LUISS

Degree Program in Politics: Philosophy and Economics

Course of International Law

Determining the lawfulness of anticipatory self-defence: a case study of Israel's preventive actions in post-Assad Syria.

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Academic Year 2024/2025

Abbreviations used throughout the paper:

IAF: Israel Air Force

ICJ: International Court of Justice

IDF: Israel Defence Forces

HTS: Hay'at Tahrir al-Sham

NSA(s): Non-state actor(s)

SDF: Syrian Democratic Forces

SNA: Syrian National Army

SOR: Southern Operation Room

UN: United Nations

UNC: United Nations' Charter

UNDOF: United Nations' Disengagement Observer Forces

UNGA: United Nations' General Assembly

UNSC: United Nations' Security Council

WMD(s): Weapons of Mass Destruction

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Abstract

The following paper is aimed at evaluating the lawfulness of Israel’s actions in the territory of Syria in December 2024. In order to do so, it presents an analysis of the *lex lata* governing the exercise of forcible action. It finds that the only exception to the general prohibition thereof is provided by self-defence under Article 51 of the United Nations’ Charter, as supported by subsequent judgements by the International Court of Justice and academics who subscribe to a restrictionist interpretation of such provision. However, there exist other schools of thoughts advocating for the inherent right for states to act before an aggression is concluded, either pre-emptively or preventively. The study continues with an analysis of Israel’s policies *vis-à-vis* its enemies through the years, which highlighted the repeated exercise of preventive actions by Israel under its doctrine of deterrence. This pattern is concerningly shared amongst international actors and ultimately threatens to erode the very basis of international law. The main thesis put forward in this dissertation, as concluded in the third chapter, is that the airstrikes and territorial incursion of last December by Israel represent a clear instance of preventive self-defence, and may set a dangerous precedent for the admissibility thereof.

Chapter 1. Admissibility of the anticipatory self-defence in International Law

This introductory section will deal with the *lex lata* regarding the exercise of self-defence and the literature surrounding its interpretation. This will prove instrumental towards the goal of evaluating the lawfulness of Israel's actions in Syria, since without theoretical basis, the discussion would amount to mere speculation. First, it is necessary to define what comprises an armed attack and when an occurrence of this kind trigger lawful self-defence. In order to do this, we will explore the United Nations' General Assembly resolution 3314 on the definition of the crime of aggression, as well as the International Court of Justice judgement in the landmark case Military and Paramilitary activities in and against Nicaragua (from now on Nicaragua). This will prove instrumental in discerning lawful exercises of force from unlawful ones from the standpoint of *lex lata*. We will then turn to the provisions concerning self-defence, namely Article 51, before delving into the discussion surrounding its nature. As we will see, the wording of such provision gives space for two diametrically opposite interpretations. Afterwards, the following paragraph will tackle the issue of discerning the different "shades" of self-defence prior to an armed attack, a specification necessary for confronting the different approaches to the issue. Lastly, this section will provide an analysis of the criteria of necessity and proportionality in the exercise of anticipatory self-defence and the evolution throughout history thereof (from the initial Caroline formula to today's meaning) so as to provide safe nets for the lawful exercise of pre-emptive actions.

1.1 The definition and threshold of armed attack in International Law

In order to understand how and when is the use of anticipatory force legitimised in today's international system, with the aim of determining the legality of Israel's actions, we first need to examine on which occasion is forcible action admissible *per se*. Indeed, the wording of Article 2§4 of the UNC essentially prohibits any resort or threat of the use of force: 'All Members shall refrain in their international relations from the threat or use of force' (UNC, 1945). This total restriction resembles that of the previous Kellog-Briandt Pact of 1928, when the contracting parties agreed never to resort to force as 'an instrument of national policy in their relations with one another' (Kellog-Briandt, 1928). There exist however two exceptions to this prohibition in the charter: either if the forcible intervention is approved by the UNSC via the powers bestowed upon it by Section VII of the UNC; or if the use of force is in response to an armed attack. The scope of this paragraph will be exploring what comprises an armed attack.

The UNGA resolution 3314 on the Definition of Aggression, despite its unbinding nature, is key to understanding the international community's notion of armed attacks. Indeed, the ICJ itself extensively cited the resolution when exercising its jurisdiction, as in Nicaragua, where it argued that it 'may be taken to reflect customary international law' (Nicaragua, 1986). The court will also consistently rely on the definition in other landmark cases, such as Oil Platforms, or in its advisory opinion during Nuclear Weapons, which will be taken into study later. Let us now draw on the resolution to extract a definition of armed attack. Article 1 of the document closely resembles Article 2§4 of the UNC when it defines an aggression as 'the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State' (UNGA, 1974), and therefore does not elucidate enough on the matter of what comprises an armed attack. What is more of use to the current inquiry is found in Article 3, which explicitly enumerates a series of instances which equate to an aggression, namely the 'invasion or attack by the armed forces of a State of the territory of a State', 'any military occupation' or 'any annexation by the use of force' (1974). Moreover, actions such as bombing, blockading ports, the sending of militias or mercenaries by one State against another as well as an attack on a State's 'land, sea or air forces' (1974) all amount to acts of aggression. This part is of particular interest to the present study as, despite the document's rather narrow scope and lack of "coercive" power, the previous enumeration of different actions comprising armed attacks has been a prime source to the literature regarding self-defence. In particular, the last two examples, the sending of militias by one State against another and the attack on a State's military capacities, will prove fundamental in the ICJ's rulings in the landmark cases Nicaragua and Oil Platforms. As for the former, its importance lies in the court's distinction between grave and lesser breaches of the principle of non-intervention, which in turn determines the extent to which the victim state can retaliate. As for the latter, it tackles the question of immediacy and necessity, and therefore will be explored in the following sections. Let us now turn to Nicaragua, for this seminal ruling addresses some of the gaps left by resolution 3314 by introducing a gravity threshold for aggressions.

First, however, we need to clarify three things regarding the role of the ICJ in the field of international law before taking into exam to its judgements: for once, when talking about the "view" or the "position" of the court, we are actually referring to the majority of the judges of such institution, as the court is comprised of 15 judges who vote equally and oftentimes have diverging opinions. Secondly, as Green (2009) points out, any judgement from the court should only be interpreted as a 'freeze frame' of that law in the particular moment in time when the court's interpretation was demanded. However, in regard to questions such as self-defence, the main issue of the current paper, the court has been so far coherent in its interpretation in decisions such as Nicaragua, Oil Platforms and Nuclear Weapons, though often narrow in scope. The third point is exactly on this issue, i.e. the

court's silence on issue such as anticipatory self-defence, at the centre of very heated debate in the international community. Indeed, such a clarification by the ICJ would be of very much use for the achievement of the current paper's goal or other debates on the matter, however, as Rothwell (2005) and Green (2009) point out, the silence itself by the court may represent its narrow interpretation of the right to self-defence, based on Article 51 of the UNC and the presence of an armed attack as 'the condition *sine qua non* for lawful self-defence' (2009). Nevertheless, the debate around the court's position on these issues will be reserved for the next paragraphs, while the present one will take into consideration the landmark Nicaragua case to discern grave breaches of the principle of non-intervention involving force from less grave ones.

The proceedings on Military and Paramilitary activities in and against Nicaragua (Nicaragua v. United States) revolve around the accusation by the former state of a breach of Article 2§4, among others, by the US through the training, arming and supplying of rebels, the Contras. After the court determined its jurisdiction over the case, the US defended their operations by arguing that Nicaragua had been supplying rebels in El Salvador and violated the sovereignty of Costa Rica and Guatemala, therefore justifying its response as lawful, collective self-defence.

The key passage from the ruling is paragraph 191, where the ICJ found it 'necessary to distinguish the most grave forms of the use of force from other less grave forms' (Nicaragua, 1986). In order to understand the rationale behind this statement, we need to explore the principle of non-intervention, which, in the words of the court, is 'the right of every sovereign State to conduct its affairs without outside interference' (1986). According to the court's view, an armed attack consists in a grave breach of the principle of non-intervention through the use of force, establishing a gravity threshold for the lawful exercise of self-defence. As the court goes on to state in paragraph 247, in line with UNGA's resolution 3314, while sending irregulars into the borders of another states represents an armed attack, 'the supply of arms and other support to such bands cannot be equated with armed attack' (1986) and therefore is of less gravity, although, it continues, it may still amount to an unlawful use of force or a breach of the principle of non-intervention though it does not trigger Article 51 of the UNC. Hence, as Randelzhofer (2012) states, 'the notion of "armed attack" has a narrower meaning than the "threat or use of force" in the sense of Article 2§4' highlighting a sort of a gap between the two provisions, in the sense that not every breach of the first amounts to the necessary condition for the exercise of self-defence. The final ruling thus found the US' measures towards collective self-defence to be unlawful. In its other seminal case concerning the definition of aggression, Oil Platforms (Iran v. United States), the court went on to specify that 'a mere addition of several small-scale attacks' does not amount to a grave enough breach triggering self-defence (Randelzhofer, 2012).

After having defined the notion of armed attack we can now move on to explore the *lex lata* concerning the right of self-defence in presence of an armed attack and to what extent states can exercise this right anticipatorily, and the different interpretations thereof.

1.2 Treaties and provisions on self-defence: Article 51

Having established the threshold for what qualifies as an armed attack under international law, the analysis now turns to the legal framework that governs a state's right to respond. Specifically, this section will examine the principal treaty-based sources on self-defence, most notably Article 51 of the United Nations' Charter. By doing so, it aims to outline the *lex lata* regulating defensive measures and set the stage for a closer examination of anticipatory self-defence in subsequent sections. As mentioned earlier, Article 51 and section VII of the UNC represent the only exceptions to the absolute prohibition to the resort to the use of force in international relations present in the charter, concerning respectively the use of forcible countermeasures as the exercise of the right to self-defence and actions adopted by the Security Council. This analysis begins with Article 51, the cornerstone of treaty-based self-defence provisions.

