

Abuse of Right of Self-defense and Its Manifestations in the International Community; a Descriptive Analytical Study

Salama Abdelaziz Hassan Aly⁽¹⁾

Assistant professor , Egypt ⁽²⁾
lawyersalama@gmail.com

Received 10/09/2022	Accepted 23/09/2022	Published 27/09/2022
--------------------------------------	--------------------------------------	---------------------------------------

Abstract:

The research problem lies in the shortcoming of the international legal base in dealing with countries that violate international law by bombing civilians and killing peaceful people under the pretext of self-defense. Hence, the research aims to shed light on international violations and war crimes committed under the pretext of self-defense by superpowers. And Presenting practical examples of these countries and its crimes. this is for purpose of searching for a legal mechanism to address them. I will follow the analytical approach by presenting the illegality of these violations and analyzing the international legal texts that criminalize them, Hence, I recommend that the international community should be keen on respecting international legitimacy and applying the law to large and small countries without discrimination, as the reality confirms that the United Nations bodies are subject to double standards.

keywords :*Abuse of Right of Self-defense, The International Community.*

Introduction:

The reality of countries in general and the great powers in particular confirms that most of them claim to use a legitimate right protected by law, but those countries seek to attack other countries, with the aim of attacking rights and freedoms, looting wealth and overthrowing regimes. There are many examples of this. When the United States of America was unable to issue a decision to attack Iraq. The alternative was for the US forces to launch a unilateral attack on Iraq under the pretext of legitimate defense and under the pretext of Iraq's possession of nuclear weapons. Israel has also claimed that the occupying forces are in danger and built a wall under the pretext of preventing the infiltration of Palestinians into the occupied territories and thus protecting Israel's security. It invoked the right of protection with the aim of occupying new lands and controlling them and preventing the Palestinians from defending their territory.

One example of the abuse of the right is that Ethiopia took advantage of Egypt's preoccupation with the January 25, 2011 revolution and proceeded to build the Renaissance Dam under the pretext that it is using a legitimate right, without caring about the risks of building this dam on Egyptian and Sudanese water security.

Research problem:

The problem of the research lies in that the countries that abuse the right of self-defense are the great powers that dominate the decisions of the UN Security Council, and the difficulty of the problem is exacerbated by the fact that the great powers encroach on others, and at the same time the Security Council is negligent in issuing decisions condemning arbitrariness, as the reality has proven. The increasing rate of transgressions and violations of the rules of international law under the pretext of using the right with the inability of the international community to get perpetrators accountable is obvious. The evidence of this is allowing the United States to destroy Iraq and Afghanistan, and

allowing Israel to strike the Iraqi nuclear reactor under the pretext of using the right.

Research Aims:

The research aims to clarify the legal basis for the theory of abuse of self-defense right within the scope of international law, and that the state bears responsibility for committing any aggression against another peaceful country, and also aims to clarify the legal controls of abuse of the right and practical models for countries that abused the self-defense right .

Research Importance:

The importance of studying the abuse of the right drives its historical roots from international agreements and international court rulings. Its importance is increased by many contemporary countries that have exploited the right of legitimate defense as a justification for the occupation of other countries, plundering their wealth and destroying their military power. Therefore, I will present two models of abuse, namely, The United States, which occupied Iraq under the pretext of fighting terrorism and the right of legitimate defense, and the Israeli model and the destruction of the Iraqi nuclear reactor under the pretext of the right to prevent future danger.

Research Methodology:

The study will be based on the analytical approach of the position of some major countries regarding the right to self-defense, as well as analyzing the legitimacy of what they have done and whether or not they bear responsibility for their actions, while clarifying the basis of this right and the legal basis for its misuse.

Section I: The theory of abuse of right in international law

A) Doctrinal disagreement about the abuse of the right:

The theory of abuse right has sparked a wide doctrinal controversy. Some believe that the use of a legitimate right does not entail

responsibility, While others believe that abuse of the right can entail legal responsibility.

Mary Ann Glendon wrote, that “if someone has a right to something, then it is wrong for governments to deny it to him even though it would be in the general interest to do” (3).

Mary Glendon seems to believe that a person should uphold his legal right, and that the state should support him in making use of that right as long as he has not abused it, or harm others.

B) Standards of abuse of right:

First : intent to harm:

The use of the right is unlawful if the right holder intends to harm the rights of others. This means that the right holder has bad intentions (4).

In the sense that the use of the right is accompanied by arbitrariness if the right holder seeks to harm others with bad intentions (5).

