

# Attacking Iran: Retaliation or Self-Defense?

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On October 1, Iran launched a major two-wave attack consisting of over 180 missiles against Israel. The primary targets were the headquarters of Mossad and three Israeli Air Force bases. However, Israel's multi-layered air defense systems, supported by U.S. warships, effectively thwarted the attack.

Iran's Islamic Revolutionary Guard Corps (IRGC) stated that the missile barrage was in retaliation for the killings of: Hassan Nasrallah, the Secretary-General of Hezbollah, on September 27 (see my discussion [here](#)); IRGC Brigadier General Abbas Nilforushan, who was in the bunker with Nasrallah at the time of the strike; and Ismail Haniyeh, the leader of Hamas, who died on July 31 during a covert operation in Tehran. Iran's UN representative argued that the Iranian operation was a "legal, rational, and legitimate response to the terrorist acts of the Zionist regime, which involved targeting Iranian nationals and interests and infringing upon the national sovereignty of the Islamic Republic of Iran." On October 4, Iranian Supreme Leader Ayatollah Ali Khamenei further asserted that the attack was justified under international, Islamic, and Iranian law. He warned, "What our armed forces did was the

minimum punishment for the crimes of the usurping Zionist regime . . . . The resistance in the region will not back down because of these martyrdoms and will prevail.” In other words, this is not the end of the matter for Iran.

These arguments, however, were largely brushed aside. U.S. Secretary of Defense Lloyd Austin condemned the attack, calling it an “outrageous act of aggression by Iran.” UK Prime Minister Keir Starmer echoed this sentiment, emphasizing Israel’s “right to self-defense.” German Foreign Minister Annalena Baerbock likewise condemned the attack “in the strongest possible terms.” And in response to concerns that he had not condemned Iran’s actions forcefully enough, UN Secretary-General António Guterres clarified, “As I did in relation to the Iranian attack in April—and as should have been evident in my earlier remarks—I again strongly condemn yesterday’s massive missile attack by Iran on Israel.”

The risk of an escalatory spiral is real. Israel’s Prime Minister, Benjamin Netanyahu, quickly vowed retaliation stating, “This evening, Iran made a big mistake—and it will pay for it.” He added, “Iran does not understand our determination to defend ourselves and to retaliate against our enemies.” The United States appears to agree, for National Security Adviser Jake Sullivan told the press, “We have made clear that there will be consequences, severe consequences, for this attack, and we will work with Israel to make that the case.” More ominously, former Prime Minister Naftali Bennet argued that “We must act now to destroy its nuclear project, destroy their major energy facilities and critically hit this terrorist regime . . . . The tentacles of that octopus are severely wounded — now’s the time to aim for the head.”

This is not the first time the two countries have engaged in a tit-for-tat exchange. In April, Iran launched a drone and missile attack in retaliation for an Israeli airstrike against targets in Iran’s Consulate in Damascus, which killed, *inter alia*, a senior Iranian general. Iran claimed the response was in accordance with its right of territorial self-defense. As in the recent attack, Israel effectively defended itself with the assistance of the United States and other countries. Six days later, the Israel Defense Force (IDF) responded with its own attack on an Iranian military base.

In this post, I offer thoughts on the legal issues surrounding a possible Israeli response, focusing on the prohibition on the use of force in Article 2(4) of the UN Charter and the right of self-defense reflected in Article 51 of that instrument (and their customary law counterparts). I conclude that while a forcible Israeli response will be lawful for the time being, international law imposes strict limits on how it may be carried out.

Before continuing, two caveats are necessary. First, I am not dealing with the issue of whether there is an ongoing international armed conflict between Israel and Iran, either directly or based on Iranian support for Hezbollah. The issue is instead whether a *jus ad bellum* justification exists for an Israeli response to the October 1 attack. Second, I offer no

opinion on the strategic wisdom of a forcible response or the military sensibility of hitting particular targets. Discussion is strictly limited to the *lawfulness* of such a response under international law.

## **The Right to Self-Defense**

As I explained in an earlier *Articles of War* [post](#), “international law has no place for responses based on retaliation, retribution, or punishment. This is so no matter how condemnable the conduct to which they reply.” While an attacker may harbor such motives—and indeed, Israel will likely be motivated by them—they do not provide a *legal* basis for the use of force against another State. Simply put, retaliation, retribution, and punishment, standing alone, violate the Article 2(4) prohibition on the use of force.

Instead, the sole legal justification for an Israeli response in the absence of Security Council authorization is self-defense under [Article 51](#) in the face of an “armed attack.” Plainly, the Iranian attack reached the armed attack threshold of intensity. The question is whether Israel enjoys a right of self-defense in the first place.

In that regard, it must be remembered that there is no right of self-defense against a State that is itself acting in self-defense. Despite its claims to the contrary, Iran cannot make the case that its missile barrage is justified as self-defense. The Israeli operations that prompted Iran’s response targeted Hamas and Hezbollah leaders, not Iranians. And while Haniyeh was killed on Iranian territory, the Israeli operation against him can be justified based on the “unwilling/unable” doctrine. That doctrine allows for defensive operations into another State’s territory when the latter has failed to put an end to actions occurring there that are integral to an armed attack (see [Deeks](#)). In this regard, it merits caution that although the [United States](#) and a number of other States have adopted the doctrine, and I have [supported](#) it for over two decades, it remains contentious.