It is pivotal here to clearly examine the wording of the provision: the key quotes here are 'the inherent right of individual or collective self-defence' and 'if an armed attack occurs' (UNC, 1945) which represent the centre of most contemporary debates and will be the basis of the following inquiry. Having discussed the notion of armed attack, we can observe how the charter considers the occurrence of such a breach as the *conditio sine qua non* of the lawful exercise of self-defence, in line with the position of the ICJ in the aforementioned rulings. Regardless, this issue sparks current debate on the issue and fuels divisions among the scholars, which Mulcahy and Mahony (2006) divide into restrictionists or adaptivists. The former represents those scholars who adopt an exhaustive interpretation of Article 51, one which leaves no space for anticipatory self-defence and requires an armed attack in order to exercise this right. The latter, the followers of the adaptivists school, argue that a customary law prior to the charter, stemming from the seminal Caroline affair (the '*locus classicus* of the law of self-defence' according to Jennings (1938)), has survived the adoption of the treaty and provides states with a right to anticipatory self-defence. Indeed, this classification ignores different degrees and shades in the two classes, and requires further clarification to assess the specific claims made by each school of thought. As for now, it is essential to provide an insight regarding the different kinds of self-defence before delving into the claims of either school of thought.

1.2.a Anticipatory, pre-emptive or preventive self-defence?

The only kind of rightful self-defence explicitly referred to in the UNC is the one subsequent to an armed aggression. Having already dealt with which actions represent armed attacks, we are able to accept this notion without giving it much of a thought. However, before discussing the admissibility of early self-defence, it is pivotal to discern the different types thereof. This task is also not straight-forward, as different scholars adopt different notions of the same terms and there appears to be no general agreement on the issue. However, studies such as Fenton's (2024) can help establish a strong understanding of the different kinds of pre-attack self-defence, namely anticipatory, pre-emptive and preventive. The research refuses to solely rely on a temporal criterion in assessing the differences between the different degrees of self-defence, considered weak and deceiving, and proposes the criteria of probability, impact and evidence. The result is that anticipatory and pre-emptive self-defence are the most similar, requiring an imminent/immediate temporal proximity of a catastrophic attack, supported by strong evidence before taking forcible measures; on the other hand, preventive self-defence appears to be the most distant in time, often exercised on the basis of weak or totally absent evidence of an attack of unknown proportions. These definitions will be used throughout the present paper as they coherently synthesise the different academic points of view on the matter

Finally, one last category of self-defence should be taken into consideration, that of the interceptive kind. This term, coined by Yoram Dinstein (1988), refers to the defensive measures taken against attacks that are already operationally underway but have not yet struck, i.e. a missile defence system intercepting missiles launched by its enemies. Indeed, as Green points out, the mere fact that the disruptive effects of the attack have not yet manifested is not enough to dismiss the measures taken by the defending state as anticipatory. Indeed, 'it in fact represents an attack that is so imminent that it is simply an attack per se' (Green, 2015). In this light, interceptive self-defence aligns comfortably with Article 51 of the UN Charter, and unlike broader forms of anticipatory or preventive self-defence, it faces little opposition among scholars regarding its legality and will thus not be explored any further by the present study.

Having established the conceptual distinctions, the next section will now critically examine arguments from both the restrictionist and adaptivist perspectives.

1.3 Grounds for the admissibility of anticipatory self-defence

The argument advanced by the current paper could be encapsulated in the words of Yoram Dinstein (1988), '"if" does not mean after. It also does not mean before'. In other words, in today's

international system, one in which states (as well as non-state actors) have equipped themselves with weapons of mass destruction and are capable of swiftly inflicting disastrous damages to their opponents, it would be fundamentally 'naïve and self-defeating to contend that a state should await an attack by another country' before being able to forcibly counteract (Gaeta, Viñuales and Zappalà, 2020). This appears to be the shared view among the majority of international lawyers and states, and is to some extent supported by state practice. However, Dinstein's quote also warns of a possible misuse of the right to act prior to an overt armed attack, i.e. a right to preventive self-defence, following the definition given in the previous paragraph. Indeed, should states see their right to resort to force recognised without the necessary evidence and or having first exhausted other means of peacefully resolving the dispute could lead to a dangerous lowering for the requirements for the lawful use of force, as some scholars point out (Garwood-Gowers, 2004; Rothwell, 2005 Tramontana, 2018). In the word of the Dutch naturalist Hugo Grotius, regarded as one of the founding fathers of International Law, 'they are themselves much mistaken ... who maintain that any degree of fear ought, to be a ground for killing another, to prevent his supposed intention.' (Grotius, 1625). In order to provide evidence in support of anticipatory self-defence, it is essential to first explore the different claims regarding Article 51 in order to examine the rationale behind each of the approaches.

As outlined earlier, the debate on this topic divides the academia between one of two schools of thought: restrictionism or adaptivism. Restrictionists such as Green (2009), Mulcahy and Mahony (2006) or Garwood-Gowers (2004) support a literal interpretation of Article 51, one which exhausts any other rightful resort to force in favour of a strictly responsive one, thus suggesting that recognising a right to anticipatory self-defence 'would weaken international law's general prohibition on the use of force, perhaps to the extent of rendering the Charter framework virtually worthless.' (2004). Such scholars reject the survival of pre-charter customary laws that conferred such a right to states, the famous Caroline formula, since a treaty adopted later in time than a customary law regarding a rule of *jus cogens* will always prevail (Mulcahy and Mahony, 2006). This position also appears to be supported by the rulings of the International Court of Justice. The legal implications of this view are centre of debate, as proponents of the other interpretation of Article 51 argue that 'if states had to wait for an armed attack to occur, then maintenance of international peace and security could not take place' (Van Den Hole, 2004). Indeed, this narrow conception of self-defence appears unsuitable for modern international dynamics, as state practice seems to support the emergence of a right to anticipatory action. However, proponents of the restrictionist approach may highlight how, contrarily to Article 51 which *prima facie* seems to necessitate an aggression of sufficient gravity to trigger self-defence, Article 39 also refers to a 'threat to peace' while examining the instances when the Security Council may approve forcible actions (Garwood-Gowers, 2004). Hence, restrictionist believe the consolidated jurisprudence to already offer enough safe nets without the need of recognizing other

rules of customary law necessary to defend global peace. Nevertheless, this argument may ignore the divide among members of the UNSC, particularly between the so-called permanent five, those who retain the right to veto decisions, which often renders decision-making in the council subject to conflicts of interests and somewhat inefficient.

On the other hand, supporters of the adaptivist school such as Van Den Hole (2003), Rothwell (2005) and O'Meara (2022) adopt another interpretation of Article 51, arguing that the provision should be read in harmony with pre-existing customary norms, not in exclusion of them, by focussing on the passage 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence' (UNC, 1945). According to Van Den Hole, 'Article 51 is therefore only meaningful on the basis that there is a customary or inherent right of self-defence' as in the charter there is no clear specification of such a right. The right they point to is that conceptualised by then US secretary of state Daniel Webster in the classic Caroline affair: the pre-emptive action by the British against Canadian rebels on the Niagara river served to Webster as the occasion to define the famous Caroline formula governing the exercise of anticipatory self-defence, i.e. 'a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation' (Caroline, 1837). The subsequent state practice crystallised the principles as customary law and so it stayed up until the adoption of the charter. However, as Forcese (2018) and Green (2009) highlight, the formula is not well suited for a general rule today as it is strongly circumstantial. Nevertheless, adaptivists today do not support the adoption of a Caroline standard altogether but adapt it to the contemporary times by changing its criteria of necessity and proportionality in the response. Additionally, as Van Den Hole (2004) notes, were states given such a right to act before the attack has occurred, the defending state should necessarily bring its case and evidence before the UNSC for an evaluation of the intelligence collected and proportionality of the response taken, effectively creating a system of checks and balances to discourage any abuse of such right.

Moreover, supporters of this theory often point to the contemporary state practice which appears to be supportive of a right to anticipatory self-defence. As O'Meara (2022) points out, while the vast majority of the world's state has rejected the idea of preventive action, recourse to self-defence of an anticipatory nature is 'undoubtedly a feature of contemporary state practice'. Interventions such as that by the United States and its allies in Iraq and Afghanistan following the terrorist attacks of September 2001 are often cited as supporting evidence. However, this is not without criticism, as a number of international layers and states have repeatedly expressed their worries about a dangerous broadening of the prohibition. The Bush doctrine and the Bethlehem principle that inform these operations will be the topic of the next paragraph, where we will study how international terrorism threatens to legitimise the preventive use of force.

1.3.a Other conception of self-defence: the Bush Doctrine and the Bethlehem principle

In the wake of the terrorist attacks of September 2001, the threats of international terrorism and NSAs have monopolised the academic debate and shifted the attention back to anticipatory self-defence. Indeed, as Garwood-Gowers (2004) argues, 'the most significant change since 11 September has not been in the threat of terrorism but instead in how the international community ... perceives that threat'. A prime example of this shift is to be found in the subsequent "Bush Doctrine", incorporated in the 2002 National Security Strategy of the United States of America, a potential third approach to the matter of anticipatory self-defence: one which recognises the right to pre-attack action, but significantly lowers the threshold for the exercise thereof by coming dangerously close to legitimizing preventive self-defence. In particular, the document states that 'America will act against such emerging threats before they are fully formed' (POTUS, 2002), dismissing the criteria of imminency and strong evidence for the exercise of forcible action.