Second: Disproportion between the interest of the right holder and the harm of others:

The abuse of the right is achieved if the right holder seeks to obtain a trivial and worthless interest. Meaning that the interest of the right holder is not commensurate with the harm resulting from the use of the right (6).

Third: the illegality of the interest:

The illegality of the interest means that the right holder seeks to achieve an illegal interest, and that interest is the one that violates public law, public order and morals (7) .

Section II: Abuse of the right of legitimate defense:

Legitimate defense is a right whereby the law permits the use of force to prevent a dangerous act that threatens oneself or money (8).

“ The principle of abuse of the right” is the case in which a state exercises its right in a way that impedes the rights of other states in a way that causes harm to other states (9).

It follows from the previous definition that abuse of rights is the exercise of a legal right only to cause inconvenience, harm or harm to another. The aggressor is responsible for the damage caused by his actions. An example of this is the abuse of power, or what Israel did by building a separation wall to protect itself from the Palestinian

Mujahideen, while the intention was to seize land and restrict freedoms. so we can say that the truth ends where the abuse begins.

A) The legal basis for the right to legitimate defense in doctrine:

Some do not differentiate between the concept of legitimate defense in international criminal law and its concept of internal law, and they are both sides of the same coin ⁽¹⁰⁾.

While the dominant juristic opinion believes that legitimate defense in international criminal law has a concept and attributes that are completely independent of internal law, since the legal defense in the internal law aims to prevent the occurrence of a crime, and if that crime occurred, the victim has no right to legitimate defense. Meaning that the legitimate defense is linked to the time of the crime, saying otherwise opens the way for revenge and retaliation, but the legitimate defense in international law remains in place after the crime has been completed, for example, the occupation of a country allows the citizens of that country to resist and defend their lands after the occupation ⁽¹¹⁾.

B) The legal basis for right to legitimate defense in Charter of the United Nations :

Article 51 of the UN Charter states that: “ 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. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”.

Thus, Article 51 was added to ensure that the right of regional or collective security groups to use force until the Security Council had taken measures that were adequate and effective to restore international peace and security was not impaired.

Two important aspects of Article 51 should be noted: the high threshold of an "armed attack" that must be surmounted before a nation may resort to force (the term "aggression," which is found in Article 1(1) and 39 of the United Nations Charter, is a broader term that is applied

to the use of force by the Security Council, and not by nation-states under Article 51) and the principles of "necessity and proportionality," which, while not explicitly mentioned in Article 51, are deeply rooted in the concept of self-defense.

Thus, force, as controlled by Articles 2(4) and 51, may only be used by a nation if necessary and only proportionately, that is, to the extent necessary-what we might call the principle of "tit for tat." This basic notion of contemporary international law with respect to the use of force, namely that it is to be used as late as possible and as little as possible, is reflected throughout the structure of the Charter of the United Nations.

C)Legal defense nature:

Moral compulsion theory:

Proponents of the moral coercion theory believe that a legitimate defense is based on the fact that the assaulted state suffers moral pressure and coercion because of the aggression , and that coercion justifies its right to self-defense.

This theory has been criticized, because the state is not like a natural person, it does not know fear or compulsion . It is unbelievable to say that the state is acting under the influence of terror.

Therefore, the theory is not suitable as a basis for legitimate defense
interest theory:

This theory is based on the premise that the aggressed state is more worthy of protection than the aggressor state and it is necessary to establish international justice by giving the victim the right to defend himself ⁽¹²⁾.

D)Legal defense controls:

The use of military force in accordance with Article 51 of the Charter of the United Nations is linked to the controls that states must adhere to in order for the use of military force to become legitimate. Those legal controls are:

1)An armed aggression against a member state of the United Nations:

According to the text of Article (51) of the Charter of the United Nations, it requires for self-defense that an attack should occur against a member state of the United Nations Organisation. This means that

the state's defense of itself is conditional on the occurrence of aggression, be it a land, sea or air attack.

2) Legitimate *défense* is temporary for a specified period:

Article 51 of the Charter of the United Nations is keen to limit the right of a state to defend itself for a period, which is the period necessary for the UN Security Council to carry out its tasks to maintain international peace and security ⁽¹³⁾.

Therefore, the use of the right to self-defense is an exception to the general prohibition of the use of force.

3) Self-defense must be subject to the oversight of the UN Security Council:

During the exercise of the right of self-defense, states must be subject to the oversight of the Security Council, in order to prevent abuse of right. The primary role of the Security Council is to monitor the use of force by the offended state. The Security Council can assess whether a state has the right to resort to force to defend itself. Therefore, the aggressed state will not be able to abuse the right of self-defense, because it will realize that its actions are subject to international control ⁽¹⁴⁾.

