PREEMPTIVE SELF-DEFENCE ON ISRAEL-HEZBOLLAH ARMED CONFLICT UNDER INTERNATIONAL LAW

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Abstract

The legalization of war has legitimized wars of “self-defence”. On January 18, 2015 on the Syrian side of the Golan Heights, Israel launched an airstrike that killed six Hezbollah fighters and an Iranian brigadier general, Mohammed Ali Allahdadi. Israel claims that it acted preemptively in order to preserve its existential security by implementing a defensive policy commonly dubbed as the “War Between Wars” policy, to disrupt Iran’s supply of advanced weaponry for Hezbollah. On the other hand, Hezbollah in its continuous defiance of United Nations Security Council Resolution 1701 claims that the aforementioned arms supply was meant to preserve Lebanon’s security against future Israeli aggression. The facts of the case presented certain legal issues, as to whether or not Israel’s airstrike towards Hezbollah constitute a legitimate self-defence and its permissibility under international law. This is a normative legal research, thus relies heavily on library research, the IRAC method was used in deciphering the issue. After careful considerations, by attributing the said airstrike with the preemptive strike theory, it has been found that Israel’s airstrike was not preemptive, but rather preventive in nature, and should have been illegal under international law. However, a just cause test was conducted on both sides, and it has been found that the odds are more in favor towards Israel than Hezbollah. Ultimately, the research concluded that although preventive warfare was deemed to be illegal under international law, Israel’s claim of self-defence was more likely to be permitted in the international arena than Hezbollah's.

Keywords: International Law, Preemptive Self-Defence, Israel, Hezbollah.
I. Introductions
   A. Background

   International law is a body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, did commonly observe in their relations with each other.\(^1\) The scope of international law is extended to all the free and independent nations, all states whether they are big or small enjoy the same status. “No principle of law is more universally acknowledged than the perfect equality of nations.”\(^2\)

   The United Nations {hereinafter UN} is an intergovernmental organization tasked to promote international cooperation and to create and maintain international order. A replacement for the ineffective League of Nations, the organization was established on October 24, 1945 after World War II with the aim of preventing another such conflict. After all, of the past 3,400 years, humans have been entirely at peace for 268 of them, or just 8 percent of recorded history.\(^3\) There are a variety of modern laws directed towards regulating the use of force in safeguarding relations between states. Both public international customary and treaty law contain legal bases for the use of force. According to article 1 of the UN Charter, The primary purpose of the UN is to maintain international peace and security.\(^4\)

   The UN acknowledges and respects state sovereignty hence states ought to resolve disputes in a peaceful manner avoiding the threat or use of force against the territorial integrity or political independence of another state. The UN Charter contains guidelines regarding the use of force, with the general

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rule stated under Article 2 of the Charter, which declares that ‘All members shall refrain in their international relations from the threat or the use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.’\(^5\)

The UN Charter provides two exceptions to the prohibition of the threat or use of force under which States are permitted to resort to the use of force under Chapter VII of the Charter. Use of force is permitted when it’s a result of an enforcement action under the auspices of the UN Security Council. Article 51 of the Charter proceeds to state the other instance when engagement is allowed: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the UN.’ Otherwise, sanctions are invoked against States that resort to the use of force.\(^6\)

The legalization of war changes world politics, but its main effect has been to legitimize wars of “self-defense” and delegitimize all other kinds of war.\(^7\) It is no surprise that most wars since 1945 have been justified as self-defense. Nor is it surprising that they are often framed this way by both sides in the conflict. Clausewitz described war as simply the continuation of political intercourse with the addition of other means.\(^8\) To be sure, the discourse of self-defense may well be a thin veneer laid over other motives for war, the concept is politically useful.

