International Law Review, Volume 43 Issue 81, Spring 2026, pp. 303-334

Weapons of Legal Justification: The Pretext of Preemptive Self-Defence in the Israeli Strikes Against Iran
(Original Research)

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(DOI): 10.22066/cilamag.2025.2066512.2767
Date Received: 1 Aug.2025 Date Accepted: 12 Oct.2025

Abstract
This article critically evaluates the legality of pre-emptive self-defence under contemporary international law, focusing specifically on Israel's June 2025 airstrikes against Iran. By analyzing the legal framework established by Articles 2(4) and 51 of the UN Charter, the central argument contends that pre-emptive force remains unlawful absent an actual armed attack. However, an incremental accumulation of scholarships and national military manuals, primarily limited to certain western States, has fostered a self-referential cycle. This cycle projects the misleading appearance of an emerging customary norm authorizing pre-emptive or preventive use of force. This doctrinal 'snowball effect', whereby successive publications uncritically cite and amplify predecessors, generates an artificial sense of legal evolution. Nevertheless, rigorous analysis drawing on doctrine, International Court of Justice jurisprudence, general practice of States and even the *Caroline* criteria itself, often invoked by States justifying pre-emptive self-defence, reveals a clear distinction: lawful self-defence is strictly confined by necessity and proportionality, while anticipatory or preventive self-defence falls outside accepted legal boundaries. The article concludes that Israel's justification, based on non-imminent and speculative threats, fails to meet even the lower threshold of the *Caroline* doctrine for pre-emptory self-defence – let alone the stricter contemporary *jus ad bellum* standards under the UN Charter. Recognizing a unilateral right to pre-emption would gravely undermine the *jus cogens* character of Article 2(4), erode the UN's collective security system, and incentivize destabilizing unilateral initiatives and resorts to force. Consequently, absent Security Council authorization or a manifest armed attack, pre-emptive self-defence remains fundamentally incompatible with the current international legal order.

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Keywords
Article 51, Caroline Doctrine, International Law, jus ad bellum, Pre-emptive Self-Defence, Self-Defence, UN Charter

Introduction

The post-World War II international legal order, institutionalized through the United Nations Charter, established a comprehensive framework restricting the unilateral use of force by States. Central to this regime is Article 2(4)'s prohibition on the threat or use of force, juxtaposed with the narrow exception for self-defence under Article 51, permissible only 'if an armed attack occurs'.[1] Notwithstanding this restrictive construction, contemporary State practice has witnessed efforts to assert a broader right of pre-emptive self-defence – the anticipatory use of force against perceived imminent threats – reviving historically contested doctrines predating the Charter.[2]

This article notes that, in recent decades, certain States and scholars – predominantly from Western jurisdictions – have made concerted efforts to reinterpret Article 51 of the UN Charter to permit the use of force in response to anticipated or perceived threats, even in the absence of an actual armed attack. This expansionist trend relies on the introduction of increasingly permissive terminology – such as anticipatory or preventive self-defence – the selective and often ahistorical invocation of the *Caroline* doctrine, and the cumulative citation of like-minded academic and policy sources to manufacture the appearance of an emerging legal norm. Together, these tactics aim to normalise a lower threshold for the lawful use of force under international law, despite consistent jurisprudence affirming that self-defence remains limited to instances of actual armed attack.

Present research further undertakes a critical examination of the purported legality of pre-emptive self-defence under contemporary international law, using Israel's June 2025 airstrikes against Iran as a case study. Building upon the *jus ad bellum* framework codified in the UN Charter and elucidated by the ICJ, this analysis contends that neither pre-emptive nor preventive, nor anticipatory self-defence finds lawful basis absent an actual armed attack. Also, this article examines whether Israel can legally invoke pre-Charter norms – specifically, the *Caroline* criteria – to justify its so-called 'pre-emptive self-defence'. It notes that even under the *Caroline* doctrine, the legality of the use of force remains confined to strictly imminent threats – falling far short of authorizing preventive action against another State. Through a doctrinal analysis tracing the evolution of self-defence, the article

1. Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (*UN Charter*), Article 51. https://treaties.un.org/doc/publication/ctc/uncharter.pdf

2. Eustace Chikere Azubuike, "Probing the Scope of Self Defense in International Law", *Annual Survey of International & Comparative Law* 17, 1 (2011): 130.

delineates the exceptional conditions under which the use of force may be lawful, namely those requiring strict necessity and proportionality.