The Bush Doctrine's expansive interpretation of anticipatory self-defence finds notable scholarly and doctrinal support in the Bethlehem Principles formulated by Daniel Bethlehem, former legal adviser to the UK Foreign Office. Although the document officially seeks to establish the criteria for the defence against NSAs as supported by state practice, its validity in regard to disputes among states is contested. Of particular interest here is Principle 8, explicitly stating: 'The absence of specific evidence of where an attack will take place or of the precise nature of an attack does not preclude a conclusion that an armed attack is imminent for purposes of the exercise of a right of self-defence' (Bethlehem, 2012). This principle aligns closely with the logic of the 2002 National Security Strategy, which similarly justifies preventive action based on uncertain threats posed by terrorists or rogue states potentially equipped with weapons of mass destruction, even in situations lacking precise intelligence on the timing or nature of the threat. By lowering the evidentiary requirements traditionally demanded by international law, both frameworks significantly broaden the scope of permissible anticipatory force, thereby raising critical questions regarding the risk of subjective and speculative determinations of imminence.

Furthermore, resolutions 1368 and 1373 by the UNSC are often regarded as strong evidence of the recognition of a right to pre-emptively act against NSAs *vis-à-vis* the threat of international terrorism. As for the former, it urges states to 'take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism' (UNSC, 2001); as for the latter, it reiterates the same principle, this time emphasizing the duty of governments to 'prevent the commission of terrorist acts' (UNSC, 2001). The mentioned resolutions provided the legal basis for the subsequent actions by the US and its allies against Al-Qaeda, the persecutor of the attacks, and their broader manouvers in the region with the aim of deterring future threats to international peace.

However, this was met with skeptisism by the academia, generating opposing views on the matter. Scholars such as Mulcahy and Mahony (2006) or Tramontana (2018) have been vocally opposed to this new approach to self-defence, stating how the Bush doctrine 'appears to permit a great degree of "guess-work" regarding ... the actual actions of the enemy and ... their intentions' (Mulcahy and Mahony, 2006) or how the National Security Strategy does not find any legal basis both in regards to the *jus ad bellum* and international humanitarian law (Tramontana, 2018). Furthermore, a successive ruling by the ICJ, Armed Activities in the territory of the Congo (DRC V. Uganda), also seems to be inconstistent with the principles stated in both the Bush doctrine and the UNSC resolutions. In this landmark case the court reaffirmed its restrictive interpretation regarding self-defence, one which requires an armed attack by a state or a state-sponsored attack by irregulars. Additionally, the court reiterated the need for self-defence to be proportionate to the scale of the offense and exclusively aimed at ending the aggression, without any kind of retaliatory action (Armed Activities, 2004).

Indeed, one must refrain from overstretching the prohibition from the use of force to a dangerous point, as it could lead to arbitrary annihilation of any perceived threat. Nevertheless, while preventive self-defence, which could have informed to some degree actions by the US in the wake of 9/11, has arguably no legal basis in the *jus ad bellum*, there is evidence of *opinio juris* and state practice which support an argument towards a right to anticipatory self-defence, as mentioned earlier. Nevertheless, its exercise needs to be strongly limited and subject to criteria such as necessity and proportionality, the study of which shall be the topic of the next paragraph.

1.4 The criteria of necessity and proportionality through the years

This section will enumerate some of the possible limits to the exercise of self-defence in particular the criteria of necessity and proportionality. Indeed, these conditions have been linked to the Webster formula concerning the Caroline affair and have extensively informed supporters of anticipatory self-defence. However, while, as Green (2009) observes, the ICJ has never referred to the Caroline incident, in its advisory opinion on Legality of the Threat or Use of Nuclear Weapons (from now on Nuclear Weapons) it still claimed that 'The right to self-defence ... is subject to the conditions of necessity and proportionality' (Nuclear Weapons, 1996), thus recognizing them as principles regulating 'all actions of self-defence' (Green, 2009). In the view of the court, necessity means that a specific measure must be necessary to 'achieve a specific purpose of self-defence', while proportionality deals with 'how far a specific measure may go in order to achieve such a purpose' (Randelzhofer, 2012).

In relation to the exercise of self-defence in a strict sense, i.e. that in response to a previous armed attack, necessity requires the exhaustion of any other means of settling the dispute or the impossibility thereof, while proportionality demands states not to go beyond the purpose of repelling the attack so that 'the specific impulse from which the attack emerged is no longer present (2012), avoiding any punitive or retaliatory intention. Moreover, the proceedings concerning Oil Platforms also highlighted another principle governing the "institutional" use of self-defence, that of immediacy. According to Iran in its reply to the court, immediacy 'means that the employment of counterforce must be temporally interlocked with the armed attack triggering it' (Oil Platforms, 2003). While the court refrained from explaining its interpretation of the criteria, as it 'only evaluated the lawfulness of the use of force by the United States in relation to the alleged, specific attacks', dismissing US's claim without accusing it of misuse of force (Ochoa-Ruiz and Salamanca Aguado, 2005).

On the other hand, when transitioning from post-aggression self-defence to the anticipatory one, the criterion of necessity comes to incorporate also a temporal dimension, that of imminence (Green, 2009). The common meaning of the former could be found in the UK's 2018 All Party Parliamentary Group on Drones Inquiry Report, stating that imminence 'requires an assessment of temporal factors only and translates to an attempt to answer the question: is the attack about to happen?' (Drones Inquiry Report, 2018). This interpretation stems directly from the Caroline formula, particularly from the expression 'leaving no ... moment for deliberation' (Caroline, 1837).

As O'Meara (2022) observes, current developments in the international system, especially after 2001, have morphed the conception states and scholars have of imminence. Modern interpretations of necessity and imminence have evolved through efforts to codify state practice and legal opinion in the post-9/11 security landscape. Two of the most cited proposals relating to the issue are the aforementioned Bethlehem principles and the Chatham House Principles by Elizabeth Wilmshurst (2008). Both of these sets of rules argue for a consolidation anticipatory self-defence in the field of international law and reject a strictly temporal definition of imminence in favour of a 'contextual imminence' (O'Meara, 2022). As for the former, it employs a conception of imminence which also relates to the nature, immediacy and probability of the threat, as well as the history between the parties and the expectable damage if no action is undertaken. Moreover, it introduces the last window test: each state acting against a future threat shall estimate when the last occasion to neutralise or mitigate its effects will be and seek to challenge it via peaceful means. Similarly, Wilmshurst (2008) argues, this time in regard to inter-state confrontations, about the existence of an inherent right to anticipatory self-defence against an imminent threat. Here, imminence is not limited to a temporal assertion, but also includes the capabilities of the attacker and the last window test. As mentioned earlier, the Bethlehem Principles are criticised for allowing excessive guesswork, since

states are not, in theory, required to know the precise time and magnitude of a threat. However, the document represents a step further in the evolution of the criteria and necessity and imminence. Conversely, Wilmshurst sharply rejects the admissibility of self-defence of a preventive kind as ‘so-called doctrine of prevention ... excludes by definition any possibility of an ex post facto judgment of lawfulness by the very fact that it aims to deal in advance with threats that have not yet materialised’ (2008). Similarly, other scholars have highlighted the incompatibility of the criteria exposed in the Bethlehem Principles and the Bush doctrine with the principles of necessity and proportionality: as Badalič points out, without concrete knowledge of an attacks time and location not only is it ‘not possible to ascertain that an instant and immediate preventive armed response to the threat is necessary’ (2024:42), but also the use of force itself might not be the only mean to settle the dispute. As for proportionality, Roberts exposes how ‘preventive application of force ... provides no ready reference point for the calculation of the proportional response’ (1987).

Overall, such authors, as well as the present one, only support anticipatory action against a concrete, imminent and grave threat leaving no feasible resort to peaceful means of settlement. As mentioned earlier, radically reinterpreting the international law as to include preventive action risks entitling states to act arbitrarily against perceived threats without seeking diplomatic solutions. So far, however, state practice has highlighted a growing consensus towards this type of self-defence which, together with the lack of effective supervision from the international environment, threat to jeopardise the achievements of post-UNC jurisprudence and its future role in peacekeeping.

Chapter 2. Israel's operations in Syria after the fall of Assad's regime through the lenses of its deterrence strategy

After having explored the *lex lata* and academic debate surrounding the lawful exercise of self-defence by a state, we shall now delve into the main subject of inquiry for the present paper, i.e. the actions undertaken by Israel in the territory of the Syrian Arab Republic since December 2024. While the debate over the legality of such actions is the issue of the third and last chapter, the present one will state the circumstances, scale and rationale behind Israel's operations. It will do so in the following way: first, we shall analyse Israel's deterrence strategy *vis-à-vis* its perceived enemies in the region. By looking at the development of the criteria that shaped such a strategy though the years, from Ben Gurion's up until Netanyahu's administrations, we will grasp the rationale which informs its approach to the newly reconstructed Syrian state. Afterwards, three previous instances of anticipatory action by Tel-Aviv will be examined, namely the 1967 Six-Day war, the 1981 Osirak attack, and the 2007 operation "outside the box". Indeed, the study of the circumstances surrounding these events and the justifications by the perpetrator will prove instrumental over the course of the next chapter as to evaluating the lawfulness of more recent attacks. We will then turn to the most recent developments in the Syrian Civil War and the effects that the fall of Assad's regime has had on the status quo of the region and Israel's goals thereof in light of its National Security Strategy. However, due to the relative novelty of these developments, the material used for the study derives mostly from think tanks and reports of the UN rather than peer-reviewed articles. Lastly, we will evaluate the material entity of the attacks by the IDF against the arsenal of the Arab Republic since December 2024, at the core of the present issue.