A case in relevance was the Israel airstrike on January 18, 2015 on the Syrian side of the Golan Heights that killed six Hezbollah fighters and an

\(^5\) Article 2 (4), Charter of the United Nations, 1 UNTS XVI, 24 October 1945.
\(^6\) Article 39-51, Charter of the United Nations, 1 UNTS XVI, 24 October 1945.
Iranian brigadier general, Mohammed Ali Allahdadi.\textsuperscript{9) The Israeli news media reported that officials believed Hezbollah was planning an attack on Israelis from the area, near the Golan Heights frontier. Israel claims that the prevention war, or even a preemptive strike was necessary on the grounds of self-defense.\textsuperscript{10) The Prime Minister of Israel, Netanyahu claims that Israel “can’t surrender the option of a preventive strike. It is not necessary in every situation, and it must be weighed carefully and seriously. There are situations in which paying heed to the international price of such a step is outweighed by the price in blood Israel will pay if we absorb a strategic strike that will demand a response later on, and perhaps too late”\textsuperscript{11) }

Hezbollah leader Hassan Nasrallah has warned that his group was ready to respond to any attack by Israel at any time and in any place, insisting that rules of engagement no longer applied between the Lebanese movement and Israel. In a televised speech on Friday during a rally held to honour the six Hezbollah fighters and one Iranian general killed in an Israeli airstrike in Syria’s Quneitra on January 18, 2015, he said, "We in Hezbollah are no longer concerned with anything called the rules of engagement. It is our right, our legal right and our moral right, to confront the aggression at any time, any place and in any form whatsoever.”\textsuperscript{12) }


B. Formulation of Problems

The research problems in this legal research are as follows:

1. Does Israel’s Airstrike towards Hezbollah constitute a legitimate self-defence under international law?
2. Is Israel’s claim of anticipatory self-defence permissible under international law?

II. Analysis

A. The Legitimacy of Israel’s Airstrike towards Hezbollah

The incident on January 18, 2015 when an alleged Israeli airstrike on Syria’s Golan Heights towards a Hezbollah convoy that killed six Hezbollah fighters and an Iranian brigadier general, Mohammed Ali Allahdadi, stands to reason that Israel is indeed exercising an anticipatory self-defence. The right to defend one-self is an inherent right, a natural right that is inalienable by any means. Yet the question still remains whether or not the aforementioned anticipatory airstrike is legitimate under the scope of international law. Fundamentally, this research hypothesized that the said airstrike was preemptive in nature.

Preemptive action has always been analogous to self-defense. Throughout history, many countries have favored preemptive military action to gain an advantage before an impending conflict.¹³ The Romans viewed preemptive attack as a means of defending its empire, and invoked this form of self-defense quite aggressively. Rome's destruction of Carthage during the Third Punic Wars is a classic example of the Roman execution of preemptive war.¹⁴ The Japanese navy conducted a preemptive attack on the gathering Russian

fleets at Port Arthur on February 8, 1904 just four hours before a formal declaration of war was issued. This action gave the Japanese a significant advantage that ultimately led to a Japanese victory during the Russo-Japanese War.\(^{15}\) Hugo Grotius even held that it was “lawful to kill him who is preparing to kill”.\(^{16}\)

Each case for preemptive action must be evaluated based on the three elements of self-defense. According to J. E. Fawcett in the Digest of International Law, three elements constitute the framework necessary to declare self-defense for the purpose of invoking Article 51 of the UN Charter: present danger, proportionality, and consent.\(^{17}\)

1. Present Danger

A threat becomes more certain as it draws nearer and becomes clearer. A man rushing towards you with an upturned knife is an immediate threat; a man across the street with a suspicious knife-shaped bulge in his jacket is far less imminent. Present danger can be verified with solid intelligence work.

The historical justification for anticipatory attacks begins with a distinction along temporal lines. In the words of former United States Secretary of State Daniel Webster’s 1842 letter on the sinking of the ship Caroline: “a necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation.”\(^{18}\)


defence could be compared to a ‘reflex action’ where one has little choice but to react with force to save one’s own life. International law generally endorsed the idea that states could use force in self-defense if it was believed that an attack was imminent.\(^{19}\)

In correlation with the issue at hand, was the Hezbollah convoy patrolling the Golan Heights an immediate threat to the national security of Israel? Former Defense Minister Moshe Ya’alon cast much light on this incident, he described the targeted convoy as a:

“Coproduction of the Iranian Islamic Republican Guards Corps and Hezbollah. They were meant to carry out severe attacks on Israel. They had completed their training. The convoy contained senior commanders, and an Iranian general, who was the “educator.” They went on patrol to choose locations from which to infiltrate Israel, and to choose from where to fire anti-tank missiles at Israeli targets in the Golan Heights. The patrol ended with them being ended. The unit was ended.”\(^{20}\)