The International Court of Justice added two other conditions namely the requirement of necessity and proportionality, as it affirmed them both in its ruling in the Nicaragua case in 1986, in order to avoid turning the right of legitimate defense into a war of aggression ⁽¹⁵⁾.

Section III: The United States and the abuse of the right of legitimate defense

The obvious materialist explanation for the war is oil, popular with many critics and structuralists, in spite of the protestations of the actors themselves that the war was not about oil. The argument that oil was not decisive so flies in the face of common sense that the burden of proof lies on those who deny it. It also begs the question as to why the country sitting atop the world's second largest oil reserves and which posed no threat to the US should have been targeted while North Korea, whose nuclear capabilities were real not hypothetical but did not

possess oil, was spared; famously Wolfowitz attributed the difference to the fact that Iraq was swimming in oil.

A) The United States and the invasion of Iraq:

After the outbreak of the events of September 11, the US administration claimed that Iraq is violating the resolutions of international legitimacy and seeking to possess weapons of mass destruction, sponsoring terrorist groups and organizations, violating human rights, planning attacks on American soil and committing crimes against humanity, and then the Iraqi regime must be overthrown, and after the United States achieved what it wanted, history proved that all the accusations were fabricated. The international inspection committees ended their work in Iraq without finding any nuclear weapons, threats or crimes against humanity ‘And it has been proven that what America is seeking is the occupation of Iraq for other reasons and without justification’⁽¹⁶⁾.

B)The United States has abused the right to self-defense:

The United States has claimed that it is fighting terrorism and that Iraq possesses weapons of mass destruction and supports organized terrorist groups . The United States claimed that it has the right to self-defense and protect American interests that are threatened by the Iraqi regime and its president.

In fact The United States has violated the text of Article (2) paragraph (3,4,5,6) of the United Nations Charter, which prohibits the use of force, which states that:

- 1) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- 2)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.

3) All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

4) The Organization shall ensure that states which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

The United States of America was seeking an illegitimate right, which is to overthrow the Iraqi regime, control energy resources in the Middle East, threaten the interests of Russia and China, and usurp Iraqi oil ⁽¹⁷⁾. The United States of America has abused the alleged right of self-defense, It launched a brutal military attack and carried out twenty two thousand sorties during 2002 against civilian and military targets, and waged psychological warfare and distributed leaflets calling on the Iraqi people to overthrow the president ⁽¹⁸⁾.

Perhaps the evidence of the arbitrariness of the United States of America is that it failed to obtain an international resolution from the Security Council allowing it to use force.

In October 2002, the US Congress approved permission for the US President to use force against Iraq ⁽¹⁹⁾.

The abuse of the right manifests itself in the absence of the present danger invoked by the United States. Also, the advanced American weapons greatly outnumber the Iraqi weapons. Also, American arbitrariness lies in the decree issued on May 16, 2003 to uproot the Baath Party, And to terminate the service of all former Iraqi army officers ⁽²⁰⁾.

Indications of arbitrariness revealed that the US forces had succeeded in dividing Iraq into conflicting sects, and financing sectarian media. The US authorities also leveled unfair accusations against the Iraqi president and the pillars of his regime, and sentenced them to death ⁽²¹⁾.

The Iraqi people were not spared from detention and torture. The US forces committed heinous crimes against Iraqis inside Abu Ghraib prison, including psychological, physical and sexual assaults (22).

In order to address why Iraq in particular was targeted, realism would also point to Iraq's geostrategic location, which impinged on multiple security concerns of the U.S., and to Iraq's nearly unsurpassed oil resources, which it could potentially deploy against U.S. interests. Military bases in Iraq would enable the U.S. to project its power further into the Middle East, Central Asia, and Africa, and could replace the less secure bases that the U.S. established in Saudi Arabia after the 1999 Gulf war.

Thus, in realist terms, the invasion was a rational means for the U.S. to achieve its primary goal of demonstrating its power to allies and competitors alike, and of avoiding the appearance of post-9/11 decline. As well, it was intended to prevent Iraq's actual or potential use of Weapons of mass destruction and oil resources to threaten the U.S. or its allies, and to prevent Iraq's potential collaboration with anti-U.S. The U.S. national interest in guaranteeing its oil supply at a time of diminishing domestic reserves and increased worldwide demand could also be achieved by military control of Iraq's petroleum reserves, which, in a Baathist controlled Iraq, would have been exploited instead by America's competitor.

