

**Faculté de droit et de criminologie**

**In Defence of Sovereignty:  
Examining the Right to Self-  
Defence in Reclaiming Occupied  
Territories through a Ceasefire  
Breach**

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Année académique 2023-2024  
Advanced Master in Public International Law

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*To you Nonna,  
Finalmente una laurea in giurisprudenza,  
più o meno.*

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# 1. Introduction

## 1.1 Introduction

In the modern history, most conflicts are related to territorial disputes and have often been the subject of ceasefire agreements that have left, more or less obvious, situations of occupation unresolved. Recent decades have been characterised by a dramatic increase in peace processes whose aim is to find negotiated settlements to armed conflicts<sup>1</sup>. Thanks to the rise in these processes belligerents to numerous armed conflicts have agreed to “end violence, engaged directly in talks and explored political solutions to their conflicts”<sup>2</sup>, as it can be observed by the large number of agreements concluded between warring parties over recent decades “including some 441 agreements dealing with 73 conflicts since 1990”<sup>3</sup>. The quantity of occupation-related conflicts<sup>4</sup>, which often coincide with ceasefire violations, emphasises how crucial it is to understand the right to self-defence in order to successfully navigate the complexity of the modern international environment.

Understanding the nuances and consequences of the right to self-defence is essential to grasping the complexities of these conflicts and their implications for international peace and security. This thesis aims to investigate the complex aspects of the right to self-defence as a justification for ceasefire violations, including its legal foundation and practical applications in the context of occupation and ceasefire-violating conflicts.

## 1.2 Research question

This thesis aims to find an answer to the following research question: “what are the implications for international law regarding the right to self-defence in situations where a state seeks to reclaim territory occupied by another state after a ceasefire agreement?”.

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<sup>1</sup> Akebo, M. (2016). Ceasefire agreements and peace processes: A Comparative Study. Routledge (ebook), p. 23.

<sup>2</sup> Akebo, M. (2016). Ceasefire agreements and peace processes: A Comparative Study. Routledge... *ibidem*.

<sup>3</sup> Akebo, M. (2016). Ceasefire agreements and peace processes: A Comparative Study. Routledge... *ibidem*.

<sup>4</sup> Hryshko, V. (2023). THE RIGHT TO SELF-DEFENCE OF AN ATTACKED STATE IN THE CONTEXT OF PROLONGED OCCUPATION OF TERRITORIES: ALLOWED OR NOT? [MA thesis]. National University of “Kyiv-Mohyla Academy”, p. 5.

In modern conflicts, breaking the ceasefire can have a big impact on international relations because it can prolong tensions and exacerbate hostilities between states. These violations give rise to intricate legal issues pertaining to the right to self-defence, especially when one state seeks to seize territory that another state has taken after a ceasefire has been broken. The significance of addressing these challenges within the domain of international law is highlighted by recent developments, such as the conflict between Azerbaijan and Armenia over Nagorno-Karabakh that is currently under examination by the International Court of Justice<sup>5</sup>.

In structuring this analysis it was observed a lack of research on ceasefire violations and its legal implications, despite their crucial importance. Lack of extensive analysis on the subject makes it difficult to fully understand the legal frameworks enabling self-defence in territorial disputes resulting from violations of ceasefires. This disparity highlights the necessity of conducting a thorough analysis of pertinent judicial decisions, governmental actions, and academic debates in order to clarify the nuances of this matter.

Thus, by reviewing significant situations where nations have invoked self-defence to justify military actions that aim at retake occupied territory after a ceasefire has been broken, evaluating pertinent legal precedents, and investigating the international reactions of the international community, this thesis seeks to close this gap.

### **1.3 Structure**

In structuring the analysis, it was decided to divide the observations into two main chapters. With the aim of giving the reader a clear understanding of the two main concepts on which this thesis is based, some fundamental principles and notions had to be explained. For this reason the first chapter will focus on the principle of the prohibition of the use of force, the principle of peaceful settlement of international disputes and the notions of occupation, ceasefire and self defence with the purpose of unveiling the creation and the developments of such concepts.

After this initial explanation, the second chapter will shift its focus to the violation of ceasefire agreements with the aim of providing a deeper understanding of ceasefire violations and how they are perceived by the states. The first paragraph will analyse ceasefire violations, why do they happen as well as what are the legal norms that regulate such violations.

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<sup>5</sup> *Pending cases* | *International Court of Justice*. ICJ. Retrieved May 2, 2024, from <https://www.icj-cij.org/index.php/pending-cases>.

The second paragraph will focus on presenting practical cases that will shed a light on state practice. The first case will analyse the Yom Kippur war that characterised the middle east in the early 1970s while the second case will focus on the Nagorno-Karabakh case between Armenia and Azerbaijan in the late 1990s and in its recent developments. For both cases a brief context of the conflict will be provided, explaining the agreement on a ceasefire, its violation as well as the international reaction of third states not parties to the conflict.

The third paragraph will then recollect the characteristic and the responses providing their analysis, with the aim of recognising trends and recurrent paths so to understand the view put forwards by states on the matter.

Finally, the conclusion will gather the finding of the research for each chapter and will propose the final answer to the research question.

## **1.4 Methodology**

Due to the nature of this study, a literature review-based methodology was employed to explore and synthesise existing research on the topic and apply the findings to a specific research context. It furthermore included a rigorous analysis of relevant laws and regulations. In order to analyse the state practice, it was decided to resort to academic articles that provided explanations on the International response of the states. This approach allowed for a comprehensive understanding of the current state of knowledge in the field and facilitated the identification of gaps, trends, and key research themes.

A systematic and comprehensive search was conducted across various academic databases, such as Google Scholar, and relevant institutional repositories.

By adopting a literature review-based methodology, it was therefore possible to conduct a rigorous analysis of the literature, identifying research gaps, and the integration of existing knowledge to advance the current study.

## **2. Understanding Legal Foundations: The Self-Defence Principle in Addressing Occupied territories**

In the last decades the international arena has been confronted with numerous armed conflicts and has seen the great role of International law in regulating such conflict through various agreements. The breaching of these agreements under the justification of self defence has characterised the discussion of many academics of the field. With the aim of setting the stage for the analysis that will lead to answering the research question of this thesis, the following paragraph will provide information concerning the principle of the prohibition of the use of force, principle of peaceful settlement of international disputes and the notion of occupation, of ceasefire and of self-defence.

### **2.1 The principle of the prohibition of the use of force and the principle of peaceful settlement of international disputes**

Two fundamental principle govern the relation between states in the international arena: The prohibition of the use of force and the principle of peaceful settlement of international disputes. The first principle, the prohibition of the use of force, must be understood through its historical development. In fact it was in the wake of World War II that the international community, shocked by the horrors of the Great War, came to an agreement on a general ban on the use of force and established such principle in article 2(4) of the Charter of the United Nations. The article added an additional prohibition, stating that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”<sup>6</sup>. Therefore it placed an obligation on contracting states not only to not resort to force against the territorial integrity of another states, but also to not threaten the other state with such use of force.

This principle, also called the 'principle of non-use of force', became the cornerstone of international relations, that aims at preventing conflicts and safeguarding the sovereignty of states. Looking at the documents from the San Francisco Conference in 1945<sup>7</sup>, it is possible to observe how the delegations intended with the Article 2(4) to prohibit almost all types of interstate armed

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<sup>6</sup> United Nations, Charter of the United Nations, 24 October 1945, Chapter I: Purposes and Principles, Article 2(4).