Lebanon’s Hezbollah leader Sayyed Hassan Nasrallah acknowledged that his militant movement received financial and material support from Iran. Nasrallah told supporters by videolink in a speech marking the anniversary of the birth of the Prophet Mohammad. “Yes, we received moral, and political and material support in all possible forms from the Islamic Republic of Iran since 1982.”\(^{21}\)

In defiance of UN Security Council Resolution 1701 that ended the 2006 Second Lebanon War which essentially calls forth the disarmament of armed groups in Lebanon (Hezbollah). Hezbollah and its Iranian patron, with the assistance of the Bashar Assad regime, are filling Lebanon with


\(^{20}\) Comments by Moshe Ya’alon at a conference held by MEMRI in Jerusalem, March 15, 2017.

surface-to-surface projectiles, and aiming them at population centers and strategic sites in Israel.\textsuperscript{22}) To forestall this threat, the Israeli defense establishment has, according to media reports, been waging a low-profile military and intelligence campaign, dubbed “The War Between Wars,” which monitors and occasionally disrupts the transfer of advanced weapons to Hezbollah.\textsuperscript{23})

In the analogy mentioned earlier, Israel’s action could be interpreted as shooting down a man across the street with a suspicious knife-shaped bulge in his jacket, which is clearly far less imminent than a man rushing forward with an upturned knife. Going by the Caroline standard, the Hezbollah convoy and its growing arms procurement may potentially be a threat towards Israel, but it does not qualify as an immediate threat. Thus, the author conclude that the existence of said convoy patrolling the Golan Heights carrying with it Hezbollah fighters and an Iranian Brigadier General is not a present danger towards Israel’s national security.

2. Proportionality

Proportionality refers to the limitations of time and force necessary to remove only the imminent threat. Proportionality will be determined during the planning phase of any attack. The two constraints that planners must work within are time and mass. When preemptive action is launched under the claim of self-defense, the attack must be of a reasonable duration sufficient to eliminate the threat, and the means with which to remove the threat must be proportional to the imminent danger.\textsuperscript{24})

\textsuperscript{22} Yaakov Lappin, \textit{The Low-Profile War Between Israel and Hezbollah}, in Mideast Security and Policy Studies No. 138, P. 7.
\textsuperscript{23} \textit{Ibid.}, P. 7.
\textsuperscript{24} \textit{Op.Cit.}, Marjorie M. Whiteman, P. 46.
In this case, The United Nations force patrolling the frontier said the Hezbollah vehicles were hit by fire from Israeli drones, not helicopters as Hezbollah and Iran had reported. Among the dead were Jihad Mughniyeh, the son of late Hezbollah terrorist leader Imad Mughniyeh, and Iranian Revolutionary Guard General Mohammed Allahdadi, aide to Qods Corps commander Qassem Suleimani, and six Hezbollah fighters.

The attack lasted for a short time, as the moving Hezbollah convoy was virtually defenseless against airstrike from several Israeli drones. The aforementioned attack was efficient in eliminating the threat (Hezbollah convoy). However, it could also be argued that the attack was disproportionate, in which Israel could possibly mobilize its ground troops instead in an effort to capture the convoy alive instead of bombing them to smithereens. Nevertheless, capture may be possible but will also greatly risk the Israel troops, as the fighters in the convoy are armed with machineguns. It could also be argued, that the possibility of car bombs could possibly harm the troops attempting to capture the convoy.

In order to gauge proportionality, the strike must be proportional to the threat. In the previous discussion it has been argued that the existence of Hezbollah’s convoy patrolling the Golan Heights does not qualify as an immediate threat. Therefore, the author conclude that the Israeli airstrike towards the Hezbollah convoy was disproportionate. Unless, Israel could present substantial evidence justifying its action, by proving that the said Hezbollah convoy was an immediate threat. Preemption demands a high

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standard of proof that can stand up to world scrutiny and Israel had failed to provide it to the international community.