C) The United States has deviated from international legitimacy:

when the USA attacked Iraq, it was ostensibly aspiring to act not only in its own self-defence, but also in the defense of the whole world. Hence, the question is whether the U.S. had the right to use force in the defense of itself and indeed, the whole world. My answer is an unequivocal no. The fundamental norms of international law, as described by the UN Charter, would not empower any state to carry out such an attack without the approval of the UN Security Council.

Since no one has claimed in 2002 or 2003 that Iraq would have posed a direct threat or used force against the U.S., Great Britain or any other state, it is no way to invoke the right of self-defense. Furthermore, the Security Council in the absence of consent among the five permanent members – has not decided that the situation in Iraq constituted any threat to peace and security in the region, and has not authorized any state to use force against Iraq. Consequently, the two states had no right to launch an armed attack against Iraq. International law does recognize the right of self-defense, only when a military attack has occurred against a state. In this case, the use of force must be under the supervision and approval of the UN Security Council⁽²³⁾.

The duties of the occupying power are spelled out primarily in the 1907 Hague Regulations and the Fourth Geneva Convention as well as in certain provisions of Additional Protocol 1 and customary international humanitarian law. The main rules of the law applicable in the case of the occupation state that ⁽²⁴⁾:

Occupation is only a temporary situation, and the rights of the occupant are limited to the extent of that period.

ii. The occupying power must respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the international law of occupation.

iii. The occupying power must take measures to restore and ensure, as far as possible, public order and safety.

iv. The population in occupied territory cannot be forced to enlist in the occupier's armed forces.

The question now is, is the US war on Iraq legitimate?

In order to answer the question, we have to go back to the Charter of the United Nations, where we find a general prohibition on the use of force in international relations in art 2(4). In 1946, the Nuremberg War Crimes Tribunal put the matter more bluntly when it said, ‘aggression ... is the supreme international crime. Indeed, the whole thrust of the

UN Charter is in favor of resolving disputes using peaceful means and in promoting cooperation. In particular, the preamble to the UN Charter refers to the need to ‘save succeeding generations from the scourge of war. In addition, there are norms outside the UN Charter in customary international law forbidding intervention and unauthorized uses of force’⁽²⁵⁾.

The US has tended to favor the self-defense argument . In accordance with this , the US claimed a right to take pre-emptive action against Saddam’s Iraq and other enemies ⁽²⁶⁾.

This pre-emptive self-defense argument stretches international law beyond breaking point. It is true that international law allows the use of force in self-defense where there is an ‘armed attack’.⁽²⁷⁾ It may also be the case that force is permitted where there is a threat of imminent attack from an adversary.

For example, this was the argument used by Israel in justifying the attack on Egypt and Jordan which began the Six-Day War. But we can realize that Saddam Hussein was not a current or imminent threat. That Iraq may have one day posed a threat to the US did not justify an armed assault on Iraqi territory in March 2003⁽²⁸⁾.

the USA justifies invading Iraq to protect the humanitarian, ultimately, whether or not Baathist Iraq was a suitable object for humanitarian intervention may be irrelevant given the failure of states to support a general principle of humanitarian intervention, and the very patchy practice in favor of the doctrine. There are good policy reasons for this diffidence, too. Humanitarian intervention will no doubt remain a seductive idea but it does have a habit of falling into the wrong hands. For example, Hitler claimed that the invasion of Czechoslovakia was motivated by humanitarianism. Brezhnev’s invasion of the same country 50 years later was to ‘protect’ the revolution. So, the war was unlawful. None of the arguments in favor of the war provided the level of justification necessary .

Although the US justified its war against Iraq by fighting terrorism, the war was arbitrary.

D) The legal status of the United States in striking a sovereign country:

Was the United States after the September 11 attacks in a state of self-defense? Does the United States have the right to violate the sovereignty of a state and overthrow its government under the pretext of self-defense and combating terrorism? Were the conditions for self-defense contained in Article 51 of the Charter of the United Nations fulfilled? .

In light of this, we can say that the subject and purpose of Article 51 of the Charter necessitate the use of armed force in the case of legitimate defense in the context of the purpose for which it was invoked, which is repelling the aggression or armed attack directed at the attacked state. If the aggression or armed attack ends. There is no room for the use of armed force under the pretext of self-defense. Rather, the matter goes here to the Security Council, which has the right to take all the measures it deems necessary to maintain international peace and security and restore them to their rightful place.

So The September 11 attacks have ended, and then the aggression has stopped, and any action by the United States of America has become illegal, because the aggression has ended.