<sup>7</sup> United Nations. (1945, April 25). *The San Francisco Conference* | United Nations. Retrieved April 30, 2024, from <https://www.un.org/en/about-us/history-of-the-un/san-francisco-conference>

confrontation by encompassing a broad range of circumstances. Nonetheless, arguments have been made both at and after the Conference that Article 2(4) only forbids the use of force against the "territorial integrity" and "political independence" of another state<sup>8</sup>. It is noteworthy that Article 2 of the charter includes the concept of "territorial integrity", highlighting how important it is to preserve this fundamental aspect of statehood<sup>9</sup>.

This document sheds a light on the importance of the concept of territorial integrity, a fundamental principle for the realisation of the prohibition of the use of force. In the aftermath of World War II the international political system has been structured around three central tenets: the notion of equal sovereignty of states, internal competence for domestic jurisdiction, and territorial preservation of existing boundaries<sup>10</sup>. Following the establishment of such principles, they slowly became fundamental concepts for many International Organisations when they were conceived and they were added in their founding charters, giving special importance to the notion of territorial integrity<sup>11</sup>. A great example of the importance given to the territorial integrity of a country can be found in the founding charters of both NATO and the European Union, which request that states applying for membership settle their external borders before to joining, and push for relying on the International Court of Justice when necessary to deal with such matters<sup>12</sup>.

The second of the two principles, the peaceful settlement of international disputes, as expressed in art. 2(3) of the United Nations Charter, was imposed on states alongside the prohibition on the use of force. Such principle puts an obligation on all the member states to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered"<sup>13</sup>, highlighting the duty to settle their disputes amicably, with the aim of preserving justice, security, and peace in the world .

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<sup>8</sup> O'Connell, M (2013), The Prohibition of the Use of Force. Notre Dame Law School, *NDLScholarship*, [https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1061&&context=book\\_chapters&&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Dit%2526as\\_sd%253D0%25252C5%2526q%253DProhibition%252Bof%252Bthe%252Buse%252Bof%252Bforce%2526btnG%253D#search=%22Prohibition%20use%20force%22](https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1061&&context=book_chapters&&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Dit%2526as_sd%253D0%25252C5%2526q%253DProhibition%252Bof%252Bthe%252Buse%252Bof%252Bforce%2526btnG%253D#search=%22Prohibition%20use%20force%22), 89-119, p. 100.

<sup>9</sup> UN Charter of the United Nations, Article 2(4).

<sup>10</sup> Elden, S. (2006). Contingent sovereignty, territorial integrity and the sanctity of borders. *the SAIS Review of International Affairs*, 26(1), 11–24. <https://doi.org/10.1353/sais.2006.0008> , p. 11.

<sup>11</sup> Some of these international organisations include: the Arab League (1945), the Organization of Arab States (1948), the Organization of African Unity Charter (1963), the African Union (2000), and the Helsinki Final Act (1975), Elden, S. (2006). Contingent sovereignty, territorial integrity and the sanctity of borders... *ibidem*.

<sup>12</sup> Elden, S. (2006). Contingent sovereignty, territorial integrity and the sanctity of borders... *op. cit.*, p. 12.

<sup>13</sup> UN Charter of the United Nations, Article 2(3).

Numerous international declarations and accords highlighted the importance of this principle. An example is the UN General Assembly (UNGA) Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States that in 1970 explained that states have an obligation to abstain from using force in order to respect international borders and settle territorial disputes<sup>14</sup>.

The post-World War rise to the prohibition of using force and the idea of peacefully resolving international problems, both of which represent a shared commitment to averting international crises. Furthermore, multiple reaffirmations of these principles over time have shown the commitment of the international community to maintain justice, security, and peace and to reduce the possibility of arm conflicts, creating a more peaceful international environment<sup>15</sup>. This was done by prioritising the peaceful settlement of conflicts, encouraging collaboration over aggression and reinforcing the prohibition to resort to force.

The primary function of the two principles is to uphold global peace and security, as stated in Article 1 of the Charter<sup>16</sup>. These values are essential for navigating the complicated dynamics of the global arena as their purpose is to guarantee just and harmonious relations between states.

## **2.2 The notion of occupation**

The forcible occupation of territory holds significant importance in the current scenario of the international arena. In fact, long-term military occupations are now a feature of 10 of the 16 ongoing international armed conflicts worldwide. Significant examples of these situations includes the occupation of parts of Palestine, Syria, and Lebanon by Israel for more than 50 years, the occupation of parts of Cyprus and Syria by Turkey since 1974 and 2016, respectively, and the occupation of the Western Sahara by Morocco since 1975 and The Russian occupation of portions of Moldova, Georgia, and Ukraine since 1990, 2008, and 2014, respectively<sup>17</sup>.

Although military occupation is a recurrent topic, precisely defining occupation is not an easy task. Malcolm Shaw defines occupation as “a method of acquiring territory which belongs to no one

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<sup>14</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (24 October 1970)

<sup>15</sup> O’Connell, M (2013), The Prohibition of the Use of Force. Notre Dame Law School... *op. cit.*, p. 90.

<sup>16</sup> UN Charter of the United Nations, Article 1(1).

<sup>17</sup> Hryshko, V. (2023). THE RIGHT TO SELF-DEFENCE OF AN ATTACKED STATE IN THE CONTEXT OF PROLONGED OCCUPATION OF TERRITORIES: ALLOWED OR NOT? [MA thesis]. National University of “Kyiv-Mohyla Academy”, p. 5.

(*terra nullius*) and which may be acquired by a state in certain situations” and add that the occupation “must be by a state and not by private individuals, it must be effective and it must be intended as a claim of sovereignty over the area”<sup>18</sup>.

However looking at the codification of a definition in international law text such a definition seems not be generally accepted. In its Manual on the Laws of War on Land, the Institute of International Law stated as early as 1880 in Article 41 that: “a territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there”<sup>19</sup>.

This definition has been endorsed by many courts and tribunals. The US Military Tribunal at Nuremberg held that “whether an invasion has developed into an occupation is a question of fact,” and later supported this opinion during the Hostages trial<sup>20</sup>. Moreover, its importance can be understood through two recent, significant rulings from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court of Justice (ICC) and by the decision of the Oxford Manual to incorporate such definition into a number of military manuals<sup>21</sup>.

Another definition has been provided through the Hague Regulations which defines occupied territories as “territories of an hostile State actually placed under the authority of an hostile army”. Additional explanation to this definition is give through the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, thanks to which it is possible to asset that “an area where combat is ongoing and the attacking forces have not yet established control cannot normally be considered occupied within the meaning of the Geneva Conventions of 1949”<sup>22</sup>. Article 42 of the Hague Convention<sup>23</sup> proposes a legal test useful to determine when and how a certain circumstance qualifies as an occupation for the purposes of IHL. Three elements constitute

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<sup>18</sup> Shaw, M. N. (2017). *International Law*. Cambridge University Press, p. 1987 (ebook).

<sup>19</sup> Ferraro, T. (2012). Determining the beginning and end of an occupation under international humanitarian law. *International Review of the Red Cross*, 94(885), 133–163. <https://doi.org/10.1017/s181638311200063x>, p. 134.

<sup>20</sup> Ferraro, T. (2012). Determining the beginning and end of an occupation under international humanitarian law... *op. cit.*, p. 135.

<sup>21</sup> Ferraro, T. (2012). Determining the beginning and end of an occupation under international humanitarian law... *ibidem*.

<sup>22</sup> *Eritrea/Ethiopia, Awards on Occupation | How does law protect in war? - Online casebook*. (2024). ICRC. Retrieved April 30, 2024, from <https://casebook.icrc.org/case-study/eritreathio-awards-occupation>.