The article rigorously evaluates Israel's asserted justification, rooted in Iran's alleged nuclear capabilities and perceived existential threats, against the established thresholds of customary international law. It concludes that the threats cited, being largely prospective and non-imminent, fail to meet the stringent requirements of imminence and necessity articulated in both the UN Charter and authoritative jurisprudence. Drawing upon relevant ICJ judgments, UN Security Council practice, and prevailing *opinio juris*, the article further argues that recognizing a unilateral right to pre-emptive self-defence would fundamentally undermine the *jus cogens* character of the prohibition on the use of force. Such recognition risks eroding the UN collective security system, incentivizing unilateralism, and destabilizing the normative authority of the prohibition itself.

Consequently, the article concludes that Israel's actions constitute a violation of international law, and that the doctrine of pre-emptive self-defence remains incompatible with the existing *jus ad bellum* regime.

1. Israel's Purported Grounds for 'Pre-emptive' Self-defence

In its 13 June 2025 address to the UN Security Council, Israel advanced a multilayered legal rationale for its pre-emptive military strikes against Iran, invoking the doctrine of self-defence under Article 51 of the UN Charter and the principles of customary international law.[3] The Israeli representative, Ambassador Danny Danon, framed *Operation Rising Lion* as a lawful act of 'pre-emptive' self-defence, necessitated by what Israel viewed as an imminent and existential threat posed by Iran's nuclear weapons program and regional military escalation.[4]

At the core of Israel's argument is the assertion that the threat from Iran met the threshold of imminence required under customary international law for assessing the legality of pre-emptive self-defence.[5] The Israeli statement emphasized that Iran had not only expressed, in unequivocal terms, its intent to destroy the State of Israel but had also undertaken concrete measures consistent with that declared intent.[6] This includes enrichment of uranium with no civilian justification (i.e., 60%); obstruction of International Atomic Energy Agency (IAEA) inspections; development of ballistic missile systems with the capacity to deliver nuclear warheads; and operational planning for a coordinated multi-front assault on Israel involving State and non-State

3. UN Security Council, "Threats to International Peace and Security" (9936th Meeting, Friday, 13 June 2025, 3 p.m., New York, 13 June 2025) UN Doc S/PV.9936, p. 21. https://docs.un.org/en/S/PV.9936?_gl=1*1jhhu7t*_ga*MTMyMzMyNjcyMC4xNzYwMjY3NDY4*_ga_TK9BQL5X7Z*czE3NzExNTY5NTAkbzEwJGcxJHQxNzcxMTU2OTg5JGoyMSRsMCRoMA..

4. Ibid.

5. Ibid., p. 22.

6. Ibid., p, 22.

actors.[7]

By drawing attention to these developments, Israel contended that the confluence of aggressive rhetoric, nuclear proliferation, and regional militarization evidenced an integrated strategic design by Iran to imminently breach the territorial integrity and political independence of Israel – thereby constituting 'a future' armed attack within the meaning of Article 51 of the UN Charter.[8] Ambassador Danon's argument invoked the principle that States are not required to absorb a nuclear strike or wait for the detonation of such a weapon before they may lawfully respond.[9] Rather, where the accumulation of hostile acts and capabilities demonstrates a clear and present danger, a State retains the right to act pre-emptively to neutralize the threat.[10]

Furthermore, Israel underscored its prolonged forbearance and reliance on international diplomatic and monitoring mechanisms before resorting to force.[11] The statement highlighted Israel's 'wait' while Iran systematically violated its nuclear obligations, destroyed monitoring equipment, recruited nuclear scientists, and conducted missile tests.[12] This dimension of the argument sought to reinforce Israel's position that the use of force was employed as a last resort, satisfying the principle of 'necessity' under *jus ad bellum*.[13]

The *Operation Rising Lion* strikes were also portrayed as complying with the principle of *proportionality*. Israel claimed its operations were meticulously targeted at military objectives central to the Iranian threat: (1) the elimination of senior Iranian military and nuclear command figures; (2) the destruction of missile infrastructure; and (3) the disabling of the Natanz nuclear facility, which was allegedly on the verge of producing sufficient fissile material for multiple nuclear weapons.[14] This scope of action was presented as necessary to avert mass civilian casualties and a potential 'nuclear holocaust', and not

7. Ibid., p. 22.

8. Ibid., p. 22-23.

9. Donald Rothwell, "Anticipatory Self-Defence in the Age of International Terrorism", *The University of Queensland Law Journal* 24, 2 (2005): 338.