The United States did not abide by the regulations of legitimate defense, whether in Iraq or in Afghanistan, The United States should have exhausted all peaceful means before resorting to force. also, Article 51 of the Charter of the United Nations legislates self-defense to ward off current aggression . but the United States used military force against Afghanistan on October 7, 2001, three weeks after September 11, so the American attack was a retaliation and an arbitrary use of the right (29).

The United States abused this right and did not take into account the proportionality between aggression and the means of warding off aggression.

The United States has used the brutal military machine in its war, whether in Iraq or Afghanistan, and resorted to all legitimate and prohibited conventional weapons, despite the expected dangers and despite the refusal of the Security Council to allow the violation of Iraq's sovereignty. and the question is ? Was the United States aiming to eliminate terrorism in Afghanistan and Iraq? Did it comply with the rules of self-defense?.

It was not aiming for this, but it wanted to destroy the enemies of the United States and the enemies of Israel. Hence, the illegal and arbitrary war of the United States of America aims to destroy Iraq and Afghanistan, and the United States tried to invoke legitimacy and claimed that it was defending itself and the world and fighting terrorism.

What the United States of America has invoked that Afghanistan refrained from handing over bin Laden is not a reason to attack a sovereign country, The jurists of international law, with regard to the obligation to extradite, have agreed on a general rule to the effect that there is no In the general rules of contemporary international law any rule that imposes on the state a legal obligation to extradite criminals, And every state has the right to refrain from extraditing the criminal, whatever the type of crime he committed, unless a provision compels it A previous treaty that allows extradition or a provision in its internal law that requires extradition.

Finally we can say What America did in Iraq or Afghanistan is an abuse of the right, Not in self defense.

E) To determine the legitimacy of the US war on Iraq and Afghanistan, there are two theories:

The first : It adopts the narrow interpretation of Article 51 of the Charter of the United Nations, and proponents of this theory adopt the necessity of launching an armed attack on the state that allows it to defend itself. Therefore, the right of legitimate defense is the only exception that permits the use of force to ward off aggression, so the state must be attacked, and mere danger or possibility is not sufficient⁽³⁰⁾.

According to this theory, the United States of America should not wage war on Iraq or Afghanistan under the pretext of protecting itself from possible terrorism, Therefore, the United States of America abused the right to self-defense.

The second: The second theory adopts the broad interpretation of Article 51 of the Charter of the United Nations, and that the right of a state to defend itself is not restricted to being attacked, but the state can take preventive measures to prevent the prospective aggression in future .

Supporters of this theory have adopted the so-called pre-emptive legitimate defense, and that the state has to defend itself simply by anticipating a possible attack in the future. They reinforce their position by saying that legitimate defense is an assumed issue that does not need to be stipulated.

Despite the arguments put forward by the proponents of that theory, it was criticized, and the United Nations did not take it, as it adopted the narrow interpretation, and stipulated that there must be aggression against the state that justifies self-defense.

International law has taken the narrow interpretation of Article 51 of the United Nations charter and stipulated that the state must be subjected to armed attack in order for it to be allowed to defend itself.

Supporters of this theory add that helping the aggressed state and granting it the right to self-defense is considered a public order, especially when the international community is unable to ward off aggression.

We note that self-defense is not limited to the aggressed state, but rather extends the right to include other states, meaning that any state has the right to ward off aggression against another state ⁽³¹⁾.

Section IIIV: The Israeli Occupation and Abuse of Right:

A) legitimacy of state of Israel:

The legitimacy of the State of Israel has been questioned by a number of countries and individuals since the Israeli Declaration of Independence in 1948. Specifically, it concerns the matter of whether the authority of Israel over the area in which it exists and/or the areas that it claims should be accepted as legitimate political authority; in the former context, which concerns the legitimacy of Israel in the area of its sovereign existence and not only its authority in the Israeli-occupied territories, the argument is couched in terms of its right to exist.

On 11 May 1949, Israel was admitted to the United Nations (UN) as a full member state.

However, numerous UN member states have refused to extend diplomatic recognition and relations to Israel; until 2022, Israel remains unrecognized by 28 of the 193 UN member states. Calls to withdraw international recognition of Israel as well as groups carrying out efforts to challenge the legitimacy of Israeli authority have been led primarily by Palestinians and other Arabs in light of the Israeli–Palestinian conflict and broader Arab–Israeli conflict, with significant support from the rest of the Muslim world ⁽³²⁾.

B) Israel and the abuse of the right

The Israeli authorities claimed that they are being attacked by the Palestinians, that Israeli security is threatened by dangers, and that Israel has the right to defend itself by building the separation wall.