<sup>23</sup> Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, the Hague (18 October 1907), Article 42.

such text: “the lack of consent to military presence of foreign forces in the territory concerned, the foreign forces’ ability to exercise authority over that territory in lieu of the local government, and the related potential inability of the local government to exert its authority in the territory in question”<sup>24</sup>. The same legal test have an additional important role. In fact it addresses multinational occupations and helps to determine the starting point and termination of an occupation as well as circumstances where foreign troops qualify as Occupying Powers, due to their total authority over local, surrogates exercising effective control over the contested territory<sup>25</sup>.

It is important to highlight that the simple presence of foreign troops in a territory does not automatically makes that territory occupied. Following what is expressed in art. 42, a territory is considered occupied when “it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”<sup>26</sup>. Article 2 of the 1949 Geneva Conventions broadened the definition of occupation to include occupation in the absence of armed resistance <sup>27</sup> meaning that there need not to be any hostilities before or after forced occupation to occur. However, it must be kept in mind that the specific situation on the ground will be assessed to determine whether an invasion has turned into an occupation<sup>28</sup>.

An important aspect that connects the forcible occupation of territory to the illegality to use force by states and the principle of peaceful settlement of international disputes is the transfer of title over the territory to the occupying power. In fact, as expressed in Article 4 of Additional Protocol 1 to the Geneva Conventions<sup>29</sup>, occupation cannot lead to a transfer of title over the territory of the occupied power to the occupying power, even if the occupied state loses possession of its territory, its sovereign title over the territory remains<sup>30</sup>.

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<sup>24</sup> Ferraro, T. (2012). Determining the beginning and end of an occupation under international humanitarian law... *op. cit.*, p. 136.

<sup>25</sup> Ferraro, T. (2012). Determining the beginning and end of an occupation under international humanitarian law... *op. cit.*, p. 163.

<sup>26</sup> Hague Convention (IV), Article 42.

<sup>27</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31, art. 2.

<sup>28</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence? [MA thesis], Swedish Defence University, p. 8.

<sup>29</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, 8 June 1977, art. 4.

<sup>30</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 7.

Through this article it is stressed once again the importance given in international law to the territorial integrity of a state. In fact, international law does not allow any state to acquire territories through the use of force. This principle was also expressed in the United Nations General Assembly's Definition of Aggression of 1974. In this document, specifically in Art. 5(3) it is clearly expressed that "no territorial acquisition resulting from aggression is or shall be recognised as lawful"<sup>31</sup>. Furthermore the 2001 International Law Commission's (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) expressed through Articles 40 and 41 that, when a serious breach of an obligation under peremptory norms of general international law happens, "no state shall recognise as lawful a situation created by [such] a serious breach"<sup>32</sup>.

### **2.3 The notion of ceasefire**

"Ceasefires are arrangements in which conflict parties commit to temporary or permanently cessation of violence"<sup>33</sup>. Globally, more than 2000 ceasefires were announced between 1989 and 2020<sup>34</sup>. Each year approximately one-third of all ongoing civil conflicts observe one or more ceasefire<sup>35</sup>. As a means of fostering confidence, as a way to express peaceful intentions, and a procedure that lays out the parameters by which contending parties stop fighting, ceasefires are an essential component of the peacemaking process.

Undoubtedly, there has been considerable ambiguity surrounding the precise definitions of ceasefire-fire and for this reason there is no universally accepted definition. Generally speaking, a ceasefire could be defined as "any arrangement in which a conflict party commits to a temporary or permanent cessation of violence", however such generic definition had led ceasefire to be often

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<sup>31</sup> United Nations General Assembly Resolution 3314 (A/RES/3314 (XXIX)) on the Definition of Aggression, 14 December 1974, Article 5(3).

<sup>32</sup> Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), Article 41.

<sup>33</sup> Bara, C., Clayton, G., & Rustad, S. A. (2021). Understanding ceasefires. *International Peacekeeping*, 28(3), 329–340. <https://doi.org/10.1080/13533312.2021.1926236>.

<sup>34</sup> Bara, C., Clayton, G., & Rustad, S. A. (2021). Understanding ceasefires... *ibidem*.

<sup>35</sup> Bara, C., Clayton, G., & Rustad, S. A. (2021). Understanding ceasefires... *ibidem*.

been used interchangeably with truce, armistice<sup>36</sup>, cessation of hostilities<sup>37</sup>, and peace agreement<sup>38</sup>. Because of this variety of meanings, a ceasefire can be considered an “umbrella term” that could relate to a spectrum of arrangement, from short-term humanitarian arrangements to “detailed formal documents setting out a permanent end to hostilities”<sup>39</sup>.

Agreements for the cessation of hostilities are generally considered as less organised than ceasefire agreements, which contain more explicit requirements on objectives, timeframes, security measures, and monitoring and verification methods. Each ceasefire or cessation of hostilities agreement, regardless of its formal designation, varies widely in its exact content<sup>40</sup>. Ceasefire is also different from a peace agreement. If peace agreements are defined as “formal agreement[s] between at least two opposing primary warring parties, which [address] the disputed incompatibility, either by settling all or part of it, or by clearly outlining a process for how the warring parties plan to regulate the incompatibility”, ceasefires are “primarily concerned with the regulation of violence, and do not include provisions to address the underlying incompatibility”<sup>41</sup>.

In the same, confusion should be avoided between ceasefire, truce and armistice. The term "truce," which originated in the Middle Ages, was frequently associated with religion and generally consist in an informal temporary halt in fighting. According to Hugo Grotius, if fighting broke out again after a truce, there was no need for a new proclamation of war because the state of war had not ended, giving the wounded party the authority to resume fighting without formally declaring war<sup>42</sup>. On the other hand, an armistice indicated an official end to military activities permanently. Since the end of the Second World War, the terms “armistice” and “truce” had become increasingly synonymous, though armistice was more used. Armistice violations were discouraged by means of preventive and enforcement measures, but the prospect of resuming hostilities was the most

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<sup>36</sup> Bailey, S. D. (1977). Cease-Fires, truces, and armistices in the practice of the UN Security Council. *American Journal of International Law*, 71(3), 461–473. <https://doi.org/10.2307/2200012>, p. 461.

<sup>37</sup> United Nations Department of Political and Peacebuilding Affairs, Guidance on the Mediation of Ceasefires, September 2022, <https://peacemaker.un.org/thematic-areas/ceasefires-security-arrangements>, p. 10.

<sup>38</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

<sup>39</sup> Bara, C., Clayton, G., & Rustad, S. A. (2021). Understanding ceasefires... *op. cit.*

<sup>40</sup> United Nations Department of Political and Peacebuilding Affairs, Guidance on the Mediation of Ceasefires... *op. cit.*, p. 10.

<sup>41</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

<sup>42</sup> Bailey, S. D. (1977). Cease-Fires, truces, and armistices in the practice of the UN Security Council. *Op. cit.*, p. 461.

powerful deterrent against major violations<sup>43</sup>. With the creation of the United Nations the difference between truce and armistice was clarified. Truces were arising from intermediary interventions, typically subsidiary to the Security Council, while armistices were resulting from direct negotiations between the parties to the conflict<sup>44</sup>. Here a new concept emerged, the ceasefire or cease-hostilities, defined as an urgent appeal by the Security Council. Through this historical analysis it is possible to see how the tendency to perceive ceasefire, truce, and armistice as progressive stages in transitioning from war to peace emerged<sup>45</sup>. This view became the mainstream way of understating ceasefire agreements, as the first step on the teleological bridge between war and peace. However, recent studies in the fields of anthropology, security, and development studies have pointed out how how areas beyond violence can also potentially be affected by ceasefire agreements<sup>46</sup>. As a result of these new research, ceasefire agreements are now seen as “documents with additional legal meaning rather than as being governed solely under the purview of international humanitarian law as military instruments used to suspend hostilities”<sup>47</sup>.