10. Sean D. Murphy, "The Doctrine of Preemptive Self-Defense", *Villanova Law Review* 50, 3 (2005): 727; *see also:* Seyed Fazlolah Mousavi and Mehdi Hatami, "Anticipatory Self Defense in International Law", *Law & Political Science* 72, 1 (2006): 303-325.

11. UN Security Council, *9936th Meeting*, p. 22. https://docs.un.org/en/S/PV.9936?_gl=1*1jhhu7t*_ga*MTMyMzMyNjcyMC4xNzYwMjY3NDY4*_ga_TK9BQL5X7Z*czE3NzExNTY5NTAkbzEwJGcxJHQxNzcxMTU2OTg5JGoyMSRsMCRoMA.

12. Ibid.

13. These aspects are crucial in the legal evaluation. I will address them in the following sections.

14. UN Security Council, *9936th Meeting*, p. 22. https://docs.un.org/en/S/PV.9936?_gl=1*1jhhu7t*_ga*MTMyMzMyNjcyMC4xNzYwMjY3NDY4*_ga_TK9BQL5X7Z*czE3NzExNTY5NTAkbzEwJGcxJHQxNzcxMTU2OTg5JGoyMSRsMCRoMA..

as a campaign of aggression.[15]

Additionally, Israel argued that the Iranian threat was not confined to Israel but posed a global security risk – referencing missile ranges spanning continents and the coordination of transnational proxy networks (e.g., Hezbollah, Hamas, Houthi forces) directed by Tehran.[16] By asserting that Iran's conduct jeopardized not only regional but international peace and security, Israel sought to bolster the argument that its actions fell within the broader purview of collective security under Chapter VII of the UN Charter, even as they were conducted unilaterally in self-defence.

Finally, Israel called on the UNSC not for authorization but for *recognition* of its inherent right to self-defence, contending that Iran had fundamentally breached its international obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), IAEA safeguards, and numerous UNSC resolutions.[17] It maintained that the Council's prior inaction and moral equivocation had emboldened Iranian violations, thereby delegitimizing any condemnation of Israel's defensive measures.[18]

In sum, Israel's legal justification hinges on a contested interpretation of anticipatory self-defence, drawing upon the *Caroline test* – an outdated, pre-Charter construct with limited relevance under the modern international law. This interpretation hinges on a cumulative assessment of Iran's conduct as constituting and/or being construed as an imminent armed attack and the absence of viable alternatives. However, this interpretation remains contested within international legal scholarship – particularly concerning the scope of imminence and the legality of pre-emptive/preventive self-defence in international law.

2. The UN Charter Framework and *Jus ad Bellum*

The post-war international legal order, anchored by the UN Charter, imposes a stringent prohibition on unilateral use of force. Article 2(4) declares that all UN Members must 'refrain from the threat or use of force against the territorial integrity or political independence of any State'.[19] This prohibition is a cornerstone of the Charter and is widely regarded in State practice and scholarship as a *jus cogens* norm – a peremptory rule from which no derogation

15. Ibid., p. 23.

16. Ibid.

17. Ibid. Regarding Israel's stance, a verbatim paragraph can be helpful to better understand the tone, content, and language of the argument: "This was an act of national preservation. We undertook it alone – not because we wanted to, but because we were left no other option. We now turn to the Council – not for permission, but for *recognition*: recognition that Israel did what the world should have done, recognition that the Iranian regime violated every obligation it ever undertook, recognition that Israel has the undeniable right and duty to defend its people from annihilation."