The Israeli government claims that before the Wall construction many Palestinian “terrorists” could cross from the West Bank into Israel when no barriers of any kind existed. , about 75 percent of Palestinians attacking targets inside the Israeli cities came across the border in the area where the first stage of the Wall was built. Therefore, the Israeli authorities and the Wall advocates argue that the Wall has three main goals. the primary goal of the Separation Wall is to ensure security for Israelis. This is connected to the second main goal, which is to improve the Israeli economic situation, which had suffered due to “terrorist attacks” in Israel causing a sharp decline in the tourism industry. The third major goal from the Israeli government perspective is to form a clear boundary between illegal and legal residents in Israel. Israel claims that without such a boundary. Israel will not be able to counter. in fact, the length and the deep of the wall Confirms that Israel is violating the right of the Palestinian people. The Wall enters up to 22 kilometers deep into the West Bank and passes through inhabited and agricultural lands there. This prevents Palestinians from accessing local streets and fields that lie on the Israeli side of the Wall. Its path in the northern region isolates more than five thousand Palestinians in "closed" areas between the Green Line and the Wall ,The length of the Wall in the occupied West Bank is 770 km, including about 142 km surrounding Jerusalem, called “Jerusalem’s vicinity”.

On July 9, 2004, the International Court of Justice published its advisory opinion on the legality of the Separation Wall and its route. It held that erecting the Wall within the West Bank is illegal because it violates the human rights of the Palestinians and annexes illegal Israeli settlements in the West Bank . According to the International Court of Justice advisory opinion (2004), the Separation Wall was established in violation of international humanitarian law. Thus, the court ruled that Israel should stop construction of the Wall, dismantle the parts already established within the West Bank area and compensate the Palestinians

who were injured as a result of its construction . However, Israeli government did not adhere to this decision, as with many other UN decisions related to Palestinian Israeli conflict. Thus, according to international law, the construction of the Wall within the West Bank violates a long line of human rights of the Palestinians living on both sides. Among other things, their right to freedom of movement is violated and consequently their right to work, education, medical care, family life, livelihood and proper living standards. The Palestinians' collective right to self-determination is also violated, as the convoluted route of the Separation Wall cuts off Palestinian space and divides the population living there ⁽³³⁾).

C) Israel and the destruction of the Iraqi nuclear reactor:

In 1981, Israel claimed that the Iraqi nuclear reactor constitutes a threat to Israel's security, although Article 51 of the United Nations Charter does not allow the use of force except in the case of warding off aggression. In June 1981, Israel surprised the world and launched an air raid on Iraqi territory targeting the Iraqi nuclear reactor, the Israel raid marked the first deliberate destruction of a nuclear reactor and the first time a country openly attacked the nuclear facilities of another. Israel justified its conduct as a case of so-called 'anticipatory' self-defense. To support this position, it drew attention to the hostile attitude of Iraq, which had refused to recognize Israel's right to exist and remained technically at war with Israel.

In subsequent UN meetings, Israel emphasized that Iraq had consistently refused to recognize Israel's right to exist and declared itself to have been in a state of war with Israel since 1948. Israel further insisted that, in spite of the officially peaceful' nature of Iraq's nuclear programme, Iraq was in reality seeking to obtain nuclear weapons. To substantiate its accusations, Israel referred to statements by Iraqi officials stressing the need for the Arab states to produce an atomic bomb. so Israel was not in situation of self defense.

Conclusion:

As a result of the foregoing, the research aims to clarify the legal bases of the theory of abuse of the right of self-defense, and to highlight the inability of international law to confront countries that attack others under the pretext of self-defense. Therefore, the research dealt with practical examples of major countries that abused the right of self-defense to achieve illegal purposes.

A)Results:

1-Although the roots of the theory of abuse of the right are one of the foundations of civil law, this theory has the same importance in international law, and derives that importance from international agreements and international court rulings.

2- Many countries used to abuse the right of self-defense and invoked the right of legitimate defense to occupy the lands of other countries and plunder their wealth, and based on those arguments, the United States arbitrarily invaded Iraq and launched arbitrary air strikes Iraq and Afghanistan.

3- International law in accordance with the Charter of the United Nations absolutely forbids resorting to the use of force in anticipation of an expected attack that may occur and the prohibition of the use of force in international relations in accordance with Article (2) paragraph (4) of the Charter of the United Nations and the Charter listed an exception to this Article and as mentioned in Article (51) Which made the use of force conditional in the case of self-defense against an armed attack and with the prior approval of the Security Council and on condition that the use of force cease immediately after the intervention of the Security Council, which determines the necessary measures to maintain international peace and security, provided that states, in their exercise of the right of legitimate self-defense, are subject to the oversight of the Security Council.