While the majority of definitions of a ceasefire naturally focus on the promise to end direct (or "warfare") hostilities, it is important to remember that ceasefire agreements may also contain other side restrictions<sup>48</sup>. An example is the 2005 Sudan Comprehensive Peace Agreement (CPA) ceasefire clauses that forbid “violations of human rights and humanitarian law, hostile propaganda and media warfare, espionage, and recruitment of child soldiers”<sup>49</sup>.

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<sup>43</sup> Bailey, S. D. (1977). Cease-Fires, truces, and armistices in the practice of the UN Security Council, *op. cit.*, p. 463.

<sup>44</sup> Bailey, S. D. (1977). Cease-Fires, truces, and armistices in the practice of the UN Security Council, *ibidem*.

<sup>45</sup> Bailey, S. D. (1977). Cease-Fires, truces, and armistices in the practice of the UN Security Council, *ibidem*.

<sup>46</sup> Sosnowski, M. (2020). ‘Not dead but sleeping’: Expanding international law to better regulate the diverse effects of ceasefire agreements. *Leiden Journal of International Law*, 33(3), 731–743. <https://doi.org/10.1017/s0922156520000308>, p. 732.

<sup>47</sup> Sosnowski, M. (2020). ‘Not dead but sleeping’: Expanding international law to better regulate the diverse effects of ceasefire agreements, *op. cit.*, p. 743.

<sup>48</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

<sup>49</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

Additionally, it is important to understand that ceasefires may occur simultaneously to peace agreements, or may be included in the latter type of agreement as an appendix<sup>50</sup>. In such a situation, the ceasefire has the role of specifying the military-technical details for the end of hostilities<sup>51</sup>.

Finally, it is fundamental to state that a ceasefire may not definitely end all violence just as violence may not end a ceasefire agreement<sup>52</sup>. As the main scope of a ceasefire agreement is not to solve the dispute at the very base of the conflict but to put an end to hostilities as quickly as possible so that a resumption of hostilities may sometimes be foreseeable. Additional complications can arise from ambiguity in what behaviour is prohibited, or from a strategic decision of a party to the conflict to purposefully breach the ceasefire in order to gain a tactical advantage that can be asserted at the negotiating table<sup>53</sup>.

## 2.4 The notion of self-defence

Self-defence represents a fundamental principle of international law and represents the only exception to the prohibition on the use of force between states and it is guaranteed under Article 51 of the UN Charter. It grants countries the right to defend themselves against an armed attack, without incurring any legal repercussions on their acts. Self-defence is, as defined by the International Law Commission, “a circumstance which precludes the wrongfulness of an act which would otherwise be illegal”<sup>54</sup>. Such a definition can be found in Article 21 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) which states: “the wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations”<sup>55</sup>. For the scope of this thesis, it is fundamental to understand the relationship between self-defence and Article 2(4) of the UN Charter, which prohibits states from

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<sup>50</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

<sup>51</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

<sup>52</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

<sup>53</sup> Clayton, G., Nathan, L., & Wiehler, C. (2021). Ceasefire Success: a Conceptual framework. *International Peacekeeping*, 28(3), 341–365. <https://doi.org/10.1080/13533312.2021.1894934>.

<sup>54</sup> Greenwood, C. (2011). Self-Defence. In *Max Planck Encyclopedia of Public International Law*, Oxford Public International Law, N° 4.

<sup>55</sup> Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), Article 21.

using force in their international affairs. Self-defence, as expressed in the ARSIWA is a notable exception to such rule.

Three requirements must be met for the use of force to be considered a legal exercise of the right to self-defence, with procedural obligations being the final one: “it must be a response to an armed attack; the use of force, and the degree of force used, must be necessary and proportionate; and it must be reported to the Security Council and must cease when the Security Council has taken ‘measures necessary to maintain international peace and security’”<sup>56</sup>. However it's interesting to note that the conduct is not always illegal just because the third criterion, which requires reporting, is broken<sup>57</sup>. This highlights some flexibility within the definition of self-defence.

Although the first condition does not carry a direct consequence on the argument of the thesis to better understand the complex interpretative of the principle it is necessary to point out that yet significant disagreements remain over the meaning of an armed attack, a term that has never been defined as such by any organ of the United Nations. The Nicaragua judgment itself does not offer a definition but rather an illustrative set of acts as “Military and Paramilitary Activities in and against Nicaragua” (*Judgment of 27 June 1986 Rep. 14*). International reactions to claims of self-defence against non-state actors in other situations since 2001, including by Turkey against PKK guerrillas operating from Iraq, by Russia against Chechen guerrillas operating from Georgia, and by Israel against Hezbollah guerrillas operating from Lebanon, point to, at a minimum, widespread acquiescence, and more likely acceptance, of the general claim that self-defence may be invoked in principle against such actors regardless of their ties to other states<sup>58</sup>.

Focusing more of the second condition, the need for necessity and proportionality in the response to the attack, it is an important reminder that, even after being attacked and after having reported to the Security Council, a state cannot react as it wishes. In fact a state's right to use force does not mean unrestricted force. The two conditions have for long now being part of customary international law<sup>59</sup>. Necessity dictates that force should only be employed when non-forcible measures are

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<sup>56</sup> Greenwood, C. (2011). Self-Defence. In Max Planck Encyclopedia of Public International Law, Oxford Public International Law, N° 8.

<sup>57</sup> Ronzitti, N. (2006). The expanding law of Self-Defence. *Journal of Conflict and Security Law*, 11(3), 343–359. <https://doi.org/10.1093/jcsl/kr102>, p. 356

<sup>58</sup> Steven, R. (2013), Self-Defense Against Terrorists: The Meaning of Armed Attack. In *Counter-terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges*, edited by N. Schrijver and L. van den Herik, 334-55. Cambridge: Cambridge University Press, p. 336.

<sup>59</sup> Greenwood, C. (2011). Self-Defence. In Max Planck Encyclopedia of Public International Law, Oxford Public International Law, N° 25.

impractical, while proportionality requires that the response matches the defensive need. “Both principles are context-specific and flexible”<sup>60</sup> reflecting the nuanced nature of self-defence.

In the Nicaragua Case in which the ICJ clarified the importance of such conditions<sup>61</sup>, and then proceeded to clarify that the two conditions apply to self-defence acts carried out under Article 51 of the UN Charter (*Legality of the Threat or Use of Nuclear Weapons [Advisory Opinion]* [1996] ICJ Rep 226 para. 41). This is important because it shows that, while such limitation cannot be found in the text of the Charter, it is still a fundamental limit to keep in consideration<sup>62</sup>.

Necessity and proportionality are both assessed in light of the objectives a state aims to achieve when defending itself. For example, in the event of an attack, a state is entitled to respond and reclaim territory, so long as it can demonstrate that the use of force is necessary to achieve these objectives and that the kind of force employed is appropriate. It is important to take the defending state's larger objectives into account. Force may still be justified even after the aggressor stops attacking, particularly if they still have authority over the territory of the victim state<sup>63</sup>. However, even if the attacking state offers to stop attacking, the use of force would still be necessary if, for example, the attacking state ended up occupying a portion of the victim state's territory<sup>64</sup>.

An additional factor to consider is the temporal aspect of self-defence. Although the ICJ does not explicitly recognise immediacy, it is implied that the response to an armed attack must be prompt and not unreasonably delayed, maintaining however some flexibility in its assessment recognises factors like attempts at negotiation or internal political procedures<sup>65</sup>.