2.1 Israel's deterrence strategy

First, the inquiry will focus on a brief analysis of the Israeli strategy relative to the Levantine region. Indeed, the geopolitical dynamics and the animosity nursed by most of the states in the region against the Jewish state have starkly shaped the latter's domestic and foreign politics. In particular, ever since its inception, Israel has been adopting a strategy of deterrence, aimed at 'deterring Arab plans to destroy Israel' through 'the use of preemptive strikes' (Inbar and Sandler, 1993), nowadays primarily focused on countering Iran's attempts at supplying its militias. While, as Rodman states, there is a 'lack of a formal national security doctrine' regarding Israel, the peculiar situation it finds

itself *vis-à-vis* the region has pushed policymakers to 'formulate a set of basic security concepts' which 'have nevertheless clearly driven Israeli thinking and conduct over the course of the state's existence' (2001). As for the present inquiry, in order to speculate on the issue of preventive warfare, it will draw upon three of these sets of concepts or "informal" doctrines, namely Ben Gurion's triad, the Begin strategy and, lastly, Netanyahu's administration's "octopus doctrine". Let us now dissect each of these strategies, starting from Ben Gurion's triad.

2.1.a Ben Gurion's triad

Amongst the founding fathers of the modern state of Israel, David Ben Gurion indeed occupies a spotlight place: not only was he the main designer of the state's national identity, but he also articulated its first defensive strategy, one by which Israel still abides to this day (though with some added criteria), i.e. the Ben Gurion's triad. The triad was originally comprised of deterrence, early warning, and decision of the victory. Nowadays, however, Israeli scholars such as Shmuel Bar include other criteria such as '"homeland resilience" ... "prevention" ... and "paralysis"' to the bunch (Bar, 2020). Nevertheless, this new set of added concepts stems directly from the initial triad, and as such it does not require an in-depth review for the time being. Let us now draw upon each of the three original criteria, leaving deterrence, the first and main one, for last as it represents the byproduct of the other two.

The concept of early warning is closely linked to intelligence gathering regarding possible threats and the disruption thereof. Indeed, Israel's intelligence agency, the Mossad, is recognised as one of the best in its field having at its disposal a complex network of human intelligence (or HUMINT) infiltrated among the top commanders of its target states. The necessity of such an efficient intelligence agency stems from Israel's disadvantaged geography and position, and the assumption of its military might to be inferior to all of its enemies' combined power (Inbar and Sandler, 1993; Bar, 2020). Additionally, whenever a threat, whether concrete or perceived, is mounting against Israel, the IDF precisely and readily disrupts it via anticipatory (or even preventive) action without emitting ultimatums beforehand, thus without letting the opponent know where the tripwire lies. This rationale strengthens deterrence in two ways: on the one hand, enemy states refrain from overtly demonstrating hostility towards the Jewish state due to the perceived supremacy of the Mossad; on the other hand, Israel, by not giving precise red lines, but rather 'wide stripes of blurred reddish colors' (Bar, 2020) which would trigger the use of force, leaves its adversaries in a sort of "minefield".

The third principle of the triad, the decision of victory, strongly relates to the belief that, as long as its enemies do not accept Israel's right to exist, there will be no lasting peace. Therefore,

during every confrontation, from preventive strikes to full-out war, Israel will always aim at imposing a decisive, costly victory in order to 'demonstrate to the enemy that its continued use of military power is in vain' (Bar, 2020). The occurrence of a war, Bar continues, represents a failure of deterrence and, therefore, a decisive victory is needed in order to restore the efficacy of deterrence. Moreover, as Ben Gurion formulated, deterrence cannot be everlasting, but rather cumulative: the sum of each action periodically undertaken by Israel, either during times of relative peace or under wartimes, adds up to the total deterrence which will, eventually, push the enemies to forego any hostility.

Lastly, deterrence. The principle of deterrence, as mentioned before, is influenced by every action undertaken by Tel-Aviv in order to hamper possible threats to its status. It is comprised of two types: deterrence by punishment and deterrence by denial (Inbar and Sandler, 1993). As for the former, it relates to 'the destruction of military forces and the capture of territory' as parts 'of the punishment Israel inflicted on its neighbors following a serious breakdown of deterrence' (Inbar and Sandler, 1993). This kind of retaliatory deterrence, according to Bar (2020), informed the period from the inception of Israel until the 1967 Six-Day war, and it has been encapsulated by IDF's chief Moshe Dayan in one of his lecture: 'we have the power to set a high price for our blood, a price which would be too high for the Arab communities, the Arab armies and the Arab governments to bear' (Henkin, 2018). Additionally, as Bar (2020) points out, this view signals the intent to reply unproportionally to the suffered offense. The Six-Day war, however, represents a turning point in the exercise of the deterrence doctrine, shifting from a strictly punitive type to one of denial, i.e. pre-emptive and, sometimes, even preventive strikes. This kind of deterrence will be better analysed in the following sub-paragraphs, as its principles have vastly informed the so-called Begin strategy and the contemporary Netanyahu's octopus doctrine.

2.1.b The Begin strategy and the "octopus doctrine"

If the Six-Day war, as will be explored later on, is a seminal case of preventive warfare, the Osirak attack of 1981 is widely regarded as a classic case of preventive attack. This section is devoted to analysing the rationale which lied behind the operation conducted by the IAF, i.e. the Begin strategy, named after the then prime minister of Israel Menachem Begin.

This doctrine relates to the development of WMDs on part of states which have expressed hostility towards Tel-Aviv. It calls for a preventive action to the halt the development of such armaments even long before the real threat is established. It is therefore an example deterrence by denial, one by which Israel has abided ever since and still informs its approach in regards as the entire

Middle East. It stems from the words of Begin himself: ‘We shall not allow any enemy to develop weapons of mass destruction turned against us’ (Begin, 1981). From Israel’s standpoint, it is essential not to let hostile neighbours acquire WMDs, particularly nuclear weapons, as this would mean shifting from deterrence of a cumulative kind to that of the Cold-war era, i.e. that of M.A.D. (mutual assured destruction). The doctrine of M.A.D relies on the assumption that, even if one of the nuclear armed superpowers attacked the other with its warheads, the victim state would still be able to reply, assuring the destruction of both. However, according to Bar (2020), this paradigm would not be sustainable in a polynuclear Middle East as Israel does not have the capacity to survive a nuclear attack before retaliating due to its geography. It is therefore instrumental for Tel-Aviv not to let its historic enemies develop such armaments. This rationale still informs its strategy until this day, as demonstrated by the pursued strategy of dismantling and thwarting nuclear programmes in the region (Syria 2007, Iran 2011 and 2025). Nowadays, however, Israel is also more committed than ever to gaging asymmetrical wars against Iranian proxies such as the Houthis, Hezbollah and Hamas while contrasting the threat of a nuclear equipped Teheran. This state of affairs has morphed Tel-Aviv’s strategy to suit preventive actions against militias rather than conventional armies, the octopus doctrine.

In a speech delivered at the Bar-Ilan University in 2009, prime minister Binyamin Netanyahu stated that what represented the greatest threat towards Israel, the Middle East and the world as a whole was ‘the nexus between radical Islam and nuclear weapons’, concretised in the increasing Iranian influence in the region and its aim towards nuclear warheads’ development (Netanyahu, 2009). This view informed the three consecutive Netanyahu’s administrations up to this day and has pushed Israel to embark a strategy aimed at disengaging Iranian proxies through actions in Lebanon, Iraq, Yemen and, more importantly, Syria (Zilber, 2022). In particular, the latter’s Alawite regime represented a bastion for Iran’s anti-Western struggle and its main ally in the so-called Axis of Resistance, making it therefore a paramount threat to the neighbouring Jewish state (Stein, 2021). This strategy, labelled as the octopus doctrine, consisted in overt attacks on Iran’s “tentacles”, i.e. its proxies, as well as covert attacks on its head, the Islamic Republic itself, such as cyber-attacks, impairing of nuclear equipment and personnel, and intelligence theft (Zilber, 2022; Talbot, 2023). Indeed, while preventive and retaliatory attacks by Israel on militias such as the Houthis in Yemen or Hezbollah in Lebanon have been constantly making the news, only recently has the public witnessed a blatant escalation between the two regional powers, which climaxed with the so-called twelve-day war in June 2025. Overall, the octopus doctrine represents the latest development in Israel’s informal defensive strategy, which stems from Ben Gurion’s triad and the Begin’s doctrine but has adapted to modern warfare, one in which asymmetrical confrontations are more frequent than inter-states war and the threat of a nuclear armed Iran is ever-present.

After having discussed the theoretical background, we can now delve into the practical examples of previous exercises of anticipatory actions by Israel, namely the 1967 Six-Day war, the 1981 Osirak attack and the 2007 Operation "outside the box" in Syria, trying to discern those of the pre-emptive kind from those of the preventive one.

2.2 The Six-Day war

The 1967 Six-Day war does not merely represent a turning point for Israel's stance *vis-à-vis* its enemies (from deterrence by punishment to that by denial), but also 'a milestone in a conceptual development' in regard to pre-emptive wars (Kurtulus, 2007). Indeed, the debate surrounding this event has influenced states' opinion and practice relating to the issue of legal self-defence, informing their behaviour up to this day. Subsequent inquiries on the matter saw the academia divided between two opposite theories regarding the nature of the 1967 war. While some scholars argued for the existence of the criteria necessary for the exercise of pre-emptive self-defence, namely necessity, contextual imminence and proportionality; others accused Israel of acting preventively. In order to provide evidence on the preventive nature of the war, let us first give a brief insight into the historical context of the conflict.