18. Ibid.

19. UN Charter, Art. 2(4). https://treaties.un.org/doc/publication/ctc/uncharter.pdf

is permitted.[20] Article 51 carves out a narrow exception, preserving 'the inherent right of individual or collective self-defence if an armed attack occurs'.[21] Thus, by the Charter's plain text, self-defence is permissible *only* when a State is the victim of an actual armed attack.[22] Any broader claim, whether anticipatory or preventive, is not explicitly authorized.[23] The ICJ has reinforced this interpretation, holding that Article 51's exception applies only to 'a genuine, present armed aggression, not hypothetical future threats'.[24] In short, international law obliges that force may only be used in self-defence *after* an armed attack. The decisions of the ICJ have repeatedly clarified that Article 51 of the UN Charter limits self-defence to cases of armed attack.[25] None of the ICJ cases upholds a right of broad pre-emptive strike; to the contrary, each emphasizes restraint.

In Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), the ICJ reviewed the meaning of Article 51. The Court held that the Charter recognises the inherent right of individual or collective self-defence of States '*in the event of an armed attack'*.[26] Thus, the Court explicitly indicated that:

"In the case of individual self-defence, the exercise of this right is subject to the State *concerned having been the victim of an armed attack*".[27]

Article 51 presupposes a customary rule: it '*Article 51 was not intended to create a new right of self-defence'*.[28] In this regard, crucially, the Court stressed that self-defence is triggered only by 'an actual armed attack' against the State invoking it – unexecuted threats or unfulfilled intentions do not

20. Lily Leishman, "*A Compelling Idea: Jus Cogens and the Power of the United Nations Security Council*" (PhD Dissertation, University of Otago, 2019): 53: "The prohibition on the use of force, and the right to self-determination, are norms which make up of the purposes and principles of the UN Charter, making a finding of *jus cogens* easy."

21. UN Charter, Art. 51. https://treaties.un.org/doc/publication/ctc/uncharter.pdf

22. Christian Henderson, *The Use of Force and International Law*, 2nd ed. (Cambridge: Cambridge University Press, 2023) 257.

23. "Article 51 of the Charter of the United Nations is limited to situations of armed attacks and does not admit of an exercise of the right of self-defense to ward off an imminent or future attack." See: Azubuike, "Probing the Scope of Self Defense in International Law", 130.

24. Pierre-Emmanuel Dupont et al., "Striking Iran's Nuclear Facilities: International Law Scholars Warn of Precedent-Setting Violations", *International Law and International Legal Thought* (2025), footnote 22.

25. James Crawford, *Brownlie's Principles of Public International Law*, 9th ed. (Oxford: Oxford University Press, 2019), 722.

26. "[I]n the language of Article 5 1 of the United Nations Charter, the inherent right (or 'droit naturel') which any State possesses in the event of an armed attack, covers both collective and individual self-defence." see: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits*, *Judgment*, para. 193.

27. Ibid., para. 195.

28. Daniel Bethlehem, "Principles Relevant to the Scope of a State's Right of Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors", *American Journal of International Law* 106, 1 (2012): 3.

suffice.[29] As the Court noted, it could not construe Article 51 to cover lesser uses of force short of armed attack.[30] Thus, the Nicaragua case reaffirmed that customary international law, as reflected in Article 51, limits the right of self-defence to instances of prior armed attacks.[31]

In the Oil Platforms (Iran v. United States), Iran filed an application against the U.S. for attacks on its offshore installations. The U.S. had argued these were necessary to stop future hostile acts by Iran.[32] The ICJ ultimately dismissed Iran's claims on jurisdiction and treaty grounds, but it nonetheless remarked in *obiter dicta* on the self-defence argument.[33] Judge Simma, in his separate opinion, asserted unambiguously that the U.S. attacks '*cannot be justified as self-defence*' since no armed attack by Iran had occurred.[34] Although no authoritative majority opinion squarely ruled on the legality of U.S. self-defence, Oil Platforms is consistent with Nicaragua case: it required proof of armed attack:

"For present purposes, the Court has simply to determine whether the United States has demonstrated that it was the victim of an 'armed attack' by Iran such as to justify it using armed force in self-defence; and the burden of proof of the facts showing the existence of such an attack rests on the United States".[35]

The U.S. itself admitted no attack took place – instead it emphasized previous incidents and claims of ongoing threat.[36] The Court's emphasis on Article 2(4) and its strict adherence to the requirement of an actual armed attack underscore a fundamental principle: mere threat or anticipation of future harm does not constitute a lawful basis for the use of force.[37]

In Armed Activities on the Territory of the Congo (Congo v. Uganda), Uganda claimed it acted in self-defence against Congolese-sponsored rebels:

"Uganda further claims that […] by August-September 1998, as the DRC and the Sudan prepared to attack Ugandan forces in eastern Congo, its security situation had become untenable. Uganda submits that in response to this grave threat, and in the lawful exercise of its sovereign right of self-

29. Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter*, 1st ed (Cambridge: Cambridge University Press, 2011), 126.