Essentially, the right of states to defend themselves against threats is balanced with the general need to maintain world peace and security. This is the core of the self-defence principle. This complex balance is deeply rooted in international law, where the boundaries of self-defence are carefully outlined, defining the situations in which it can be used and the responsibilities it entails. As a

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<sup>60</sup> Green, J. (2015). The *ratione temporis* elements of self-defence. *Journal on the Use of Force and International Law*, 2(1), <https://doi.org/10.1080/20531702.2015.1043097>, p. 9.

<sup>61</sup> Greenwood, C. (2011). Self-Defence. In Max Planck Encyclopedia of Public International Law, Oxford Public International Law, N° 25.

<sup>62</sup> Greenwood, C. (2011). Self-Defence. In Max Planck Encyclopedia of Public International Law, Oxford Public International Law, N° 25.

<sup>63</sup> Greenwood, C. (2011). Self-Defence. In Max Planck Encyclopedia of Public International Law, Oxford Public International Law, N° 27.

<sup>64</sup> Greenwood, C. (2011). Self-Defence. In Max Planck Encyclopedia of Public International Law, Oxford Public International Law, N° 27.

<sup>65</sup> Greenwood, C. (2011). Self-Defence. In Max Planck Encyclopedia of Public International Law, Oxford Public International Law, N° 51.

cornerstone of international law, self-defence protects against unrestrained aggression and unilateral acts while also reflecting the changing dynamics of global security. International law aims to carefully balance the legitimate interests of states in self-defence with the more general imperative of preserving peace and stability on the international scene by imposing limitations through specific criteria on the use of force in self-defence, such as necessity and proportionality. These restrictions show the complexity of self-defence and highlight how consideration and moderation must be used when dealing with such cases. By doing this, they uphold the core values of justice, fairness, and common security that act as the foundation of the global legal system.

This first chapter was designed to provide a conceptual basis for developing the subsequent analysis of multiple fundamental concepts governing interstate relations.

The first paragraph is focused on the principle of the prohibition of the use of force and the principle of peaceful settlement of international disputes, defining them, their creation through the historical context and their role in inter-state relations.

The second paragraph defined the notion of forceable occupied territories. It explained that, while forceable occupation of territories is a current problem of the international community, it has been difficult to develop a one commonly accepted definition. It was also explained how a legal title over the occupied region cannot be obtained as a consequence of an occupation.

The third paragraph defined the notion of ceasefire, emphasising the numerous synonyms with which the interpretation of term is often confused.

The fourth and last paragraph defined the notion of self defence, explaining its function but also its limitation, with the final aim of maintaining a balance between the right of a state to defend itself and the responsibility of the international community to ensure peace and security worldwide.

Taking into consideration the information here provided, the following chapter will shift focus towards the main topic of this thesis. More precisely, the analysis will examine the implications for international law regarding the right to self-defence in situations where a state seeks to reclaim territories occupied by another states, breaching a ceasefire agreement.

### **3. Examining Real-World Scenarios: Case Studies of Self-Defence in Reclaiming Occupied Territories**

The conflicts that arose after World War II were frequently characterised by ceasefire agreements, often obtained through the mediation of third states or International Organisations, but these agreements have often left unresolved certain issues mainly related to territorial problems following an occupation. Despite their common occurrence, and their often critical effect on the trajectory of a conflict, ceasefire violations remain a blind spot in conflict research<sup>66</sup>. For this reason it was decided to refer to academic text to understand why ceasefire agreement may fail and to the current legalisation and States' practice in order to understand the consequences on their violations.

#### **3.1 Ceasefires' violations: The Interplay Between Breaches and Legal Regulations**

As highlighted in the first chapter, forcible occupations remain a persistent feature of the contemporary international armed conflict landscape. While ceasefire agreements were developed to manage the conclusion of hostilities, even in such circumstances, numerous attempts in recent years have fallen short of success. Ceasefire violations differ from other forms of hostilities during armed conflicts, in since they are an unilateral violation of an agreement and could be interpreted as a demonstration of the “unwillingness or inability of conflict parties to adhere to their own commitments”<sup>67</sup>. There are multiple reasons why a ceasefire may fail<sup>68</sup>.

The actions that are prohibited under ceasefire agreements vary both in scope and in specificity. Since their aim is to put an end to the hostilities, what constitutes a violation of the ceasefire agreement is specified in the text of the agreement, even though it can be specified in greater or lesser detail<sup>69</sup>. While certain agreements forbid all forms of hostility or violence, others provide specific definitions and descriptions of actions that are forbidden, as for example the use of particular weapons. In addition to physical behaviour, prohibited acts may also include providing

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<sup>66</sup> Sticher, V. (2022). Ceasefire violations: Why they occur and how they relate to Strategic Decision-Making Processes. *International Studies Review*, 24(4). <https://doi.org/10.1093/isr/viac046>.

<sup>67</sup> Sticher, V. (2022). Ceasefire violations: Why they occur and how they relate to Strategic Decision-Making Processes... *ibidem*.

<sup>68</sup> <sup>68</sup> Sticher, V. (2022). Ceasefire violations: Why they occur and how they relate to Strategic Decision-Making Processes... *ibidem*.

<sup>69</sup> Akebo, M. (2016). Ceasefire agreements and peace processes: A Comparative Study. Routledge... *op. cit.*, p. 109.

new weapons or reorganising troops. Recently an increasing trend was noticed to including non-physical acts, often termed "verbal attacks," as violations of ceasefire agreements such as "hostile propaganda and incitements to military action" or imposing the use of "civilized and dignified language"<sup>70</sup>.

Such specifications in the ceasefire agreements are essential to promote long-lasting peace between states and in this perspective these agreements could be considered a valuable prelude to subsequent peace agreements. They accomplish this by "changing the incentives to break a ceasefire, reducing uncertainty about actions and intentions and by managing the incidence of violations"<sup>71</sup>.

However, conditions can often arise whereby initiatives can be taken at the level of central government and national political direction that result in ceasefire violations. When governments are engaged in purposeful dialogue, ceasefire violations cease or at least decrease in frequency<sup>72</sup>.

It is important to analyse the legal norms that can help understanding whether an occupation, that is consequent to an armed attack frozen through a ceasefire and, allows a victim state to react in self-defence actions.

After having defined the meaning of occupation, of ceasefire and of self-defence, two main things can be stated. Firstly, a ceasefire agreement suspends active violent activities between the parties but does not conclusively end hostilities<sup>73</sup>. For this reason and, multiple scholar have considered the ceasefire as a "sleeping"<sup>74</sup> continuing of hostilities. In fact, following a ceasefire, the right of the parties to engage in active hostilities against one another is suspended, provided that the other belligerent abides by the terms of the agreement. Flagrant disregard for the ceasefire agreement by one party, even in the form of non-violent acts, entitles the other belligerent party to renounce the agreement and renew hostilities<sup>75</sup>. Therefore, the state acting in self-defence during an ongoing

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<sup>70</sup> Akebo, M. (2016). Ceasefire agreements and peace processes: A Comparative Study... *ibidem*.

<sup>71</sup> Akebo, M. (2016). Ceasefire agreements and peace processes: A Comparative Study, *op. cit.*, p. 40.

<sup>72</sup> Jacob, H. & United States Institute of Peace. (2017). A LINE ON FIRE. In *PEACEWORKS*. <https://www.usip.org/sites/default/files/PW131-Ceasefire-Violations-in-Jammu-and-Kashmir-A-Line-on-Fire.pdf>, p. 25.

<sup>73</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>

<sup>74</sup> Sosnowski, M. (2020). 'Not dead but sleeping': Expanding international law to better regulate the diverse effects of ceasefire agreements, *op. cit.*, p. 731.