The crisis began when, on the 9th of May 1967, Soviet intelligence reported an Israeli plan to invade Syria. This in turn alerted Egyptian president Gamal Abdel Nasser, who, in an exercise of brinkmanship, mobilised 80,000 men in the Sinai Peninsula, closed off the strait of Tiran and essentially cut off the Israeli port of Eilat. In the following days, tensions exacerbated as Nasser's rhetoric became increasingly aggressive towards Israel, even requesting the withdrawal of UNEF forces stationed in the Sinai region. Moreover, Jordan and Iraq's decision to enter the Joint Defensive Treaty, in force between Egypt and Syria, appeared to be anticipating an attack. In response, Tel-Aviv authorised the full-mobilization of its troops towards the border, and even voted at its cabinet to decide whether to act preventively or not on May 23rd. As the voting resulted in perfect parity between the two options, forcible action was postponed for the moment. Meanwhile, the Israeli ambassador was trying to obtain support from the US for the operation by persuading President Lyndon B. Johnson of the incumbent attack. However, as Quigley (2013) points out, Washington was unwilling to sponsor an anticipatory attack by Israel as CIA's intelligence did not confirm the Mossad's, since it suggested a defensive scope behind the UAR's operation. Therefore, Washington opted for the diplomatic route and even urged the government of the Soviet Union to dissuade Nasser from any offensive plan. This, according to Kurtulus (2007), signalled a détente of the initial tensions, opening up diplomatic solutions which, although scarcely successful, could have highlighted a will to solve the dispute

peacefully. However, even though Egypt had stopped deploying troops in Sinai as the crisis seemed to have halted, the IAF still stroke several airfield during the famous Operation Focus on the morning of June 5th. The attack obliterated the majority of the Arab aircrafts before it could even leave the ground, clearing the way for a swift, total victory for Israel over its enemies in less than a week. By the 10th of June, Israel had occupied the Gaza Strip and Sinai peninsula from the Arab Republic, the West Bank from Jordan and the Golan Heights from Syria before signing a ceasefire.

The pretext of the war still divides the academia, with scholars such as Shapira (1971) or Bar (2020) supporting the idea of a lawful exercise of anticipatory self-defence, pointing to the overtly aggressive stance of the Arab countries as its *casus belli*. However, an in-depth analysis of the circumstances highlights how the actions by Israel do not amount to pre-emption, but rather prevention, due to the lack of concrete evidence (intelligence by the CIA did not confirm Mossad's concerns) and the viability of peaceful resolution to the dispute. Indeed, as Kurtulus (2007) points out, neither of the two superpowers supported a full-scale conflict and were dissuading their allies from starting one. Moreover, the Joint Defensive Treaty, which Shapira (1971) proposes as the main evidence of a plot to overcome Israel's military superiority, was in fact a 're-activation of another defense treaty from 1950, the "Arab Collective Security pact"' (Kurtulus, 2007) which restrained the signees from any aggression on the basis of Articles 2 and 51 of the UNC.

Therefore, while the evacuation of the UNEF forces from the Sinai region and the deployment of forces near the border, although allegedly for a defensive reason, represented a dangerous exercise of brinkmanship, the situation appeared to have crested in late May as diplomatic channels were opening up for the resolution of the crisis. As Kurtulus suggests, the Six-Day war might have had more to do with the concept of deterrence rather than a concrete threat: as outlined earlier, part of Israel's deterrence strategy is not letting the enemies know then they have triggered a response before suffering the consequences. Hence, the attack on June 5th closely resembles a preventive strike, one which deeply influenced the way states approach warfare nowadays.

2.3 The 1981 Osirak attack and the 2007 operation "outside the box"

While the Six-Day war is an uncommon example of full-out conflict caused by preventive self-defence, preventive strikes and operations aimed at hindering hostile states' efforts at developing WMDs are far more common in modern history, particularly when approaching Israel's defensive strategy. As noted above, such an approach derives from Menachem Begin's own words, which in turn are but an adaptation of Ben Gurion's principle of early warning. The Israeli government, indeed, has repeatedly express that, while Israel will not be the first state to introduce nuclear weapons to the

region, it will neither be the second, highlighting the pragmatic approach to the question and hinting at a possible nuclear arsenal. Undoubtedly, while final evidence regarding the possession by Tel-Aviv of nuclear warheads has not been published, the widespread consensus is that they have been developed somewhere during the 60s. Clear signs of this are Israel's decision not to sign the Treaty on Non-Proliferation of Nuclear Weapons despite pressures from the UNGA, as well as deliberately employing an ambiguous rhetoric in order to allude to a possible nuclear retaliation. Once again, this ambiguity represents another component of its deterrence. On the other hand, Israel actively operates as to contrast the emergence of a polynuclear Middle East through the use of preventive strikes which, over the years, have become the standard. However, among these operations, two in particular represent landmarks cases in the evolution of the perception of preventive self-defence by the international community: the 1981 Osirak Attack and 2007 "operation outside the box" in Syria. As for the former, it refers to the destruction, by the hand of the IAF, of a nuclear facility in Iraq in July 1981. The latter occurred in September 2007 in Syria, more precisely on the Al Kibar facility.

As outlined earlier, both of these operations retain a preventive aim which was informed by the Begin strategy, that being halting at its inception the development of WMDs by confrontation states. As Tsagourias (2025) observes, a comparative analysis of the 1981 and 2007 strikes suggests a marked evolution in the international perception regarding the admissibility of preventive force. Whereas the Osirak operation provoked widespread condemnation from both states and academic, the Al-Kibar strike elicited strikingly less criticism, potentially indicating an emergent, albeit problematic, tolerance for such actions. Indeed, while Tel-Aviv justified its action in Iraq as lawful under Article 51 of the UNC by advocating for the existence of an inherent right to pre-emptively attack, such an explanation was not endorsed by the US under the presidency of Ronald Reagan, who voted in favour of the condemnation of the act at the UNSC. Similarly, Margaret Thatcher, then prime minister of the United Kingdom, called the attack 'a grave breach of international law' (Pogany, 1981). While, as demonstrated in the first chapter, there is strong evidence for the admissibility of anticipatory self-defence, both in state practice and *opinion iuris*, the 1981 Osirak attack does not qualify as such because of the lack of undeniable evidence for an imminent (in the contextual sense) threat leaving no possible resort to peaceful means. Again, the leitmotif appears to be the perception by Tel-Aviv of an existential threat posed by hostile regimes (in this case Hussein's, who blatantly attacked Israel in his rhetoric). However, as mentioned earlier, such motivations cannot solely justify an armed attack, as favouring the inception of a customary law empowering states to act preventively could lead to total anarchy.

Although the first two cases analysed, i.e. the Six-Day war and the Osirak attack, prompted though reactions on part of the international system, even among Israel's chief allies, a more recent instance of preventive strike has drawn substantially less critiques, possibly signalling a dangerous

acceptance of these actions, i.e. the 2007 Al-Kibar attack. Known also by the name operation "outside the box" or "Orchard", the attack on the nuclear facility of Al-Kibar, in Syria, is considered a seminal instance of preventive strike amid Israel's deterrence by denial strategy: the discovery of a nuclear plant in the Syrian desert (in all probability sponsored by North Korea) by the Mossad prompted a forcible reaction by the latter. However, as Riedel (2013) argues, Israel, once again, acted alone since the US, under President George W. Bush, refused to endorse the strike due to the lack of reliable intelligence about the true scope of the facility. While there is undisputable evidence on the existence of the reactor, the US were less confident regarding a possible nuclear weapons programme on part of the Syrian regime. Therefore, President Bush, who had already faced criticism *vis-à-vis* his decision to declare war on Iraq on thin evidence, pushed Israel to embark the diplomatic route. Nevertheless, on 6th September 2007 Israel shelled the facility without any previous notice. This effort is consistent with Tel-Aviv's pragmatism and reflects its will to preserve its deterrence, even when it means endorsing a strategy of preventive attacks. While it is undeniable that a nuclear armed Syria would have posed an existential threat to Israel and its allies, it is paramount not to allow preventive warfare to become the standard in international relations and crystallise itself as customary law, even more so when diplomatic means have not been exhausted.

However, as mentioned earlier, this exercise of such a strategy faced comparatively less criticism by the international community. This, according to Garwood-Gowers (2011), highlights the consequences of the 2001 terrorist attacks and the subsequent Bush doctrine had on public opinion in the West regarding preventive strikes on hostile regimes. While, according to the author, this failure to condemn the act on the international stage (as this time no UNSC resolution was passed) could suggest a general agreement on the issue of preventive strikes, hence *opinion iuris*, other reasons, such as the political animosity against the Syrian regime, might have influenced the international community. Nevertheless, as a study of these previous section will highlight, there is mounting evidence of a relaxation of the general prohibition on the use of violence, particularly when such violence is used against non-state actors. Indeed, while alarmism is of little use and every case should be studied in context, the decreasing criticism from the international community for actions against a non-imminent, perceived threat calls for an intervention, possibly by the ICJ, to restate the illegality of preventive warfare in international law.

As for the present inquiry, before assessing the extent and legality of the most recent strikes conducted in Syria by Israel, it will delve into the latest development of the civil war by also analysing the geopolitical consequences it pertains *vis-à-vis* Tel-Aviv and the region.