30. *Military and Paramilitary Activities in and against Nicaragua*,, para. 210.

31. Helmut Philipp Aust, "Article 51", in *The Charter of the United Nations: A Commentary*, 4th ed., ed. Bruno Simma et al. (Oxford: Oxford University Press, 2024), 1769-1820.

32. *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Written Proceedings*, Counter-Memorial and Counter-claim submitted by the United States of America, para. 3.16.

33. Ibid., *Oil Platforms*, *Judgment*, para. 40.

34. Ibid., p. 327, para. 6 (Separate Opinion of Judge Simma).

35. Ibid., p. 189, para. 57.

36. William H. Taft, "Self-Defense and the Oil Platforms Decision", *The Yale Journal of International Law* 29,1 (2004): 305.

37. Caroline E. Foster, "The Oil Platforms Case and the Use of Force in International Law", *Singapore Journal of International & Comparative Law* 7, 2 (2003): 587.

defence".[38]

The Court recalls that Uganda has insisted in this case that its military operation was not a use of force against an anticipated attack as the 'reliance is placed by the Parties only on the right of self-defence in the case of an armed attack which has already occurred, and the issue of the lawfulness of a response to the imminent threat of armed attack has not been raised'.[39] As the ICJ found no armed attack by the Congo on Uganda, and, indeed, the rebel assaults lacked State attribution, The Court flatly held that 'the legal and factual circumstances for the exercise of a right of self-defence […] were not present'.[40]

Because Uganda had not been the victim of an armed attack by the DRC, nor had the DRC assented to Ugandan action, there was no basis for defence.[41] The Court emphasized that even if hypothetically an attack occurred, Uganda's force was disproportionate. This case thus confirms that absent an actual armed attack, one cannot claim necessity of self-defence.[42] Even for non-State threats, Uganda's actions exceeded any permissible force; they could not be retroactively justified as pre-emptive defence.[43]

In its 2004 advisory opinion on Legal Consequences of the Construction of a Wall, the ICJ addressed Israel's claims of self-defence against terrorism. The Court held that Article 51 was inapplicable: Israel's context was not an armed attack by another State, but attacks by non-State actors from territory under Israeli control.[44] Thus, while the Court recognizes that 'Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack',[45] it believes that 'article 51 of the Charter has no relevance in this case*'*.[46] The Court reminded that the Charter right of self-defence arises *only* from an 'armed attack by one State against another State'.[47] Thus, Israel could not invoke Article 51 to justify self-defence

38. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Merits*, *Judgment*, para. 39.

39. Ibid., para 143.

40. Ibid., para 147.

41. David Kretzmer, 'The Inherent Right to Self-Defence and Proportionality in *Jus ad Bellum*', *The European Journal of International Law* 24, 1 (2013): 244.

42. Ibid: "[T]he Court stated that '*even if this series of deplorable attacks could be regarded as cumulative in character*' they could not be attributed to the DRC and therefore did not give licence to Uganda to exercise its right to self-defence against that State."

43. Kimberley N. Trapp, 'Back to Basics: Necessity, Proportionality, and the Right of Self-Defence Against Non-State Terrorist Actors', *International & Comparative Law Quarterly* 56,1 (2008): 144-45; *see also*: Brent Michael, 'Responding to Attacks by Non-State Actors: The Attribution Requirement of Self-Defence', *Australian International Law Journal* 16,1 (2009): 154-55.

44. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinions*, para. 139.