Yet even if one concludes that Haniyeh’s killing in April cannot be characterized as self-defense, by October 1, Iran no longer enjoyed the right to respond to it forcibly. By the necessity criterion, a defensive use of force may not be too early (imminency) or too late (immediacy) (see [Dinstein](#), paras. 659-61). Immediacy refers to the point in time when there is no longer a defensive need to respond forcibly in order to defeat an ongoing armed attack or deter subsequent attacks in a campaign against the victim State.

Here, over five months had passed since the earlier exchange between Israel and Iran. Recall that the International Court of Justice observed in its 1986 *Paramilitary Activities (Nicaragua)* judgment that the United States could not claim compliance with the immediacy requirement due to a lapse of several months between Nicaragua’s purported armed attack and the claimed U.S. response in the collective self-defense of El Salvador (para. 237). The

same logic applies here. Moreover, in light of the Israeli operations into southern Lebanon, it would have been unreasonable for Iran to conclude that the IDF intended to open a third front against Iran, at least not until Iran attacked.

As for the Nasrallah strike (see my analysis [here](#)), it took place in Lebanon and targeted a Lebanese citizen. The sole connection with Iran is that an IGRC general was killed in the effort to destroy the Hezbollah command and control facility and kill Nasrallah. Thus, the operation's effect on Iran was incidental and, as such, insufficient to trigger the right of self-defense. This is particularly so for those States and commentators that accept the International Court of Justice's characterization of an "armed attack" as the "most grave" form of the use of force (*Paramilitary Activities*, para. 191). While the United States rejects this view, it is the prevailing approach, one with which I concur (on this issue, see [Ruys](#), § 3.2).

But it could be argued that the ongoing Israeli operations in Lebanon, although not targeting Lebanon as such, nevertheless triggered Lebanon's right of self-defense against significant uses of force on its territory. This is not a proposition with which I agree, for I am in the camp that accepts the unwilling/unable approach. Nevertheless, assuming solely for the sake of discussion that Lebanon may lawfully exercise self-defense in the face of the Israeli operations against Hezbollah, it would enjoy the right to seek the assistance of other States acting in collective self-defense. Yet, as the International Court of Justice made clear in its *Paramilitary Activities* judgment, a condition precedent to acting in collective self-defense is a formal request from the State facing the armed attack (para. 199). Lebanon has yet to make such a request to Iran.

Finally, Iran's close ties to Hezbollah are worth mentioning. The Iranian attack may be seen as an expression of support for that organized armed group. However, it cannot qualify as an action in Hezbollah's collective self-defense because only States enjoy the right of self-defense. This being so, States may only support other States in collective self-defense.

Because the October 1 Iranian attack rose to the level of an armed attack, and because that operation cannot qualify as having taken place pursuant to the right of self-defense, Israel's right of self-defense was triggered by the attacks against it. Yet, to exercise that right, it must comply with the dual requirements of necessity and proportionality; failure to do so is a wrongful use of force in violation of the [Article 2\(4\)](#) prohibition (*Paramilitary Activities*, paras. 194, 237; *Nuclear Weapons*, para. 41; *Oil Platforms*, paras. 43, 73-74, 76).

### **Necessity of an Israeli Response**

In the context of self-defense, necessity refers to a need to use force to preclude an imminent attack or defeat an ongoing one; if a non-forcible option exists to address the situation, the necessity criterion is not satisfied. Clearly, this condition was satisfied while the October 1 attack was underway. But the critical question with regard to necessity is

immediacy, a point discussed above in the context of the Iranian attack. In other words, may Israel *still* respond now that the attack is over? This raises the question of whether Iran's missile barrage was a single attack or part of a broader campaign.

When dealing with the temporal aspect of armed attacks, there is always a margin of appreciation, for it is often difficult to assess whether the attack is definitively over or but the first blow in a series of strikes; victim States cannot be expected to assume the risk of miscalculation. However, after some time, and depending on the attendant circumstances, it can become clear that more attacks are not forthcoming. Once that occurs, a forcible response is merely unlawful retaliation.

That arguably may have been the case for Israel following the April exchanges. But once Iran conducted the October 1 attack, it became reasonable for Israel to assume that Iran was engaging in a *series* of related attacks that together amount to a campaign. Indeed, Khamenei's statements can be interpreted as supporting the likelihood that Iran will strike at Israel again whenever it deems Israeli actions sufficiently provocative, regardless of whether those actions qualify as armed attacks themselves. Moreover, both Iranian attacks were surely motivated in part by a desire to flex its muscles in a show of Iranian support for its regional proxies. Given the current Israeli operations in Gaza, Lebanon, and Yemen, it is reasonable to conclude Iran will do so again at some point.