3. Consent

Consent is a function that can be delegated largely to the UN Security Council. This body can research existing treaty arrangements and laws to determine whether or not action is warranted, and will react accordingly if the threat criteria meet the requirements for the use of force outlined in Article 51 of the UN Charter. For a conventional force, the enemy government is assumed to be implicitly involved with any actions that created the threat. In the case of unconventional forces, diplomacy and sound intelligence can determine the government's level of involvement.28)

It is important to note that the Security Council holds powerful control, ‘...until the Security Council has taken measures necessary to maintain international peace and security...”29) The said measures taken by the Security Council was formulated in 2006, when the Security Council passed the Resolution 1701, which effectively calls for:

a. Making southern Lebanon into a zone “free of any armed personnel, assets and weapons” other than the Lebanese Armed Forces (LAF) and the United Nations Interim Force in Lebanon (hereinafter UNIFIL);  
b. Disarming all armed groups so that there are no weapons in Lebanon other than those of the Lebanese State;  
c. Banning foreign forces from Lebanon;  
d. Banning arms sales or arms transfers except as authorized by the Lebanese government; and  
e. Enabling UNIFIL to ensure that southern Lebanon is not used for hostile activities.30)

Sadly, Hezbollah and its state sponsor, Iran, have continuously defied and disregarded all of these provisions. When Resolution 1701 passed, Hezbollah

29 Article 51, Charter of the United Nations, 1 UNTS XVI, 24 October 1945.  
had less than 15,000 rockets. It has since expanded its arsenal up to 150,000 missiles and rockets, of which many are more destructive and capable of precisely targeting any location in Israel.\textsuperscript{31}) Hezbollah chief Hassan Nasrallah continues to boast that the group’s "weapons and rockets comes from the Islamic Republic of Iran," and that it will continue to receive Iranian arms shipments.\textsuperscript{32})

Resolution 1701 expanded the UNIFIL from 2,000 troops to as many as 15,000 to prevent Hezbollah’s rearming. The resolution authorized UNIFIL to take “all necessary action” in cooperation with Lebanon’s army to stop Hezbollah attacks on Israel. However, due to intimidation by Hezbollah, UNIFIL does not routinely patrol population centers in southern Lebanon, allowing Hezbollah to use these unmonitored areas to hide its weapons in underground tunnels, bunkers, and private homes.\textsuperscript{33})

Although the Security Council has passed the Resolution 1701 and stationed over 15,000 UNIFIL troops along the borders of Lebanon, it has still been ineffective in disarming Hezbollah. Nor did the Security Council undertake any action against Iran and Hezbollah’s repetitive violations of Resolution 1701. The author conclude, that although there is no concrete consent from the Security Council concerning Israel’s war between wars policy, the Security Council itself is unable to disarm Hezbollah, thus, unable to guarantee Israel’s existential safety. As tensions are rising across the Golan Heights borders, the Security Council has no standing to judge Israel’s

\textsuperscript{31} The Middle East Research Institute, “Kuwaiti Daily: Missile, Arms Factories Built By IRGC In Lebanon Have Recently Been Handed Over to Hezbollah,” accessed on https://www.memri.org/reports/kuwaiti-daily-missile-arms-factories-built-irgc-lebanon-have-recently-been-handed-over, June 4th, 2018, P. 1.


airstrike towards Hezbollah on January 18, 2015. Furthermore, Israel had the international consent from allied countries, mostly contributed by the United States.

The present case has been evaluated based on the three elements of preemptive self-defense and has been found lacking in the elements of present danger and proportionality. Thus, the author conclude that the Israeli airstrike against Hezbollah’s convoy patrolling the Golan Heights is not preemptive in nature. Since preemptive self-defence is out of the picture, that leaves preventive self-defence as the only category left. It is important to note that the main focus of this research is to correlate Israel’s airstrike with the preemptive self-defence theory. Nevertheless, as a food for thought, the author will provide a brief discussion of preventive self-defence.

The immediacy of the threat is the clear distinction between preemption and prevention. The United States Department of Defense (hereinafter USDOD) defines a preemptive attack as “an attack initiated on the basis of incontrovertible evidence that an enemy attack is imminent.” Imminent is the key word here. The USDOD distinguishes this from a preventive war, which is “a war initiated in the belief that military conflict, while not imminent, is inevitable and that to delay would involve great risk.” Here, “not imminent” is the great password.

The academic literature echoes this distinction readily. Snyder puts it most simply by arguing that a “state pre-empts when another state is poised to strike; it prevents another state from striking (through disarmament) where the strike is a future, but not immediate, risk.” Harkavy separates the terms thusly:

36 Ibid., P. 15.
“Pre-emption, then, is usually linked to an immediate crisis situation, one with mutual escalating fears and threats, in which there is an apparent advantage to striking first. Preventive war, on the other hand, and in its pure form, involves longer-term premeditated behaviour on the part of one antagonist, often where striking the first blow may not be perceived as crucial.”