4- The most prominent practical examples of violating international law under the pretext of self-defense is the occupation of Iraq by the United States of America and Israel's practices in Palestine.

5- Countries that invoke the right of self-defense completely ignored its conditions. Those countries were not subject to any immediate danger and continued their aggression despite the danger being over.

6- There are many American excuses and justifications for the invasion and occupation of Iraq. Sometimes the United States claims that it is waging a war on terrorism, sometimes it claims that it seeks to establish a democratic regime in Iraq, and sometimes it tries to link Iraq with the events of September 11, but the indisputable fact is that the war is arbitrary. Its purpose was clear, which is to steal Iraq's oil, annihilate the Iraqi army in favor of Israel, and confront the two rising powers, Russia and China.

7- The massacres perpetrated by Israel in the Palestinian territories, the invasion of Lebanon and Syria and the launching of indiscriminate raids on civilians cannot be for self-defense. But they are war crimes that require the Israeli leaders to be punished before the International Criminal Court .

8- International law does not define pre-emptive war and does not permit a state to launch an attack on another just because of fear and precaution for a potential danger, Therefore, Israel's violation of Iraq's sovereignty in June 1981 and the bombing of the Iraqi nuclear reactor arranges its responsibility and completely denies its legitimate defense.

9- Abuse of the right means the illegality of the end and the result despite the legitimacy of the means, arbitrariness arises when a country seeks to occupy another under the pretext of the possibility that that other possesses nuclear weapons.

10- The construction of a separation wall of this depth and size in the Palestinian territories is a clear violation of international legitimacy

where Israel sought to tighten control over the Jewish settlements and add new settlements, and therefore Israel has no right to build.

B) Recommendations:

1- I recommend that the international community should be keen on respecting international legitimacy and that the law should be applied to the great and small countries without discrimination, as the reality confirms that the United Nations organs are subject to double standards.

2- The UN Security Council must bear its responsibility in the event of aggression from a major country against another by issuing an immediate resolution condemning the aggression and demanding the aggressor to withdraw his forces immediately.

3- I recommend amending Article 27 of the United Nations Charter, according to which five superpowers control Security Council decisions, so that it is unable to pass any resolution against those five countries that abuse their veto power.

4- The attack launched by the United States on Iraq is an aggression and a violation of the principle of international legitimacy, and Iraq must resort to all legal means to demand compensation for all the losses it incurred in lives and money as a result of the American occupation .

5- I recommend that Iraq resort to the International Court of Justice to obtain an advisory opinion on Israel's responsibility for the material and human losses resulting from the bombing of the Iraqi nuclear reactor.

Bibliography:

¹)Salama Abdelaziz Hassan Aly .

²) I am working at Islamic University of Minnesota, USA , (<https://site.iu.edu.so>).

³)_A. M. Glendon, Rights1991' Talk. *The Impoverishment of Political Discourse*, New York (The Free Press), p. 40.

⁴) Al-Sanhoury Abdel Razek,2011,*the mediator in explaining the civil law*, Egyptian Universities Publishing House, third edition part 1, p. 844.

⁵) Al-Derini,2013, *Abuse of the right*, Al-Resala Foundation for Printing and Publishing, Damascus, third edition p.17.