2.4 Geopolitical shifts after the fall of Assad's regime

Although 8th December 2024 marks the capture of Damascus by the rebel forces spearheaded by the group Hay'at Tahrir al-Sham, and the subsequent fall of the 54-year-long rule of the Assad family, the regime up to that date was far from stable: the capitulation was but the climax of a 14-year-long civil war which saw Syria as the stage on which several groups strived for supremacy (Hall, 2025; Pinfold, 2025). Nevertheless, the regime change has brought a number of issues to light, in particular regarding the status quo in the Levantine region, which have puzzled policymakers, especially Israeli ones. Indeed, given the jihadist origins of HTS and particularly its chief Ahmed Al-Shaara, who now serves as the transitional president, the newly incepted state is struggling to achieve widespread international recognition. Moreover, the Syrian Arab Republic is still far from unified, as shown by sectarian violence by the interim government against the Druze community, supported by Israel (Office of the High Commissioner for Human Rights, 2025). The present paragraph will deal with the last developments in the Syrian republic since the fall of Assad, with a focus on the interests of Israel *vis-à-vis* the newly incepted regime, the study of which will provide an understanding of the rationale behind Israel's preventive action in the state, which in turn will be instrumental as to assess the admissibility thereof.

Before December 2024, the Syrian civil war appeared to have hit a stalemate, but only to a superficial analysis: as Pinfold argues, 'though it had dipped in intensity, the civil war was simmering, not frozen' (2025). Indeed, sectarian violences were (and are) still happening on a daily basis, in particular against the Alawites community, i.e. the former "ruling" ethnicity of which the Assads were members. Even though the rule was *de jure* in Bashar Al-Assad's hands, Syria was (and still is) *de facto* highly fragmented and decentralised: in the North, the Syrian National Army, sponsored by Turkey, organised armed reprisals against its Kurdish counterpart, the Syrian Democratic Forces, which controls the Eastern region of the state. In turn, the SDF was committed to contrasting the Islamic State and as such attracted the sympathy of Western's states. To the South of the country, the Southern Operation Room, composed of moderate Islamist and Druze minorities, is sponsored by the US and the Israeli occupied Golan Heights. Lastly, until December 2024, the HTS controlled the North-Western region of Idlib (2025).

Then, at the end of November 2024, HTS launched an offensive against the central government which capitulated in the span of 10 days. However, as Pinfold points out, the coup represents a critical failure of the regime rather than a masterstroke by the rebels: Assad's forces, poorly trained and unmotivated, fled the battlefield and gave way for the offensive, which caused little over 600 casualties, compared to the estimated toll of 600,000 for the rest of the conflict. Furthermore, the role of Turkey in the success of the operation needs not to be underrated: while

formally condemning the group as terrorist, Ankara covertly supported HTS. Indeed, 'Turkish patronage was the lifeline that allowed the group to thrive in Idlib' (2025:8). This is also supported by the stance the interim government has kept towards the SDF in the East, where it has boosted the presence of its regular forces, and by engaging in an increasingly hostile rhetoric in respect to the Kurdish forces.

While a regime change does not represent a prospect of unity and peace for Syria given its lasting fragmentation and sectarian tensions, for Israel this event represents an important variation of its interests regarding the region: the prospect of rendering a prime enemy harmless while weakening the Axis of Resistance formed between Iran and its allies (Hall, 2025). Indeed, as Hall argues, the new regime will likely not let Iran supply its proxies in Lebanon and Gaza via Syria, as this would hinder the possibility of co-operating with the US and the Gulf States from which it seeks investment. However, while on the one hand an outward-oriented Syria means a weaker and isolated Iran, for Irael the fall of Assad could also translate to uncertainty, since the former regime posed but a minor threat due to its instability. Additionally, while Assad consistently restrained from overt confrontation with the Israeli backed Southern Front (now reorganised into the SOR), Tel-Aviv fears a reprisal of violence near the Golan Heights. Indeed, these beliefs proved to be true as violence in the region escalated, with Israel intervening in favour of the Druze minority. As outlined earlier, to continue, the origins of HTS as a jihadist militia, firmly opposed to the state of Israel does not help venting Tel-Aviv's concerns, which needs assurances regarding a harmless Syria.

Overall, we can assume that, together with Israel's everlasting doctrine of deterrence and early action, the concerns regarding its interests in the Southern part of Syria as well as the historic enmity of the ruling party have informed Israel's preventive strikes in December 2024. Certainly, this represents but a very superficial assessment of the forces at play, as great powers such as the US, Russia and China also have interests at stake in respects to the new Syrian Republic. However, as for the present study, the instances provided are sufficient to draw a pretext behind Israel's actions, the entity of which is the topic of the next paragraph.

2.5 Israel's preventive strikes in post-Assad Syria

This final section turns to the core issue of the case study: Israel's conduct during the regime change in Syria in December 2024. The focus here is on outlining the scale of Israel's military operations, including strikes against Syrian arsenals and the expansion of its occupied territory in the Golan Heights. The admissibility of these actions under international law represents a highly contested debate. Some commentators have characterised the operations as necessary and proportionate responses to an imminent threat, while others criticise them as preventive measures

undertaken without the exhaustion of peaceful alternatives. The following chapter will examine these competing assessments in detail, situating the December 2024 strikes within the framework of *lex lata*, the historical context of Israeli–Syrian hostilities (for some scholars argue that hostilities between the two states have never ended and, therefore, these recent strikes should be assessed on the basis of *jus in bello* rather than *jus ad bellum*), recent development in state practice, and international reactions. For present purposes, it is sufficient to provide a brief evaluation of the scope and intensity of the operations themselves.

In the wake of the capitulation of Damascus on 7th December 2024, the IAF swiftly intensified its aerial campaign over the Syrian skies, with allegedly 473 airstrikes within a week targeting 'key military sites including anti-aircraft batteries, airfields, weapons production facilities, and missile systems' believed to have neutralised '70–80% of Syria's strategic military capabilities' (ACAPS, 2025). On its part, Tel-Aviv justified its move as defensive, stating it was targeting the former regime's chemical and long-range weapons before they could be seized by radical militias. However, as Pinfold points out, 'it soon became clear this was a broader campaign to destroy all remnants of the former regime's military infrastructure' (2025). Indeed, given Israel's suspicion over the new head of the Syrian Republic, this operation might be informed by the doctrine of early warning, and as such be part of its deterrence strategy. Accordingly, Hall interprets these reprisals as part of what has been termed the strategy of "mowing the grass", i.e. 'temporary military solutions to manage sporadically recurring threats' during times of peace so as to maintain Israel's deterrence (2025).

Additionally, the IDF have subsequently expanded Israel's occupation of the Southern region of the country, adjacently to its borders, by 400 square kilometres to also include Mount Hermon, the highest point in the Levantine and a strategic outpost, along with several villages (Hall, 2025; ACAPS, 2025). Part of this territory was intended as a 235-square-kilometer buffer zone established by the 1974 Agreement on Disengagement after the Yom Kippur war to implement UNSC Resolution 338 of 1973 in which United Nations Disengagement Observer Force were stationed (Agreement on Disengagement, 1974). Likewise, this move has been presented by President Netanyahu as defensive, stating the importance for Israel to safeguard its borders and the strategic role Mount Hermon has acquired in the wake of the 'dramatic events that are happening here below us in Syria' (Beaumont, 2024).

As it will be explored in the following chapter, both of these actions have attracted criticism and prompted scrutiny in the international forum. Critics of Israel's operations point to a breach of the general prohibition of the use of violence as well as Syria's sovereignty, all while exacerbating the country's fragile stability and possibly hindering its democratic development. By contrast, other observers view the attacks and occupation in light of a reasonable concern for Tel-Aviv's security and therefore a lawful exercise of anticipatory self-defence on the basis of the adaptivist interpretation of

Article 51 of the UNC. Yet another group of supporters of the lawfulness of Israel's actions do not believe the state acted anticipatorily at all, but rather affirm an ongoing state of war between the two countries which was not extinguished by the 1974 Agreement on Disengagement. Indeed, this position is shared by Israel's leaders, who deemed the agreement 'void until order is restored in Syria', with Prime Minister Netanyahu asserting that the agreement had 'collapsed' (The Times of Israel, 2024). Therefore, if this position was found to be true, the attacks should be judged on the basis of the *jus in bello* (or international humanitarian law) rather than *jus ad bellum*.

Taken together, these divergent perspectives underscore the contested nature of Israel's December 2024 strikes. Each of these positions, together with the international reactions by states, will be analysed so as to draw the final assessment of the case study and evaluate the overall lawfulness of Israel's actions in the wake of the regime change in Syria.

Chapter 3. Evaluating the admissibility of Israeli operation in Post-Assad Syria

The preceding chapter outlined the concrete scale of Israel's December 2024 operations in Syria and introduced the contested narratives surrounding their legitimacy. The present, and last, chapter turns to the central question regarding the legality thereof under international law. First, the reactions of international institutions, states, and commentators will be considered. The necessity for this analysis is twofold: first, the informed opinions by States and institutions offer a solid base for the assessment of the legality of such debates. Moreover, exploring the views of different actors and comparing them to the previously mentioned instances of preventive actions may highlight a growing consensus *vis-à-vis* pre-attack self-defence. Afterwards, it will cite and evaluate Israel's official justifications and the alleged scope of its military actions. In doing so, it will address the argument made by Israeli leadership about the termination of the 1974 agreement, according to which the recent hostilities are to be situated among an ongoing conflictual state (therefore concerning *jus in bello* rather than *jus ad bellum*). The successive paragraph will then draw from the considerations made in the first one regarding lawful self-defence, particularly regarding the criteria of necessity, proportionality and imminence, in order to situate Israel's actions within the borders of the adaptivist view of Article 51. Overall, the scope of this chapter is to tackle the issue by exhaustively adopting any possible point of view in order to assess, with the maximum degree of reliability, the legality of the facts under study. The main thesis that will be finally endorsed is that such actions do not find any legal justification under international law, neither when adopting a restrictive view based upon the UNC and the ICJ rulings, nor when utilising a more adaptivist approach, one which allows states to act pre-emptively under precise circumstances. On the contrary, the strikes and occupation of December 2024 could set a dangerous precedent for preventive attacks, and as such situate themselves amidst an ongoing process of erosion of the peremptory prohibition of the use of force.