Certainty (as determined by the imminence) is the first and most critical distinctions between prevention and preemption. According to Matthew J. Flynn, preemptive war is often confused with preventive war, which is an attack launched to defeat a potential opponent and is an act of aggression. Preemptive war is thought to be justified and honorable, while preventive war violates international law. Therefore, Israel’s airstrike may possibly be preventive in nature and may not possess the necessary framework to declare self-defense for the purpose of invoking Article 51 of the UN Charter. Hence, Israel’s actions are not in correspondence with the preemptive strike theory and is not a legitimate self-defence in the international arena.

B. The Permissibility of Israel’s Claim of Anticipatory Self-Defence

In relevance to the present case, by focusing on the question of just cause with respect to the Israel-Hezbollah conflict, our question is: which side’s claim of self-defense is more likely to be permitted in the international arena? The author hypothesized that the side with a just cause in going to war is more likely to acquire an international permit for its claim of self-defence than the other.

First and foremost, assessing the plausibility of the account’s jus ad bellum component is essential in determining which side (Israel or Hezbollah)

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violated the Charter of the United Nations, Article 2 (4) – arguably the cornerstone of public international law. It reads:

“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.”

The question of jus ad bellum also bears directly on the closely related ideas expressed in Article 51 of the Charter:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security …”

Jus ad bellum comprises a number of different criteria, and it is usually held that all must be satisfied before a country can claim that it has justice on its side in going to war. Jus ad bellum can be used to analyse the moral use of anticipatory self-defence; jus in bello is somewhat applicable but less directly relevant to the question we are exploring on how wars can / should start, rather than how wars are conducted. Therefore, the author will refrain from jus in bello and focus extensively on jus ad bellum.

International law and rules of customary international law recognize the rules of jus ad bellum as principles, which are used to determine when the use of violence is justifiable. The guiding principles of jus ad bellum in congruence with the present conflict are as follows:

1. Just Cause

Just war theorist Brian Orend calls this criterion "clearly the most important rule (of jus ad bellum); it sets the tone for everything that follows."[40] The heart of the question of just cause lies within the notion of self-defense. The paradigm of a state having a just cause for going to war is

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thus when it is under armed attack. This notion is conventionally extended to include the case where it is reasonable to regard an armed attack on one's territory as imminent. In such cases a state may be justified in launching a 'preemptive' attack.

Johnson summarises the four historical grounds for a cause to be considered ‘just’ and acknowledges that, “there is the notion that defence always constitutes a just cause. This idea is as old as the ages and is, at least in theory, the only legitimating cause for resort to war …”\(^{41}\) It thus seems that as long as a country feels that they are the victims of aggression (even imminent future aggression), they meet this criteria regardless of the size or power of their state.

Hezbollah’s objectives were to: 1) resist Israel’s occupation of Lebanon, 2) reject Lebanon’s political system which Hezbollah perceived as corrupt, and 3) support the creation of an Islamic state within the country.\(^{42}\) The ultimate goal of the group has been to destroy Israel and to liberate Palestine. This would be pursued after accomplishing their first objective, driving Israeli forces from southern Lebanon.

Hezbollah’s continuous defiance to Security Council Resolution 1701 further weakens the group’s just cause, its priority to maintain armed status in order to protect Lebanon and the Middle East region from Israeli and US influence were inconsequential. Fundamentally, if a state were attacked by a neighboring state, the former would respond. If the attacked state has an army, it would send its troops to defend itself. Thus, the official Lebanese army is the one responsible to protect and defend Lebanon, not Hezbollah.

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Albeit, the official Lebanese army did not respond to any military action by Israel nor did the army instigate any offensive military action.43)

A point worth noting given its potential relevance to the present case, the customary right of self-defence cannot be abandoned, discarded or eliminated by any treaty, even if that treaty is the UN Charter.44) Under these circumstances, Israel’s claim of self-defence to stop Hezbollah’s arms buildup from Iran with the sole purpose of eliminating Israel is justifiable. The odds are more in favor towards Israel than Hezbollah, and thus the author conclude that just case is more likely to be found on Israel’s side than Hezbollah’s.