45. Ibid.

46. Ibid.

47. Ibid.

against threats imposed in the situation of Palestine. The Court's analysis reinforces that non-State violence, or threat thereof, cannot be framed as a legitimate reason for unilateral use of force under the Charter without either (a) a nearby State's complicity or (b) explicit Security Council authorization:

"Israel does not claim that the attacks against it are imputable to a foreign State. The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (200l), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence".[48]

In the same token, scholarly commentary has long stressed that 'the Charter does not admit self-defence against a threat; there must be an actual armed attack'.[49] In the same vein, the Commentary of the United Charter elucidates that:

"The interpretation of Art. 51 as being an exclusive regulation of the right of self-defence, has been confirmed by State practice and by the ICJ. In its Nicaragua judgment the ICJ proceeded from the assumption that the existence of an armed attack is a *conditio sine qua non* for the exercise of the right to individual and collective self-defence".[50]

In this context, the Latin phrase *conditio sine qua non* means 'a condition without which a right could not be'.[51] In other words, without an armed attack, there can be no legal justification for self-defence, whether individually or collectively.[52] Thus, any invocation of the right to self-defence in the absence of an armed attack stands in direct tension with both the textual formulation and the underlying object and purpose of Article 51 of the UN Charter.[53] As James Crawford observes:

"There is a long-standing controversy as to whether the Charter definitively excludes the possibility of anticipatory self-defence, that is, the use of force pre-emptively to avert an imminent armed attack. Since 1945 states using force have preferred to justify their actions as self-defence in response to an armed attack, rather than asserting a right of pre-emptive action. But when pressed, the proponents of anticipatory self-defence rely on two related propositions. The first is that Article 51 reserves a right of self-defence

48. Ibid.

49. Norman Bentwich and Andrew Martin, *A Commentary on the Charter of the United Nations*, 1st ed. (Oxfordshire, Routledge, 2024), 107.

50. Aust, 'Article 51', 1769.

51. Taft, *Self-Defense and the Oil Platforms Decision*, 302-3.

52. Dominic Raab, "Armed Attack after the Oil Platforms Case", *Leiden Journal of International Law* 17, 2 (2004): 729.

53. Ruys, *Armed Attack and Article 51 of the UN Charter*, 208.

which existed in customary law, and which included certain anticipatory action. The problem is that the argument is incompatible with the text of Article 51 ('if an armed attack occurs'), as well as the object and purpose of the Charter, which aims to restrict the capacity of states to employ force unilaterally. The second proposition is that the customary law was formed in the nineteenth century, in particular as a result of correspondence exchanged by the US and Great Britain in the period from 1838 to 1842".[54]

While the second proposition refers to the Caroline formula – often cited as establishing a customary law basis for pre-emptive or anticipatory self-defence[55] – Crawford's analysis underscores the tension between pre-Charter interpretations of customary international law and the post-1945 normative framework established by the UN Charter.[56] The plain language of Article 51 – specifically the conditional clause 'if an armed attack occurs' – was intended to restrict the unilateral use of force to situations of actual, rather than anticipated, aggression.[57]

Meanwhile, some States have at times implicitly or explicitly invoked anticipatory self-defence.[58] The International Law Association reminded that 'whether or not a State may rely on self-defence in order to take forcible measures prior to an armed attack is one of the clearest instances in which the line between self-defence and unlawful use of force is most often debated'.[59] As Chris O'Meara has observed, this legal uncertainty is directly tied to certain specific issues. O'Meara notes:

"The debate pertaining to State responses to threatened armed attacks is most notable in the context of the development and acquisition of weapons of mass destruction ('WMDs') and the threat of attacks by terrorist non-State actors ('NSAs')".[60]

Nonetheless, it has now become evident that Israel's justification for legitimizing its attacks against Iran is largely grounded in these ambiguous and contentious matters – for instance, enrichment of uranium with no civilian

54. Crawford, *Brownlie's Principles of Public International Law*, 722-23.

55. Andrew Garwood-Gowers, "Pre-emptive Self-Defence: A Necessary Development or the Road to International Anarchy?", *Australian Yearbook of International Law* 23,4 (2004): 51-52; *see also:* Hossein Sharifi Tarazkoohi and Victor Barin Chaharbakhsh, "Appraisal of Anticipatory Self-Defence in the 21st Century", *Public Law Research* 15,40 (2013): 9-36.

56. Crawford, *Brownlie's Principles of Public International Law*, 722-23.

57. Jean Allain, "The True Challenge to the United Nations System of the Use of Force: The Failures of Kosovo and Iraq and the Emergence of the African Union", *Max Planck Yearbook of United Nations Law* 8, 1 (2003): 243.

58. Alex J. Bellamy, "International Law and the War with Iraq", *Melbourne Journal of International Law* 4,2 (2004): 515.

