Iran and Israel: The Light Treatment of Jus ad Bellum

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In the early hours of October 26, 2024, the Israel Defence Forces (IDF) launched a large-scale attack against Iran. According to the IDF, these were "precise and targeted strikes against military targets in a number of areas in Iran." While details on the nature and effects of these strikes are still emerging, they apparently "cripple[d] Iran's missile production capability." Nevertheless, in certain quarters, there seems to be a common wisdom that the IDF's strikes constituted armed reprisals in response to Iran's large-scale, surface-to-surface missile strikes on October 1, 2024, thereby violating the *jus ad bellum*, the law governing recourse to force in international relations.

Is this a correct legal assessment or is this a simplistic evaluation of a much more complex web of facts and law? The purpose of this post is to reflect upon certain legal considerations, lacking in present (academic) discourse but which colour these events in a different light. I begin this post by highlighting political rhetoric which, rather than indicating legal positions, has served as a distraction to academic analysis. I then consider when the right of self-defense may arise in circumstances of so-called "indirect" use of force by a State through a non-State armed group. Finally, I apply this analysis to Iran's involvement in Hezbollah's activities.

Red Tape and Red Herrings

Regarding both Iran's strikes at the beginning of October 2024 and Israel's strikes near the end of the same month, commentators have highlighted language used by political leadership on both sides emphasizing retaliation and retribution. Thus, following the killing of Ismail Haniyeh, Chairman of the Hamas Political Bureau, in Tehran in July 2024—an incident widely attributed to Israel—Iranian officials, including Ali Khamenei, reportedly stated that Israel would be "punished." Following Iran's attacks on October 1, 2024, Israeli Prime Minister Benjamin Netanyahu stated that Iran "will pay for it."

Taken at face value, such statements imply that both sides have had recourse to force for the purpose of punishing the adversary. The use of force in international relations is, of course, prohibited under Article 2(4) of the UN Charter, whereas there are two (uncontroversial) exceptions thereto enshrined in Chapter VII of the Charter: self-defense; and Security Council authorization. Recourse to force is thus prohibited for the mere purpose of punishing an adversary, although the legality of tit-for-tat operations and deterrence-focused force as lawful self-defense in response to an armed attack remains debatable.

Regardless, there is a fundamental problem with placing too much emphasis on statements made by political officials in explaining recourse to force, particularly when directed at a domestic audience. Whether geared towards providing justification for using force under municipal law, or as is more often the case, for the purpose of demonstrating strong leadership towards the electorate, such statements often constitute red herrings. Nowhere does international law require "pure" intentions in recourse to force; it instead requires that recourse to force meets the conditions limiting its use.

Were these conditions met in the IDF's strikes of October 26, 2024? I shall first consider the law applicable to so-called "indirect" uses of force, and then apply the law in light of the relations between Iran and Hezbollah, drawing pertinent conclusions thereafter.

Indirect Use of Force

A problem with much of the present academic discourse focused on the application of the right of self-defence regarding the events of October 2024 is that it appears fixated on specific instances of Israeli and Iranian *direct* recourse to force, without sufficient—or, indeed, any—regard to Iran's *indirect* recourse to force. When discussing indirect use of force—in layperson terms, force through a proxy—scholars conduct their analyses through the lens of attribution under the law of international responsibility. In particular, analysis focuses on the level of control necessary for a State over a non-State actor to attribute the latter's conduct to the former. However, rather than concentrating on modes of attribution, I focus on the primary rules of the *jus ad bellum* which implicate indirect recourse to force, as some have recently done in other contexts.

That logistical support by a State to armed groups acting against another State can amount to a use of force is well-established in international law. Whether such logistical support on its own also amounts to an "armed attack" giving rise to a right of self-defense under Article 51 of the UN Charter is more controversial. The International Court of Justice (ICJ) in the *Paramilitary Activities (Nicaragua)* case ruled against this approach, whereas Judges Schwebel and Jennings considered that the issue was more nuanced. Indeed, it appears the differences in approach depend on the existence or extent of a so-called "*Nicaragua* gap"; that is, the extent, or otherwise, of the difference between acts constituting a (mere) violation of the prohibition of the use of force under Article 2(4) of the Charter and those constituting an armed attack, giving rise to a right of self-defense.