In this regard, there is no "revolving door" of self-defense that requires a State to justify each defensive use of force separately when facing a chain of related attacks. Instead, once the victim State has reasonably decided that it is being subjected to a *campaign* of attacks, it may treat them as an *ongoing* armed attack. As long as non-forcible measures are unavailable to end the campaign, the State retains the right to use force in self-defense throughout it. It is fair to characterize the current situation along these lines.

### **Proportionality of an Israeli Response**

While necessity limits the situations in which force may be used, proportionality restricts the amount and nature of the force employed. Proportionality does not require that the force used be equivalent in degree or nature to that used in the armed attack, but it must not exceed what is necessary to prevent or defeat the attack. The goal of the proportionality requirement is to balance the victim State's need to defend itself against the broader international community's interest in limiting the destabilizing effects of a State's resort to force.

The G7 States have emphasized the centrality of this requirement to any Israeli response. Proportionality dictates that Israel's use of force must be strictly related to ending Iranian attacks, not to broader military or political objectives. Moreover, proportionality applies not

only to the amount of force but also to the types of targets. In other words, there must be a direct link between how Israel uses force to defend itself and the goal of defeating Iran's armed attack. There are two primary ways this connection can manifest.

The most obvious means is by striking at an adversary's capacity to continue an ongoing attack or launch likely future attacks. In the case of Iran, this could include targeting ballistic missile launch facilities, military airfields, and C4ISR (Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance) assets that are currently being used or likely to be so used in future attacks. By contrast, strikes on an Iranian Military Academy, a valid military objective under the law of armed conflict (LOAC), would not be justified under this reasoning, as the connection to the ongoing armed attack would be too tenuous.

The second basis for targeting is compellence, which should not be confused with deterrence. Compellence refers to using force to coerce an adversary to desist; it is a strategy for responding to an ongoing armed attack. Deterrence, by contrast, involves actions that deter an adversary from deciding to engage in a future use of force; it is used to convince an adversary not to launch an armed attack in the first place. Because the October 1 attack can reasonably be characterized as ongoing, compellence is the issue.

Compellence involves imposing costs on an adversary at a level intended to force it to terminate its armed attack; it is designed to alter cost-benefit calculations. These costs can be imposed on assets that the adversary is using or is likely to use to attack. More significantly, forcible compellence may also target entities that are unlikely to be used but that the adversary values. This is operationally significant because assets directly tied to the armed attack will likely be well-defended. Targeting more vulnerable assets may be more effective in persuading the adversary to cease hostilities.

It must be cautioned, however, that compellence is subject to the proportionality criterion. Accordingly, no greater cost may be imposed on Iran by Israel than reasonably required to successfully alter Iran's intention to maintain the armed attack campaign.

A further limitation on compellence operations is that they may only be directed at military objectives and targetable individuals (combatants, members of organized armed groups, and civilians directly participating in the hostilities). This requirement stems from the fact that there is presently an ongoing international armed conflict between Israel and Iran to which LOAC applies in tandem with the *jus ad bellum*.

The LOAC compliance requirement brings into focus two types of potential target sets that have captured headlines. The first category consists of Iranian oil infrastructure. These assets (in the context of the current conflict) can only qualify as lawful military objectives by applying the controversial "war-sustaining" doctrine, which the United States has long advocated (Department of Defense, *Law of War Manual*, § 5.6.6.2). Many States, including

close U.S. allies, reject this interpretation, limiting qualification as a military objective to entities that are either “war-fighting” (e.g., military equipment and facilities) or “war-supporting” (e.g., a munitions factory) in character. In my view, this is the correct approach. Given this difference of opinion, a strike on Iranian oil infrastructure will inevitably spark controversy. Accordingly, President Biden has wisely cautioned, “If I were in their shoes, I would be thinking about other alternatives than striking oil fields.”

The second type of target involves Iranian nuclear facilities. If these facilities are linked to the production of nuclear weapons, they qualify as military objectives under the law of armed conflict. However, it might be questioned whether an attack on them can be justified as proportionate under the *jus ad bellum*. And President Biden has made it clear that the United States is opposed to any strike on Iranian nuclear sites.

Finally, because an international armed conflict is currently ongoing between the two States, Israeli defensive operations targeting military objectives must comply with other customary LOAC rules, particularly the rule of proportionality and the obligation to take precautions in attack, as well as treaty obligations binding on Israel.

### **Concluding Thoughts**

The October 1 Iranian missile barrage, together with Iran’s April attack, undeniably triggered Israel’s right to self-defense. However, the law of self-defense places strict limits on how it may respond. While Israel is entitled to take defensive action against Iran, its response must comply with the necessity and proportionality requirements of the *jus ad bellum*. Furthermore, any military action Israel takes must adhere to LOAC rules, including those requiring distinction, proportionality, and precautions in attack.

The situation remains tense, and the potential for further escalation is real. If escalation is to be averted, both States must act in a manner consistent with their rights and obligations under international law. Those rights do not include retaliation for retaliation’s sake.

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