59. International Law Association, Committee on the Use of Force, 'Final Report on Aggression and the Use of Force' (2018). https://repository.essex.ac.uk/24215/1/ILA%20Use%20of%20Force%202018.pdf

60. Chris O'Meara, "Reconceptualizing the Right of Self-defence against 'Imminent' Armed Attacks", *Journal on the Use of Force and International Law* 9,2 (2022): 279.

justification.[61] However, such justifications remain doctrinally contested and lack consistent support in State practice or authoritative jurisprudence.[62] It is noteworthy commentaries on the UN Charter recognized the potential for abuse inherent in expansive interpretations of the right of self-defence. As it explained:

"Abuses of the right of self-defence were in the past facilitated by the theory that self-defence was justified in the face not only of actual, but also of threatened, aggression. [Thus,] the Charter does not admit self-defence against a threat".[63]

This interpretation underscores the Charter's clear intention to confine the right of self-defence to responses to *actual* armed attacks, thereby rejecting doctrines of preventive or anticipatory force that had previously, enabled unilateral recourse to military action under the broad guise of threat perception.[64] Accordingly, from another perspective, the adoption of the UN Charter represents a decisive break from 19th-century customary law, effectively abrogating the permissibility of using force in response to mere threats.[65] In this light, it is incontrovertible that Article 2(4) and 51 of the UN Charter together establish a stringent *jus ad bellum* regime: only an actual armed aggression can justify military response, and any other use of force is *prima facie* a Charter violation.[66]

Nevertheless, to fully assess whether any legal basis for pre-emptive self-defence might exist, it is necessary to turn briefly to the pre-Charter era. Despite the Charter's firm rejection of the use of force in response to mere threats, Israeli representative to the United Nation implicitly invoked 19th-century customary law to argue for a residual right of pre-emptive self-defence.[67] As noted, the Caroline doctrine lies at the heart of this older

61. UN Security Council, *9936th Meeting*, 21. https://docs.un.org/en/S/PV.9936?_gl=1*1jhhu7t*_ga*MTMyMzMyNjcyMC4xNzYwMjY3NDY4*_ga_TK9BQL5X7Z*czE3NzExNTY5NTAkbzEwJGcxJHQxNzcxMTU2OTg5JGoyMSRsMCRoMA.

62. Charles Pierson, "Preemptive Self-Defense in an Age of Weapons of Mass Destruction: Operation Iraqi Freedom", *Denver Journal of International Law & Policy* 33, 1 (2004): 163; *see also*: O'Meara, *Reconceptualizing the Right of Self-defence against 'Imminent' Armed Attacks,* 279.

63. Bentwich and Martin, *A Commentary on the Charter of the United Nations*, 107; *see also:* Javad Zarif and Mohammad Ahani Amineh, "Premptive Self-Defense: The Legitimacy of the Use of Force in International Relations or a Repeated Violation of the United Nations Charter", *Political and International Studies* 4,12 (2012): 41-82.

64. Renee Mastrolembo, "Imminence and States' Right to Anticipatory Self-Defence: Responding to Contemporary Security Threats and Divergence in Legal Diplomacy", *Canberra Law Review* 16,1 (2019): 144.

65. Jackson Nyamuya Maogoto, "Rushing to Break the Law? The 'Bush Doctrine' of Pre-Emptive Strikes and the UN Charter on the Use of Force", *University of Western Sydney Law Review* 7,1 (2003): 29.

66. Charlotta Nilsson, "*The Legality of Anticipatory Self-Defence in International Law*" (Master's Thesis, University of Lund, 2008), 16.

67. UN Security Council, *9936th Meeting*, 22: "[T]he State of Israel launched *Operation Rising Lion*, a 'pre-emptive' military operation." https://docs.un.org/en/S/PV.9936?_gl=1*1jhhu7t*_ ga*MTMyMzMyNjcyMC4xNzYwMjY3NDY4*_ga_TK9BQL5X7Z*czE3NzExNTY5NTAkbzEwJGcxJHQxNzcxMTU2OTg5JGoyMSRsMCRoMA.

framework, establishing strict criteria for the use of force prior to an actual armed attack.[68]

To assess whether this largely obsolete doctrine could still provide legal justification for actions such as Israel's strikes against Iran, a close examination of its historical context and inherent limitations under customary law becomes essential.