Regardless of where one stands on the question of (mere) logistical support, it seems to be generally agreed, including by the ICJ in *Paramilitary Activities*, that a State's "substantial involvement"—as General Assembly Resolution 3314 uses the term—in acts conducted by an non-State armed group of sufficient gravity to constitute armed attacks against another State give rise to a right of self-defense *against the State*. Even if "substantial involvement" does not include the provision of arms and training, there is little reason to assimilate it to a standard requiring attribution and/or "overall control," as some seem to suggest. Indeed, "substantial involvement" is not so much a mode of attribution under the law of international responsibility as it is a concept arising from the interpretation of "aggression"—particularly due to subsequent practice—and in turn "armed attack." Rather, the concept appears to concern circumstances where a State is involved in acts constituting armed attacks, such as the planning and preparation of such attacks, without actually being the actor which directly executes the armed attacks (e.g., MacDonald, Tsagourias, Corten).

Has Iran been "substantially involved" in acts of regional non-State armed groups, sufficiently grave to constitute armed attacks, against Israel? I now turn to the facts which may shed light on this issue.

Iran's Relations with Hezbollah

While Iran is reported to have supported various regional non-State armed groups to varying degrees, including Hamas and Palestinian Islamic Jihad in the Gaza Strip and West Bank and the Houthis in Yemen, for present purposes, focusing only on Iran's relations with Hezbollah is sufficient to make the point. Indeed, Hezbollah is seemingly the most powerful of non-State armed groups supported by Iran, and in the time frame relevant for this post, has been engaged in the most intense direct hostilities with Israel.

Of course, there is an incomplete picture in the public domain in terms of the relations between Iran and Hezbollah. Nevertheless, there are certain facts, or at the very least reports, which do go some way in providing useful indications of legal significance. Beyond

arguably creating Hezbollah, Iran has continuously provided Hezbollah with military training, know-how, and guidance. Iran also funds Hezbollah with an estimated annual amount of $700 million and is Hezbollah's top arms supplier.

However, perhaps more pertinently for the present post, Iran is also involved in Hezbollah's operations, which are often interrelated with Iran's own activities. For example, Iran Revolutionary Guard Corps' Brigadier Mohammad Reza Zahedi, who was killed in an airstrike attributed to Israel in April 2024, reportedly served on Hezbollah's Shura Council. This is a deliberative body described as Hezbollah's "central decision-making body," thus suggesting significant involvement in key decisions in Hezbollah's war efforts. Moreover, just as the ink was drying on the first draft of this post, reports seem to suggest that Hezbollah required Khamenei's "green light" to agree to a ceasefire with Israel.

Iran's involvement in Hezbollah's operations also appears to extend to the tactical level. For example, reports suggest Hezbollah used intelligence gathered by Iran on the location and nature of specific military installations in Israel, such as information on the Golani Brigade training base, the same installation targeted in a deadly Hezbollah suicide-drone attack on October 13, 2024.

In light of these reports, it seems very likely Iran's support for Hezbollah reaches the threshold of "substantial involvement," meaning Iran's armed attacks against Israel did not end on October 1, 2024, as some assert. Instead, on closer examination, the more persuasive argument is that Iran's armed attacks against Israel started long before the direct attacks of October 1, 2024, or even April 14, 2024, and that these armed attacks are continuing. Accordingly, leaving aside propositions that self-defense extends to tit-for-tat or deterrence-focused acts, or propositions which may seek to attribute Hezbollah's ongoing hostilities to Iran, Israel has the right to use force against Iran in self-defense necessary to halt and repel this continuous armed attack.

Conclusion

Iran's October 1, 2024, attacks against Israel were not an open-and-shut event. Rather, they appear to have been just one of several ongoing armed attacks by Iran due to Iran's substantial involvement in Hezbollah's armed attacks against Israel. If this is correct, it would mean that Israel had the continued right to use force in self-defense when it launched its large-scale attack against Iran on October 26, 2024.

Arguably the most important lesson for international lawyers in this whole affair is to take the statements of political leaders regarding recourse to force with a pinch of salt. While legal considerations are—or at least should be—a *sine qua non* in decisions about whether to have recourse to force, they exist alongside other considerations. Spin is the bread and

butter of politicians; it is key to garnering domestic public support. International lawyers should avoid the red herrings obfuscated by spin, consider the relevant legal and factual matrix, and reach independent conclusions accordingly.

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