<sup>75</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

international armed conflict, gives up its right to use force against the aggressor as long as the aggressor abides by the terms of the ceasefire agreement<sup>76</sup>.

Secondly, according to the UNGA Resolution (A/RES/3314 (XXIX)) “any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof<sup>77</sup> constitutes an act of aggression. However as previously explained, mere forcible occupation, while deemed wrongful, does not automatically justify invoking self-defence. The International Court of Justice (ICJ) has stressed that self-defence under Article 51 of the UN Charter is limited to specific circumstances<sup>78</sup>. It was specified in the in the Armed Activities case, and was furthermore explained in the Oil Platforms case where the ICJ emphasised that to invoke self-defence a state must prove to be the victim of an armed attack<sup>79</sup>. This principle has then been used again by the Eritrea-Ethiopia Claims Commission<sup>80</sup> which, basing itself on the ICJ judgement, clarify that self-defence can only be invoked in response to an armed attack as defined by Article 51. It must also be considered that in this period of continuous evolution, even the concept of armed attack has taken on nuances that can often be subject to interpretation. Therefore, unless aggression amounts to an armed attack, it does not trigger the right to self-defence of a state whose territories have been occupied<sup>81</sup>.

These two contrasting ideas became in the academic field the starting point for the proliferation of the various theories regarding the effect of a ceasefire on the parties' authority to resume hostilities<sup>82</sup>.

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<sup>76</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

<sup>77</sup> United Nations General Assembly Resolution 3314 on the Definition of Aggression, Article 3(a).

<sup>78</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 12.

<sup>79</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 15.

<sup>80</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

<sup>81</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

<sup>82</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

As an example it is possible to consider the opinion of two scholars the belong to opposites school of thought: Professor Yoram Dinstein and Professor Christopher Greenwood.

On one side Professor Yoram Dinstein suggests that “parties to an indefinite ceasefire retain the ability to resume hostilities at will, provided they provide notice to the opposing belligerent”<sup>83</sup>. This position is based on Article 36 of the Hague Regulations which states: “An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice”<sup>84</sup>. Therefore Article 36 allows the parties to a ceasefire to resume military operations at any time.

On the other side Professor Christopher Greenwood suggests that "an indefinite ceasefire should be interpreted as a mechanism for transitioning to the termination of hostilities, subjecting the parties to the prohibition on the use of force under peacetime *jus ad bellum* rules”<sup>85</sup> reiterating the importance of the prohibition on the use of force in international law and emphasising the role of the ceasefire as a step towards a peace agreement.

State practice, just like scholars, is divided on the interpretation of such rules of international law. Furthermore state justifications do not necessarily rest on a legal analysis under the *jus ad bellum* regime<sup>86</sup>. Thus, studying particular conflict context is necessary to comprehend state behaviour and arguments around the use of armed action to retake occupied land With the aim on understanding state practice, in the following paragraph will be analysed two cases with the respective international reactions that followed the breaches.

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<sup>83</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

<sup>84</sup> Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, the Hague (18 October 1907), Article 36.

<sup>85</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

<sup>86</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 16.

### **3.2 Real-world examples: Self-Defence as Justification for Reoccupying Territories and the International Community's Response.**

In analysing the international response to the violation to ceasefire agreements it must be kept into consideration that, as stated in the first paragraph of this chapter, political decisions have an impact on such violations, but also how third states, not part to the conflict, react to them. This is important because it helps to understand partially the different approaches which can be inferred through state practice on the matter. For several political reasons, certain conflict might attract more or less the interest of other states in the international arena. For the scope of this thesis such political considerations will not be analysed further, but it remains useful to understand and be conscious of their role.

#### *Yom kippur War*

The Yom Kippur War, commonly referred to as the Fourth Arab-Israeli War, must be understood in a context of ongoing hostilities and unresolved conflicts resulting from the 1967 Six Day War<sup>87</sup>. Israel took control of major Arab lands in the aftermath of the last conflict and managed to maintain its military presence in the occupied areas, citing security concerns and strategic interests to avoid the concerns of the international community expressed through the UN Security Council Resolution 242 (1967)<sup>88</sup>. This resolution asked for Israel to withdraw from the occupied territories and condemned the acquisition of land through warfare. In October 1973 Egypt and Syria launched a coordinated surprise attack against Israeli forces, catching them off guard during the Yom Kippur, the Jewish holiday<sup>89</sup>. While Egypt and Syria aimed at reclaiming their occupied territories and assert national sovereignty, Israel efforts aimed at defending its territorial gains and at securing its borders<sup>90</sup>. Israel asserted Egypt and Syria's resumption of hostilities constituted "a

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<sup>87</sup> Spinder, Stephen (2016), The Intelligence Failure of the Yom Kippur War of 1973, Armstrong, *Undergraduate Journal of History*: Vol. 6 : Iss. 1 , Article 4. DOI: 10.20429/aujh.2016.060104, p. 38

<sup>88</sup> UNSC Res 242 (22 November 1967) UN Doc S/RES/242.

<sup>89</sup> Spinder, Stephen (2016), The Intelligence Failure of the Yom Kippur War of 1973... *op. cit.*, p. 36.

<sup>90</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 17.

massive violation of international law" as it breached the 1967 ceasefire<sup>91</sup>. Israel viewed the ceasefire as an international agreement that "obligated the opposing parties to abstain from hostilities against each other and respect the lines of contact established under that instrument"<sup>92</sup>.

Amidst the chaos of battle during the Yom Kippur War, the effectiveness of ceasefire agreements became a central concern. Despite the conclusion of the Six Day War with a ceasefire facilitated by the UN Security Council<sup>93</sup>, the text developed failed to address the underlying issues of the conflict or resolve territorial disputes. UN Resolution 242, while urging Israeli withdrawal, lacked a clear framework for a lasting peace or ensuring compliance<sup>94</sup>.

Following the Yom Kippur War, concerns about the ceasefire agreement resurfaced when both sides accused each other of violations. Israel accused Arab states of aggression, while Egypt and Syria asserted their right to self-defence against Israeli occupation<sup>95</sup>. The absence of a comprehensive peace settlement and enforcement mechanisms highlighted broader regional challenges, perpetuating violence and instability despite mediation efforts.

The Arab states received support from many states for the use of force against Israel aimed to reclaim national territories and restore sovereignty<sup>96</sup>. Few countries explicitly supported Israel's self-defence invocation<sup>97</sup>, suggesting condemnation of its occupation and opposition to force. Views generally portrayed Israel as the aggressor<sup>98</sup>, justifying Egypt and Syria's resort to force due to occupation.

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<sup>91</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

<sup>92</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

<sup>93</sup> UNSC Res 242 (22 November 1967) UN Doc S/RES/242.

<sup>94</sup> UNSC Res 242 (22 November 1967) UN Doc S/RES/242.

<sup>95</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 17.

<sup>96</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 18.

<sup>97</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

<sup>98</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

The supporting powers of the Arab states justified the use of force in self-defence by Egypt and Syria equating the occupation by Israel with an ongoing armed attack, even if not openly declared by the states.

Despite the stability issues following the occupation, Israel considered the attack by Syria and Egypt as an aggression, interpreting the ceasefire as an international agreement obliging the parties to refrain from hostilities and to respect the established lines.

During the 1973 hostilities, influential third-party states assessed belligerents' legal positions under the 1967 ceasefire. The United States noted Arab breaches and called for restoration but refrained from attributing illegal use of force and to assign them responsibility for initiating conflict<sup>99</sup>.