2. Just Authority

A state’s decision to resort to war must be based upon the need to right a wrong for example in a situation of self-defense. The principle of just authority states that only war waged under and by a legitimate authority is a just war. Such legitimate authority is derived from state sovereignty which is derived from popular consent. In cases of individuals or groups that do not have the consent to act for or on behalf of a legitimate authority then the use of violence by these particular individuals or groups is deemed to be illegal.45)

In the present case, the Israeli airstrike against Hezbollah’s convoy has received prior sanction from the Israeli Air Force, thus constituting just authority. On the other side, Hezbollah as an alleged state actor of Lebanon has been unable to produce satisfactory evidence to support the notion that its convoy’s patrols are attributed to Lebanon, as such actions were

43 Ibid. P. 5.
supposedly the responsibility of the Official Lebanese army. Furthermore, there has been no official recognition from Lebanon regarding Hezbollah’s existence and actions, thus, Hezbollah’s just authority are unstable and unclear.

3. Proportionality Principle

Pursuant to the concept of responsibility to protect, the force used by a retaliating state must be proportional to the magnitude of the attack and states are prohibited from using excessive force that is not necessary for attaining their just intention. Rationally speaking, the Israeli airstrike that killed six Hezbollah fighters and an Iranian brigadier general, Mohammed Ali Allahdadi, are highly disproportionate unless Israel could firmly prove to the international community that there is indeed an imminent threat caused by the Hezbollah convoy patrolling the Golan Heights towards Israel’s existential security.

Israel claimed that it acted in the interest of self-defence, caused by UN’s ineffectiveness in disarming Hezbollah pursuant to Security Council Resolution 1701. Ultimately leads to Israel’s war between wars policy. However, Israel should be able to provide substantial evidence proving the notion that the said convoy is an immediate threat. The evidence could be brought forth from solid intelligence network, otherwise, Israel’s airstrike would be no different to summary execution without a fair and due process. The author conclude that unless Israel presents substantial evidence, there would hardly be any justification for Israel’s disproportionate attack.

4. Just or Right Intention

The concept of right intention, or just cause is all about the reason behind the decision to resort to the use of force, states must do so for the

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cause of justice and not for reasons such as self-interest. In an instance where reasons of national interest overwhelm the pretext of fighting aggression then a war cannot be considered to be just. Even with a just cause, a war may surpass its boundaries of use of force. A just war is limited to the pursuit of the avowed just cause.  

This is difficult to assess because intent is registered only in the minds of the political and military decision makers, and public articulations of intent can only be taken at face value. In this case, Israel’s claim of self-defence to preserve its existence and way of life are generally accepted as just or right intention. However, an argument can be made that it is unlikely for Hezbollah to use force against a larger state like Israel to achieve ulterior motives, because of the disparity in military strengths.

5. Probability of Success

“Human life and economic resources should not be wasted on war efforts that are certain to fail.” Prior to engaging in a war one must weigh the costs, losses and benefits of waging that particular war, and the probability of success, taking into consideration Article 2 of the UN Charter. In the present case, the probability of success in Israel’s airstrike is fairly high as the moving Hezbollah convoy was virtually defenseless against airstrike from several Israeli drones. Taking the whole conflict between Israel and Hezbollah into account, it is clear that even though Hezbollah has been receiving regular arms buildup from its Iranian patron, The odds are much more in favor for Israel, as a side with the mightier military force has a significantly higher probability of success than Hezbollah.

6. Last Resort

With Article 2 of the UN Charter in mind, the principle of last resort simply states that all non-violent options, such as negotiations and diplomatic avenues, ought to be exhausted prior to a legitimate authority’s deciding to wage war.\(^{49}\)

As recalled from previous discussions, the current hair-trigger tension between the State of Israel and Hezbollah comes from the long history of conflict between both sides. In 2009, Israel filed a complaint with the U.N. that Lebanon was not complying with the resolution after a Katyusha rocket was fired from Lebanon and landed next to a house in northern Israel and injured three people.\(^{50}\) The complaint affirmed Israel's right to defend itself and its citizens. Later in 2009, when weapons that Hezbollah was hiding in a civilian home in a Lebanese town near the border of Israel exploded, both Israel and UNIFIL complained that Resolution 1701 was being violated by Lebanon and Hezbollah.