3.1 International reactions

In the wake of the airstrikes, a number of reactions were recorded through press releases, official appeals to international institutions and resolutions at the international fora. As discussed earlier, these statements outline the overall reception of the facts by the most important actors at the international level, i.e. states, officials and scholars, and as such provide a reliable basis from which the present discussion can proliferate. This reception, in turn, will be compared to that of the previous instances of preventive actions by Israel studied in the preceding chapter, in order to grasp the development of a new conception of self-defence which could potentially be crystallised into a norm

of customary law. First, let us explore the comments by states and officials at the UN's fora which condemned the acts of December 2024. Secondly, negative reactions by states from press releases will be analysed. Lastly, we will turn to those states and personnel that endorsed Israel's actions.

3.1.a Critiques of the acts at the United Nation's level

In a press statement released on the 13th of December, the UNDOF (United Nations Disengagement Observer Force), which had been stationed in the area of separation established by the Agreement on Disengagement of 1974, accused Israel of violating the treaty by occupying parts of the buffer zone (UNDOF, 2024). According to the statement, this is the climax of operations by the IDF along the ceasefire line 'where they have been constructing counter-mobility obstacles since July 2024' (2024). Additionally, the Observer Force urges all parties to restrain from breach of the agreement in order to restore stability in the region of the Golan Heights.

Likewise, on December 19th, the Secretary-General of the UN, Antonio Guterres, called for an immediate end to 'all acts of aggression' and for the restoration of Syria's 'sovereignty, territorial unity, and integrity' (Nichols, 2024). The wording of such declaration is not to be taken superficially, as they represent a strong condemnation of the acts. According to the Secretary-General of the UN, not only do Israel's strikes and military occupation represent a violation of the agreement of 1974 (which, he stresses, remains fully in force), but they also represent acts of aggression and violation of another state's sovereignty grave enough, therefore, to trigger a forcible response under the interpretation of Article 51 given by the ICJ in the Nicaragua judgement.

However, armed reprisals in these circumstances are very unlikely, giving the complex stage in which the Syrian leadership finds itself. Indeed, as Assistant Secretary-General for the Middle East, Asia and the Pacific Khaled Khiari argued during the 9896th meeting of the UNSC, the facts of December (and also April, when the meeting took place) 'threaten Syria's fragile political transition' (UNSC, 2025). Such actions, as the representative for Algeria observed at the meeting, were uncalled for: 'Syria has neither threatened nor attacked Israel' and, as he stressed, 'upholding international law is not a matter of choice' (2025).

Furthermore, both the Office of the United Nations High Commissioner for Human Rights and Ben Saul, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, strongly condemned the acts which, in their view, 'constitute serious violations of international law' (Thabet, 2024). The Special Rapporteur successively added that 'There is absolutely no legal basis under international law to preventively or preemptively disarm a country… This is completely lawless' (2024). Indeed, Saul's opinion closely

resembles that of the ICJ in cases such as Nicaragua and Oil Platforms in so far as it rejects any resort to anticipatory or preventive actions.

All of the above instances are but a fraction of the numerous proceedings which were prompted by the strikes at the level of the United Nations. Indeed, one should also acknowledge the UNSC resolution 2766, which reiterated, on the line of the Secretary-general, the need for both parties to observe the 1974 agreement as well as extending the UNDOF peace-keeping mission by another 6 months up until June 2025, when it was renewed again (UNSC, 2024). Nevertheless, the observations mentioned depict a widespread condemnation of the acts to various degrees, from "merely" breaches of the Agreement on Disengagement, to more serious accusation of aggression and violation of Syria's sovereignty.

3.1.b Critiques by states from official statements

For the most part, official statements by countries have echoed those at the UN's fora in as far as they have condemned the acts, albeit with different degrees of severity.

As one could have predicted, the harshest remarks came from Muslim and Arab-majority countries. As for Iran, its foreign ministry's spokesperson Esmail Baghaei accused Israel of conducting a 'flagrant violation of the United Nations charter' (Al-Jazeera, 2024), pointing to an unlawful exercise of forcible action and violation of a state's sovereignty. Similarly, Qatari foreign ministry condemned Tel-Aviv's posture of imposing its policies *fait accompli* by leveraging on Syria's fragile transition and decentralization (2024). Such positions were also shared by Jordan, Saudi Arabia and Iraq. Furthermore, these states, speaking at unified voices at the Arab League emergency meeting, denounced Israel incursions in the buffer zone as a 'serious threat to regional and international peace' and urged the UNSC to approve a resolution to order the demilitarization of the area around Mount Hermon (Arab League, 2024).

On the other hand, while also urging for the respect of the provision of the 1974 agreement and a de-escalation of tensions in the region, France was considerably less stark in its considerations regarding the occupation: in its official statement, the French foreign ministry called on Israel to 'withdraw from the zone and to respect Syria's sovereignty and territorial integrity (Le Monde, 2024). However, in contrast with the declaration by the members of the Arab league, France did not condemn the act as a grave breach of international law, but rather of the Agreement on Disengagement. A similar stance has been adopted by China, which also pointed out to the turbulent situation in the Middle East in order to call upon Israel to restrain from actions which could escalate tensions and to respect Syria's sovereignty (Khaliq, 2024).

Lastly, the interim head of the Syrian Arab Republic, Ahmed al-Sharaa, stated that the Israel's actions were unjustifiable and a blatant breach of the 1974 Disengagement Agreement. However, he continued, 'the general exhaustion in Syria after years of war and conflict does not allow us to enter new conflict' and, therefore, it would not retaliate but rather seek assurances by PM Netanyahu of a cessation of all hostilities (Al-Jazeera, 2024). Clearly, the posture by the interim government reflects the necessity to focus on internal stability and centralizing the rule against a fragmented sovereignty. This could also represent the motif behind its mild condemnation of the airstrikes and incursion: alienating itself from Israel, and by extension the US, would in fact hinder the new rule's path to stability. Thus, while Arab and Muslim-majority states tended to articulate strong legal condemnations, Western and other major powers adopted more cautious formulations that focused primarily on the Disengagement Agreement and de-escalation rather than on aggression or illegality per se.

3.1.c Endorsement of Israel's actions

As explored previously, the majority of commentators at the international level opposed Israel's airstrikes and incursion into Syria of December 2024, even though their overall disapproval varied. By contrast, only a limited number of actors explicitly endorsed Israel's position, most notably the United States, albeit with certain reserves and differing standpoints within various state officials.

In a press briefing on the 9th of December, former department of state spokesperson Matthew Miller addressed, amongst other issues, that of the Israeli incursion in the buffer zone. Miller, speaking on behalf of the US administration, expressed U.S. support for Israel's operations, framing them as defensive in nature, while stating that 'every country has the right to take action against terrorist organizations' (Department of State, 2024). Indeed, as explored in the first chapter, ever since the terrorist attacks of September 2001, the US has been increasingly supportive of a right for states to act preventively, especially against NSAs. Thus, by stressing on the power vacuum produced by the Syrian coup, the American leadership has overtly endorsed the preventive operations. Nevertheless, as Miller continued, the US would support territorial gains only so long as they are temporary and aimed at contrasting the insurgence of terrorist groups near the border. Likewise, national security adviser Jake Sullivan relied on the alleged right to act preventively to support Tel-Aviv's seizing of the ceasefire zone. Israel, he argues, retains 'a right to defend itself from risks to its security' and, subsequently, the security of other actors in the region (Reuters, 2024). Moreover, he suggests that concern over a hostile government was a key justification for Israel's intervention.

Meanwhile, the former defence secretary Lloyd Austin contacted the Israeli minister of defence, Israel Katz, to emphasise the importance of a close cooperation between the two states over

the Syrian issue. A paramount concern for the US, Austin stated, is 'to prevent the Islamic State militant group from re-establishing a safe haven in Syria' (Singh, 2024). This further illustrates the US' endorsement of Israel's actions, which is in line with the approach the two states have retained *vis-à-vis* preventive self-defence: both the US and Israel, in fact, are among the chief supporters for the emergence of a right of customary law that could allow its exercise.

Overall, an overview of recorded reactions from the international community pertaining to the events of last December highlights a clear condemnation for the attacks, with the US being one of the few states to actively endorse Israel's stance. Still, only a fraction of the commentators, the majority of which are either officials of the UN or of states which have a conflictual history with the state of Israel, have condemned the acts as grave breach of international law regarding the prohibition of the use of force. Most states, particularly Western ones, only expressed concerns relating to the 1974 agreement and the fragile transition Syria is experiencing rather than the unlawful use of force *di per sé*. This, in turn, is consistent with the reactions to previous instances of preventive strikes studied earlier, and could be placed into an evolving process which is jeopardising the norm of *jus cogens* on the prohibition of any resort to violence.

3.2 Israel's justifications for the attacks

After having discussed the responses by states and officials at various level, it is now the turn for a review of Israel public motivations for its operations. Indeed, while the motivations provided by Tel-Aviv in official letters and press releases have had limited impact on the public opinion, they are still instrumental in assessing the admissibility thereof under international law. Therefore, the present paragraph is devoted to briefly explaining the Israeli rationale behind the strikes and incursion of December 2024.