Following the violation of the ceasefire agreement, the international response reflected a complex array of perspectives and actions. While many states supported the Arab states' use of force against Israel, viewing it as a justified response to occupation and aggression, few explicitly endorsed Israel's invocation of self-defence. This discrepancy in support hinted at a broader condemnation of Israel's continuing occupation and opposition to its use of force to maintain control over the territories. Moreover, influential third-party states assessed the legal ramifications of the ceasefire violation. The United States, for instance, acknowledged Arab breaches and called for the restoration of the ceasefire but refrained from attributing illegal use of force, avoiding assigning sole responsibility for initiating the conflict. This nuanced response underscored the intricacies of the situation and the challenges in navigating international consensus amidst ongoing hostilities and territorial disputes. However, in this case, these positions, even if influenced by political and strategic issues, give a clear, even not explicit, position on the interpretation of the legitimacy of the application of the principle of the use of force in self-defence in the case of illegal occupation of territories.

### *Nagorno-Karabakh*

When Azerbaijan established its independence in 1918 and claimed Nagorno-Karabakh as part of its territory, the conflict between Armenia and Azerbaijan over Nagorno-Karabakh began in the early

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<sup>99</sup> Konchak, P. (2024, February 14). *CEASEFIRE IN INTERNATIONAL ARMED CONFLICT: IMPLICATIONS FOR JUS AD BELLUM SELF-DEFENSE*. Lieber Institute - West Point. Retrieved April 30, 2024, from <https://lieber.westpoint.edu/ceasefire-international-armed-conflict-implications-jus-ad-bellum-self-defense/>.

20th century<sup>100</sup>. The area was autonomous during the Soviet era until Nagorno-Karabakh declared its intention to secede from Azerbaijan in the late 1980s<sup>101</sup>. Following this proclamation, there was a full-scale conflict that ended in a ceasefire agreement in 1994<sup>102</sup>. Nevertheless, Nagorno-Karabakh remained practically independent after this deal, closely allied with Armenia, which had aided in its cause throughout the conflict and annexed a number of Azerbaijani areas<sup>103</sup>.

The UN Security Council passed resolutions endorsing Azerbaijan's sovereignty and territorial integrity, calling for the prompt removal of occupying forces, and denouncing the use of force to seize land prior to the truce<sup>104</sup>. Since the ceasefire, Nagorno-Karabakh has been widely acknowledged as being under Armenian occupation<sup>105</sup>. This view has been reinforced by the European Court of Human Rights, which acknowledged Armenia's support for the "Nagorno-Karabakh Republic" and its actual authority over the territory<sup>106</sup>.

Even though there was a brief period of relative calm after the ceasefire, new hostilities broke out in 2020 when Azerbaijan went on the offensive to retake some of the territory it had previously held<sup>107</sup>. A ceasefire was achieved following six weeks of fighting, in exchange for Armenia ceding control of the captured districts<sup>108</sup>.

Azerbaijan regained much of its lost territory, signifying a dramatic turnaround in geographical control<sup>109</sup>. The degree to which Azerbaijan's military activities align with the *jus ad bellum* regime

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<sup>100</sup> Ruys, T., Silvestre, R. F., (2021), *Military action to recover occupied land: lawful self-defense or prohibited use of force? The 2020 Nagorno- Karabakh conflict revisited... op. cit.*, p. 668.

<sup>101</sup> Ruys, T., Silvestre, R. F., (2021), *Military action to recover occupied land: lawful self-defense or prohibited use of force? The 2020 Nagorno- Karabakh conflict revisited... op. cit.*, p. 669.

<sup>102</sup> Ruys, T., Silvestre, R. F., (2021), *Military action to recover occupied land: lawful self-defense or prohibited use of force? The 2020 Nagorno- Karabakh conflict revisited... op. cit.*, p. 670.

<sup>103</sup> Ruys, T., Silvestre, R. F., (2021), *Military action to recover occupied land: lawful self-defense or prohibited use of force? The 2020 Nagorno- Karabakh conflict revisited... ibidem.*

<sup>104</sup> UNSC Res 822 (30 April 1993) UN Doc S/RES/822; UNSC Res. 853 (29 July 1993) UN Doc S/RES/853; UNSC Res. 884 (12 November 1993) UN Doc S/RES/884.

<sup>105</sup> Ruys, T., Silvestre, R. F., (2021), *Military action to recover occupied land: lawful self-defense or prohibited use of force? The 2020 Nagorno- Karabakh conflict revisited... op. cit.*, p. 670.

<sup>106</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 21.

<sup>107</sup> Ruys, T., Silvestre, R. F., (2021), *Military action to recover occupied land: lawful self-defense or prohibited use of force? The 2020 Nagorno- Karabakh conflict revisited*, International Law Studies, Vol. 97, No. 1, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2968&context=ils>, p. 666.

<sup>108</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem.*

<sup>109</sup> Ruys, T., Silvestre, R. F., (2021), *Military action to recover occupied land: lawful self-defense or prohibited use of force? The 2020 Nagorno- Karabakh conflict revisited... op. cit.*, p. 672.

has not received much attention from the international community, mainly due to the difficulty of confirming facts on the ground<sup>110</sup>. Both Azerbaijan and Armenia accused each other of initiating hostilities: Azerbaijan asserted self-defence against Armenian attacks, while Armenia accused Azerbaijan of aggression<sup>111</sup>. Rather than openly claiming self-defence against Armenia's occupation, Azerbaijan presented its actions as a "counter-offensive" in response to Armenia's use of force<sup>112</sup>.

Turkey openly supported Azerbaijan's actions as hostilities occurred within its sovereign territory, citing its inherent right to self-defence<sup>113</sup>. However, the international community, including the Co-Chair countries of the OSCE Minsk Group, concentrated on advocating for an end to hostilities and a return to negotiations, rather than exploring the legality of Azerbaijan's actions<sup>114</sup>. The fundamental objective remains the pursuit of a lasting peace through diplomatic means, notwithstanding the complexity and legal difficulties underlying the war.

The international community has shown a limited overt support for Azerbaijan's activities in reaction to the conflict between Armenia and Azerbaijan. Notably, Turkey has stood in solidarity by stating that Azerbaijan has the right to self-defence because hostilities are taking place on its own sovereign territory indirectly reaffirming the validity of the principle of territorial integrity despite of occupation. Instead of investigating whether Azerbaijan's activities are acceptable under international law, the international community has concentrated on pressuring both sides to end the hostilities. Key players like the US, Russia, and France<sup>115</sup> have all strongly condemned the latest uptick in violence along the Line of Contact and underlined the need for an early cessation of hostilities. Important parties have expressed their disapproval of the latest upsurge in violence along the Line of Contact and stressed the need for an early end to hostilities in statements released by the

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<sup>110</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 21.

<sup>111</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

<sup>112</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

<sup>113</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 22.

<sup>114</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

<sup>115</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

US, Russia, and France<sup>116</sup>. In this case, it can be seen that the question of the legitimacy of the use of force for the re-establishment of occupied territories has been carefully avoided by focusing on the vagueness of the response to a violent action.

What is also evident in this case is that active military intervention appears to be the only way to enforce legally approved and internationally accepted actions of restitution of occupied territories.

### **3.3 Understanding State Practice: Patterns and Variations Through Case Studies.**

In the previous paragraph two different cases of ceasefire violations were presented, along with the international response to each of such violations. While, as previously stated, the international response to ceasefire violations is fragmented, it is possible to make some observations that will allow to find and answer to the research question of the present thesis.