- ⁶) Ramadan Abu Al-Saud 2000, *Sources of Compliance in Egyptian and Lebanese Law*, Arab House for Publishing and Distribution, Cairo, p. 346.
- ⁷) Adnan Ibrahim Al-Sarjan and Khater 2012, *Sources of Personal Rights*, House of Culture for Publishing and Distribution, Cairo, pg. 405
- ⁸) Jamal Ibrahim Al-Haidari 2012, *Explanation of the Penal Code*, Al-Sanhoury Library in Baghdad, first edition, p. 825.
- ⁹)_Alexandre Kiss, 2006, accessed on 3 January 2019 »*Abuse of Rights, Max Plank Encyclopedia of Public International Law*«, Oxford Public International Law, at: opil.ouplaw.com.
- ¹⁰) Muhammad Mahmoud Khalaf, 1973, *Forensic Defense in International Criminal Law*, The Arab Renaissance Library, Cairo, p. 10.
- ¹¹) Muhammad Mahmoud Khalaf, 1973, *Forensic Defense in International Criminal Law*, The Arab Renaissance Library, Cairo, p125
- ¹²) Dr. Aisha Ratib, 1970, *The Legitimacy of Armed Resistance*, Lectures Given before the General Assembly of International Law, p. 140.
- ¹³)_Ali Ibrahim Al-Anani, 2001, *International Organizations* (General Theory of the United Nations), Dar Al-Nahda Al-Arabiya, Cairo, p. 114.
- ¹⁴) Maher Abdel Moneim Abu Younes, 2004, *The Use of Force in Imposing International Legitimacy*, The Egyptian Library, Cairo. p. 137.
- ¹⁵)_Lambert. Mélanie, 2002, *La crise du 11 septembre 2001 : La manifestation de lacunes Juridique dans l'espace normative international*, Mémoire pour l'obtention de DEA, Université Lille II. Faculté des sciences juridiques, Politiques et sociales. p 17
- ¹⁶) Ron Suskind, 2007, *The One Percent Theory*, translated by: Michel Dano Beirut: Arab House of Science-Publishers, 1 , pp. 26-27.
- ¹⁷) Ian Tledge, 2006, *The Thirst for Oil, "What is America doing to the world about its oil security?"* (Beirut: Arab House)for Sciences, p. 9.
- ¹⁸) Noam Chomsky, 2007, *Failed States: The Abuse of Power and the Assault on Democracy*, Beirut Publishing House. The Arabic Book, pp. 3–36.
- ¹⁹)_Raymond W. Copson, "Iraq War: Background and Issues Overview", *Report for Congress*, 24: March 2003, accessed on 12 May, 2021, p.15, available at: https://www.everycrsreport.com/files/20030324_RL31715_9dfcd161c5c837c0c9566dc1778ee3c883b485fa.pdf.
- ²⁰) Ambassador Paul Bremer, 2006, *The Year His Case in Iraq: The Struggle to Build a Hopeful Tomorrow*, (Beirut: Dar Al-Kitab Al-Arabi, 1st ed., 2006), p. 62, p. 78.
- ²¹)_Mahmoud Abdo, 2012, *Saddam Hussein: The Journey to the End, Umm Eternity - From Arrest to Execution*, Damascus: Dar Al-Kitab Al-Arabi p32-34.
- ²²) Fadel Al-Rubaie, 2007, *Post-Orientalism: The American Invasion of Iraq and the Return of the White Colonies*, Beirut: Center for Unity Studies Al-Arabiya, pp. 274-277.
- ²³) .Karem Mahmoud Hussein Nashwan 2002, "Human rights protection mechanisms in the international law of human rights" Al Azhar University Journals p 2.

²⁴)International committee of the red cross , 2004, *Occupation and International Humanitarian Law: Questions and Answers*,” ICRC, access on 14 april 2022 , <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

²⁵) the cases in which Yugoslavia accused 10 NATO Members of violating the international legal obligation not to use force against another state: Legality of Use of Force (Yugoslavia v Belgium) (Provisional Measures) [1999] ICJ Rep 124; (Yugoslavia v Canada) (Provisional Measures) [1999] ICJ Rep 259; (Yugoslavia v France) (Provisional Measures)[1999] ICJ Rep 363.

²⁶) Gerry Simpson,2004, in Christopher Greenwood, Gerry Simpson and Philip Hurst, *‘Iraq: Was It Legal?’* , Debate held at London School of Economics, London, UK, access on 12, january 2022 available from <<http://www.lse.ac.uk/collections/alumniRelations/events>> at 1 May 2005

²⁷) Oil Platforms , 2015, access on 22, february2022 , *Islamic Republic of Iran v US* (Merits) [6 November 2003] ICJ [51] <www.icj-cij.org> at 1 May 2005. See also UN Charter art 51.

²⁸) Presented to Parliament by the Prime Minister ,2005, access 1. May, 2022, *UK Parliamentary Intelligence and Security Committee, Iraqi Weapons of Mass Destruction Intelligence and Assessments* ,available from <<http://www.fco.gov.uk>>

²⁹) Ahamad Hussein Sweidan, *International Terrorism in the Light of International Changes*, Dar Al-Halabi Publications, Beirut Lebanon First Edition, 2005, p. 140

³⁰) Dr.. Mohamed Sayed Abdel Tawab,2017, *Legal Defense in IslamicJurisprudence, a comparative study*, PhD thesis, Faculty of Law, Cairo University, p. 581.

³¹) Dr.. Amer Bin Tounis, 1989, *The Basis of State Responsibility during Peace in the Light of Contemporary International Law*, , Ph.D. thesis, Faculty of Law, Cairo University, p. 3.

³²) https://en.wikipedia.org/wiki/Legitimacy_of_the_State_of_Israel.

³³) https://info.wafa.ps/ar_page.aspx?id=4110