In his official letter submitted on December 9th, the Permanent Representative of Israel to the United Nations, Danny Danon, notified the UNSC of the events of the Golan Heights. Danon pointed to the attack and looting by armed groups of several UNDOF outposts as the main leitmotif behind its action (Danon, 2024). However, according to a statement by the UNDOF, by the time Israel initiated its operations 'most of the weapons and ammunition that had been taken earlier in the day' had already been retrieved (UNDOF, 2024). Furthermore, ambassador Danon stated that Israel had only taken 'limited and temporary measures to counter any further threat to its citizens' in 'full accordance with international law' and ongoing commitment to the Agreement on Disengagement (Danon, 2024). Still, the lack of any mention to Article 51 of the UNC as the enabler of these actions could mirror Israel longstanding reliance on anticipatory self-defence. Indeed, invoking the right to self-defence in response to an armed aggression could expose the manoeuvre to strict legal scrutiny

by the UNSC. Therefore, the failure to frame the operations as lawful under article 51 becomes evidence for the exercise of preventive self-defence by Israel.

Similarly, PM Netanyahu advocated for the necessity to 'ensure that no hostile force embeds itself right next to the border of Israel' after the Syrian army had deserted its positions (Netanyahu, 2024). However, in contrast with the letter submitted by the permanent representative to the UN, Netanyahu announced in his statement the 'collapse of the Separation of Forces Agreement from 1974' which called for a temporary intervention 'until a suitable arrangement is found' (2024). This argument has been at the centre of the debate over the legality of the operations: if this was proven to be the case, the attacks would have to be assessed under the lens of international humanitarian law rather than that of *jus ad bellum*.

Indeed, the Israeli leadership relied on the notion of *rebus sic stantibus* in order to forward the invalidity of the 1974 agreement, i.e. an unforeseen change which radically transforms the circumstances on which the treaty was based, as set out by Article 62 of the Vienna Convention on the Law of Treaties (1969). As mentioned earlier, however, Secretary-General Antonio Guterres firmly remarked the survival of the agreement. This argument reflects international law since, as Zimmerman points out, coups against the government of a party state are 'irrelevant in relation to the said State being bound by treaties previously entered into' (Zimmerman, 2006). Moreover, since regime changes are not mentioned as instances of state succession, such cases are neither regulated by the 1978 Vienna Convention on Succession of States in respect of Treaties. Hence, a review of the *lex lata* on the matter disqualifies the Israeli argument regarding the cessation of the 1974 agreement, which was violated by the occupation of the buffer zone.

Overall, the motivations provided by Israel pertaining to its actions following the fall of Assad's rule fail to pass a scrutiny under international law. Indeed, this is one of the causes behind their widespread rejection in the international fora. Nevertheless, in order to assess the overall admissibility of such actions, it is necessary to alas analyse whether or not they satisfy the principles governing self-defence pre- or post-attack.

3.3 Evaluating the admissibility of Israeli actions

As outlined throughout the paper, there is evidence for the existence of a right for states to proportionately act *vis-à-vis* a contextually imminent, grave and concrete threat before it commences. States, therefore, retain the right to defend themselves pre-emptively, or anticipatorily, since it would be too naive to support a strict interpretation of lawful self-defence in the present days. However, as it was also explored earlier, such a right does not empower states to resort to force unless certain criteria are fulfilled, as doing so would endanger the very fabric of international law as a whole

(Kuttab, 2024). Therefore, do the actions undertaken by Israel in Syria last December fulfil such criteria, thus amounting to an exercise of anticipatory self-defence, which is admissible under an adaptivist interpretation of Article 51?

Again, given the relative novelty of the events, there is little authoritative literature revolving around the legality of the operations. Moreover, as the study of the international reactions highlighted, few states addressed the acts as violation of the peremptory rule on the prohibition of the use of force, while the majority of them only critiqued the facts in so far as they violated the agreement in force between the two states. Therefore, they are of little use in assessing the perceived legality of the events. However, the limited opinions of jurists, academics and international institutions published since the events took place can help placing the events within the framework established during the first chapter.

First, let us assess the legality of the airstrikes under the strict, classical interpretation of lawful self-defence, as embedded in the UNC and supported by the ICJ in rulings such as Nicaragua and Armed Activities, and reiterated in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. As the court affirms in its informed opinion, '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' (Legal Consequences of the Construction of a Wall, 2004). Moreover, as stated in the Armed Activities judgement, Article 51 'does not allow the use of force by a State to protect perceived security interests beyond these' (Armed Activities, 2005). Indeed, if one was to adopt a literal interpretation of the provision, there would be no possibility for Israel to seek justification for its exercise of self-defence under Article 51, which, in fact, it did not.

Nevertheless, the wording of the Armed Activities judgement seems to be prohibiting only the preventive kind of self-defence since, as Tsagourias points out, 'the protection of a State's security interests and its defence against an armed attack are different things' (2025). Indeed, given the definitions set out in the first chapter, the former pertains to the preventive dimension of self-defence, while the latter could apply to the anticipatory one. The admissibility of anticipatory action is one of the prerogatives of the adaptivist school of thought, albeit with strict criteria regulating it. Hence, could the events of last December be framed in this optic?

In order to be eligible as anticipatory action, an exercise of self-defence must fulfil the following criteria which derive from the modern adaptation of the Caroline formula: first, there has to be no possible resort to pacific means of dispute settlement. Secondly, the threat has to be contextually imminent, i.e. it must be certain, sufficiently grave, with a clear intention of causing damage and/or casualties in the victim state, and has to satisfy the last window test (O'Meara, 2022; Wilmshurst, 2008). Lastly, the reality of the threat needs to be purported by undisputable intelligence,

which is to be submitted to the UNSC for a review of the operation's necessity and proportionality to the threat (Van Den Hole, 2004). These principles are necessary to ensure a rational exercise of this alleged right while fostering the emergence of a customary rule allowing preventive self-defence. Nevertheless, commentators have been divided in the evaluation of Israel's operations: on the one hand, jurists as Kuttab (2025) and Milanovic and Schmitt (2024) condemn such actions as instances of preventive, and thus unlawful, self-defence; while others, such as Tsagourias, endorse the airstrikes as 'reasonable measures' of a pre-emptive nature (2025).

As for the former, critiques of the Israeli conduct stress the fact that, while the new ruling party of Syria has a long history of enmity against the Jewish state, 'we cannot infer an irrevocable commitment – a decision that will be implemented – to attack Israel' (Milanovic and Schmitt, 2024). Hence, the measures undertaken fail to satisfy the criterion of imminence of the attack. The authors also highlight the complex transition the interim government is facing, which renders highly difficult for the regime to pose a threat to its neighbours. Thus, 'it is, accordingly, difficult to treat Israel's use of force as necessary in the sense that now represents the last window of opportunity to deflect a future attack.' (2024).

Conversely, Tsagourias argues that the entity of the threat posed by possible WMDs falling in the hands of terrorist groups is grave enough to justify its measures. In his view, 'the increased capability of inflicting such an attack if such weapons become available, the "track record" of attacks against Israel, and the views expressed by certain actors' are enough to frame the airstrikes and the incursion as reasonable under a broader interpretation of anticipatory actions. The author draws on the modern state practice as evidence for the emergence of a right to act preventively (Tsagourias, 2025). However, as UN's Special Rapporteur Ben Saul warns, and as demonstrated throughout the preceding analysis of the jurisprudence, disarming any state on the basis of distant security concerns or an unwanted regime has no basis in international law, and allowing states to do so 'would be a recipe for global chaos' (Thabet, 2024). This view is also shared by Kuttab, who condemns to the highest degree the action by Israel which, if it were to become the standard, could render 'international law illusory and open a Pandora's box' (Kuttab, 2024).

All things considered, the conduct of Israel last December in Syria does not amount to a lawful exercise of self-defence, neither from a strict, institutional standpoint as suggested by the ICJ and UN officials, nor from a broader, adaptivist interpretation of Article 51 which is supported by state practice and opinion iuris.

Conclusions

The scope of the present dissertation has been to explore the modern development regarding the notion of self-defence in international law spanning from court rulings, UNSC resolutions, academia and state practice, in order to assess the admissibility of Israel's airstrikes and incursion in the territory of Syria in December 2024. In so doing, the precedent inquiry highlighted a growing consensus which is concerningly reshaping the conceptions states and actors have pertaining to the use of forcible action: as an analysis of the literature and security strategy of some states over recent history evidences, anticipatory self-defence is steadily becoming the standard. This partially due to the evolution warfare has been experiencing with the introduction of more efficient, accessible and deadlier weapons, which sometimes may fall in the hands of irregular militias. Nevertheless, it is essential to discern anticipatory actions taken in regard to a certain and imminent threats, from the arbitrary annihilation of distant, even merely perceived, hazards. Furthermore, the relative silence by the International Court of Justice does not help mitigating the situation, which is polarising the academia.

Overall, a study of the extent of the actions and the rationale lying behind the exercise thereof, compared with official reactions from states and commentators, proved the unlawfulness of such measures, which find no legal basis even in a broader conceptual framework which acknowledges an inherent right for states to act anticipatorily, i.e. when the threat they are responding to is concrete, grave enough and contextually imminent. The case study demonstrated how Israel's operations do not qualify as such due to the failure by the Israeli government to provide evidence of a clear and concrete threat to its security. Indeed, while the new regime in Damascus has had a long history of enmity with the Jewish state, and the concern over its democratic transition is a shared sentiment amongst most of the international community, there has not been any registered commitment to the use of force against any of its neighbours. Instead, the new leadership has signalled its intention to stabilise the internal situation of its country also through the establishment of closer ties with the West. Therefore, the events of last December are to be interpreted as inadmissible instances of preventive use of force, and as such situate themselves amongst an advancing trend which, from the 1967 Six-Day war to the invasion of Iraq, is jeopardising one of the cornerstones of international law: the prohibition of the use of force.

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