The IDF estimates that the number of civilian homes in southern Lebanon that are being used to store weapons are in the hundreds.\(^{51}\) Israel also criticized the Lebanese army, which is responsible for enforcing the resolution, for cooperating with Hezbollah in making sure that the evidence of the violation of the resolution had been cleared up before allowing UN peace keepers to do their job. Two days later, fifteen Lebanese civilians from Kfar Shuba, carrying Lebanese and Hezbollah flags, crossed into the

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\(^{49}\) Article 2, Charter of the United Nations, 1 UNTS XVI, 24 October 1945.


Israeli occupied Shebaa Farms.\textsuperscript{52} The IDF took no action to the provocation, but stressed that it was a violation of Resolution 1701. The United Nations confirmed that Hezbollah violated the resolution and that the group is rearming.\textsuperscript{53}

On the other side, Hezbollah stated that such weaponry "serves as a deterrent against potential aggression from Israel,"\textsuperscript{54} Hezbollah in its defiance of UN Security Council Resolution 1701 continues to regularly build up arms, filling Lebanon with surface-to-surface projectiles, and aiming them at population centers and strategic sites in Israel.\textsuperscript{55} By rationale, the Israeli airstrike targeted towards a hezbollah convoy that killed six Hezbollah fighters and an Iranian brigadier general, Mohammed Ali Allahdadi, disrupts the transfer of advanced weapons to Hezbollah. The author conclude that the aforementioned airstrike is a last resort, as every potentially non-violent options has been exhausted.

III. Closing

A. Conclusions

From the analysis outlined above, the following conclusions are drawn:

1. Israel has, over the recent years, been using newly honed offensive capabilities and intelligence gathering to conduct surgical strikes against the Hezbollah-Iranian weapons trafficking network. The goal of this campaign, more commonly known as the War Between Wars Policy, is


\textsuperscript{54} Report of the Secretary-General on the implementation of Security Council resolution 1701 (2006), Reporting period from 26 February to 24 June 2016.

intrinsically defensive. However, it is undeniable that the very nature of this defensive policy is anticipatory. The case in question was the Israel airstrike on January 18, 2015 on the Syrian side of the Golan Heights that killed six Hezbollah fighters and an Iranian brigadier general. The strike was evaluated based on the three elements of preemptive self-defense: present danger, consent, and proportionality. The result was that Israel fulfilled the element of consent but was found lacking in the other two elements. Finally, the aforementioned airstrike is concluded as not preemptive, but preventive in nature. Therefore, does not constitute the framework necessary to declare a legitimate self-defense under Article 51 of the UN Charter and a flagrant violation of international law.

2. With respect to the Israel-Hezbollah conflict of Israel’s airstrike on January 18, 2015 on the Syrian side of the Golan Heights that killed six Hezbollah fighters and an Iranian brigadier general. The just war test was conducted on both sides of the conflict, in which the following principles of just war must be satisfied: just cause, just authority, proportionality, right intention, probability of success and last resort. It has been found that the side with a just cause in going to war is Israel. Although it has been established earlier that Israel’s defensive policy is preventive in nature and unacceptable under international law, the customary right of self-defence is a natural right that cannot be abandoned, discarded or eliminated by any treaty, even if that treaty is the UN Charter. Therefore, Israel is more likely to acquire an international permit from the international arena for its claim of self-defence than Hezbollah.

B. Recommendations

Based on the conclusions above, certain recommendations regarding this legal issue are as follows:

1. Indonesia as a member of the UN holds the same responsibility of keeping international peace and security, some recommendations could
be offered by Indonesia to the international community. There are certain repercussions in the preemptive doctrine, vagueness and potential for abuse is inherent in the unclear definition of preemption. This is mainly because its potential range of application and misuse is limitless. There is no limit on how serious the threat must be to justify a preemptive attack. Furthermore, the ICJ should in its future case related with the use of force in self-defence, decide whether preemptive self-defence is legal or illegal under international law. If the use of preemptive force was allowed, then some criterions are necessary for the use of force in preemptive self-defence.

2. An effective exception to the centralized use of force by the UN Security Council should be created, in case, if the UN collective security machinery fails to act. In this regard, more rights should be given for regional organizations if the Security Council is inactive of ineffective.

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