In both of the cases presented, the territories belonging to one state were occupied by the other state, and the cease fire had frozen the situation. The violation of the ceasefire by one of the two parties was then justified by the right to self defence. On the other hand, since prolonged occupation resulting from force is considered a continuous attack, any requirement for immediacy is met and hopefully appears to be the only way to enforce legally approved and internationally accepted actions of restitution of occupied territories. So the question thus shifts to the ultimate element of necessity.

First, in order to find an answer to the research question of this thesis it must be stressed that the use of force in self-defence, as presented in chapter one, will only be considered lawful when responding to an ongoing armed attack, when it is necessary and when the use of force is proportionate. In the cases of occupation presented above, the armed attack has not only occurred but has not ceased. In fact, an occupation characterised by a ceasefire agreement can be considered as an ongoing armed conflict. This view can be understood by the other states' reaction.

While it is clear for the Yom Kippur case, where Israel was perceived as the aggressor<sup>117</sup>, the same can be understood through the international community reaction in the case concerning Armenia and Azerbaijan. When the international community decided to not condemn the action against the occupied powers, they have not condemned such reaction as lacking this criteria.

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<sup>116</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *ibidem*.

<sup>117</sup> Olofsson, A. (2023). Military action to recover occupied territory – a lawful exercise of self-defence?... *op. cit.*, p. 17.

For the same reasoning, it is possible to condor that the condition of necessity, often taken to refer both to the immediacy of the response in self-defence and to the notion that the use of force is a last resort, is validated. Any criteria pertaining to immediacy is satisfied when an extended occupation results from force, and the discussion then shifts to the need of the final resort and often indispensable to resolve otherwise stagnant situations. Concerning the proportionality criteria, once again the international reaction, that did not condemned the warfare means used by the occupied state, may indicate that the last resort criteria has been satisfied<sup>118</sup>.

After having validated the conditions of ongoing armed attack, necessity and proportionality, it is not possible to analyse the international response. In both the Yom Kippur case and the Nagorno-Karabakh case, it is possible to notice two trends. On one side, in both cases a part of the international community supports the occupied state in breaching the ceasefire in line with the aim of reconquer the occupied territories. On the other side, the other states, while not supporting this view, they have not condemn it either. This nuanced reaction of the international community suggests a possible growing acceptance of the principle that states under occupation may breach ceasefire agreements in self-defence and seek to reclaim their territories.

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<sup>118</sup> *Use of force in Self-Defence to recover occupied territory: When is it permissible?* (2020, November 18). EJIL: Talk! <https://www.ejiltalk.org/use-of-force-in-self-defence-to-recover-occupied-territory-when-is-it-permissible/>.

## 4. Conclusions

This thesis aimed to answer the following research question: “what are the implications for international law regarding the right to self-defence in situations where a state seeks to reclaim a territory occupied by another state after a breach of a ceasefire?”.

In order to find an answer to this question, it was decided to structure the thesis into two main chapters.

The first chapter focused on defining the essential principles and notions governing the field of conflict. The first paragraph focused on the principle of the prohibition of the use of force and the principle of peaceful settlement of international disputes. Through the first paragraph it was stressed how these two principle have emerged from the post-World War II era, signifying the desire of states to make sure that such a disastrous war could be avoided in the future. In fact the primary function of the two principles was found to be the upholding global peace and security, as stated in Article 1 of the UN Charter. It was furthermore stressed how these two principles have become the cornerstone of international law in governing the relations between states in the international arena.

In the second paragraph it is analysed the definition of the notion of occupation. It was stressing how, while forcible occupation of territories still characterise many conflicts of the present days, finding a single definition commonly accepted is still difficult. It was then emphasised how the determination of whether an invasion has turned into an occupation needs to be assessed based on the specific situation on the ground. Finally it was considered important to explain the illegality of an occupation that aims at transferring the title over the territory of the occupied power to the occupying power.

In the subsequent paragraph it was introduced the notion of ceasefire. It was decided to provide a precise definition the term by analysing its characteristics in comparison to other terms sometimes wrongly used as synonyms. It was additional explained that ceasefire may not definitely end all violence just as violence may not end a ceasefire agreement.

Finally, it was introduced the notion of self-defence, providing a definition and analysing the conditions that must be fulfilled in order for an armed aggression to be considered self-defence and therefore not bear the responsibility of an internationally wrongful act. In the possibility of justifying an armed attack through the notion of self-defence, three fundamental conditions were presented. It was stressed that a legal exercise of the right to self-defence must be a response to an armed attack. Moreover, the degree of force used must be necessary and proportionate. Finally, such

response must be reported to the Security Council and must cease in the case of measures taken by the latter to solve the conflict..

This first chapter allowed to provide a comprehensive overview of fundamental concepts, necessary in order to fully understand the complexity of the issue at stake. In these paragraphs it was considered important to identify different approaches in defining such concepts, highlight the evolution of their definition and the challenges that were faced in identifying a globally accepted interpretation. This variety of approaches and definitions could be considered to constitute a weakness in the thesis development, as the adoption of different interpretations could alter the analysis developed in the second chapter.

Following the explanations provided in the first chapter, the second chapter shifted its focus on the potential ceasefire violations that could be justified by self-defence. The initial part of the chapter focused on the reasons why a ceasefire is violated and what are the international law norms that deal with such violations. It was considered fundamental for the scope of this thesis to emphasise that multiple scholars have regarded the ceasefire as a 'dormant' continuation of hostilities. This perspective facilitated the analysis in meeting the criteria previously outlined for responding to armed attacks within the context of self-defence. In the first paragraph it was considered of fundamental importance to emphasise the correlation between a ceasefire violation and the legal regime that dictates the use of self-defence, in order to provide a background for the following analysis of real case studies.

It was additionally observed a multiplicity of approaches concerning the legal bases when regulating the violations. For this reason in the second paragraph it was decided to focus on real case studies to better analyse different state practice, in order to recognise paths and similarities in the international response that third states have in reaction to the violations. Two main cases were presented. The first case concerned the Yom Kippur war that started in the early 1970s and concerned Israel and few other Arab states. The second case was the Nagorno-Karabakh case, whose ceasefire was decided in 1994 and with the most recent violations in 2020. Each case was provided with international reaction that characterised the international community after the respective violation.

The analysis of the international reaction was then done in the third and last paragraph. After having explained that in both cases the military act was considered to be in response to an ongoing armed attack, to be necessary and the use of force to be proportionate, it was then analysed the international response. Through such analysis, it was possible to identify two patterns. On the one hand, a portion of the international community supported the occupied states in both instances as

they violated the ceasefire in an effort to retake the seized territory. Conversely, the other states have not denounced this viewpoint but they have also not endorsed it either.

Although it must be considered that an analysis of individual cases is indispensable and that this remains complex and could hardly allow generalisations, the international community's nuanced response raises the possibility that the idea that occupied governments may violate ceasefires in self-defence and attempt to retake their territory is becoming more widely accepted. Although it must be emphasised that many of these positions are inevitably influenced by strategic political considerations of the different states outside the subject matter.

Therefore, while the legal bases outlined in the initial chapter may not enjoy universal recognition, the examination of the applicability of self-defence reveals promising prospects. By analysing the specific conditions under which self-defence can be invoked, as illustrated in the case study examined, it was possible to shed light on the significance of state practice. Through real-world examples, it becomes evident that state actions play a fundamental role in shaping interpretations and applications of legal principles. Consequently, even though a definitive conclusion may be difficult to obtain given the inherent uncertainties, the trend observed in state practice suggests a growing acceptance of self-defence as a justification for the breach of a ceasefire in order to retake the occupied territory. When considering the implications for international law as structured in the research question of this thesis, it is possible to recognise this trend as having, in the long term, a significant impact in regulating ceasefire violations in case of an occupied territory.

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