3. Pre-emption in Law and Practice

3-1. Historical Antecedents: The Caroline Criteria

The inherent right of self-defence stands as a fundamental exception to the Charter's prohibition on the use of force between States. Yet, the precise contours of this right, particularly concerning actions taken *before* an armed attack has actually commenced – anticipatory or pre-emptive self-defence – remain one of the most contentious and legally fraught areas of modern *jus ad bellum*.[69] At the heart of this enduring debate lies the Caroline incident and the criteria articulated by US Secretary of State Daniel Webster in 1842.[70] While framed as a stringent test to limit the permissibility of anticipatory action, the Caroline criteria have, throughout their long history, also functioned as a potent legal pretext, invoked by States to justify actions ranging from arguably legitimate preventative measures to highly controversial pre-emptive strikes.[71]

The Caroline affair itself arose from the turbulent context of the 1837 Canadian rebellion against British rule. American sympathizers, operating from US territory, used the steamboat Caroline to supply the rebels. British forces, perceiving a direct and ongoing threat to their efforts to quell the insurrection, crossed into US territory, seized the vessel, set it ablaze, and cast it adrift over Niagara Falls, resulting in American casualties. The subsequent diplomatic exchange between the United States, represented by Secretary Webster, and Great Britain, represented by Lord Ashburton, proved seminal. While the immediate dispute centered on violations of territorial sovereignty, Webster's articulation of the conditions under which such a cross-border incursion *might* be legally defensible transcended the

68. Rothwell, *Anticipatory Self-Defence in the Age of International Terrorism*, 338-341; Pierson, *Preemptive Self-Defense in an Age of Weapons of Mass Destruction*, 163-65.

69. Michael Reisman and Andrea C. Armstrong, "The Past and Future of the Claim of Preemptive Self-Defense", *American Journal of International Law* 11, 1 (2006): 525.

70. Hannes Herbert Hofmeister, "Neither the 'Caroline Formula' Nor the 'Bush Doctrine' – An Alternative Framework to Assess the Legality of Preemptive Strikes", *University of New England Law Journal* 2,1 (2005): 45.

71. Maria Benvenuta Occelli, "Sinking the Caroline: Why the Caroline Doctrine's Restrictions on Self-Defense Should Not Be Regarded as Customary International Law", *San Diego International Law Journal* 4,1(2003): 467.

specific case.[72]

In his note to Lord Ashburton dated April 24, 1842, Webster demanded that Britain demonstrate:

"... a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it [Her Majesty's Government] to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of The United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it".[73]

Thus, the Caroline criteria crystallized around three core, cumulative principles:

- **a.** *Necessity*: The requirement for self-defence must be absolute and imperative. There must be no viable alternative to the use of force to avert the impending harm.[74]
- **b.** *Immediacy* or *Imminence*: The threat must be instant and overwhelming, leaving literally 'no moment for deliberation.' The attack must be about to happen; a merely future or contingent threat is insufficient.[75]
- **c.** *Proportionality*: The defensive action taken must be commensurate with the nature and scale of the imminent threat. The response must be strictly confined to what is required to neutralize that specific threat.[76]

These criteria, born in the era of customary international law prior to the UN Charter, represented a conscious effort to impose strict limitations on the unilateral resort to force, even in the face of perceived threat. In other words, even an anticipatory strike must meet the highest thresholds of *imminence* and *necessity* – essentially a *last resort* in the face of a *virtually immediate* attack.[77] These criteria remain the lodestar for any claim of anticipatory self-defence. They underscore that self-defence, even if exercised before an attack, cannot be used as a pretext for striking without an overwhelming and instantaneous threat. They aimed to prevent States from invoking vague fears or long-term strategic concerns as justification for aggression disguised as prevention.[78] The bar was set deliberately high: only the most clear,

72. Gabor Kajtar, "The Caroline as the 'Joker' of the Law of Self-Defence – A Ghost Ship's Message for the 21st Century", *Austrian Review of International and European Law* 21,1(2016): 4.

73. James W. Houck, "Caroline Revisited: An Imagined Exchange between John Kerry Caroline Revisited: An Imagined Exchange between John Kerry and Mohammad Javad Zarif", *The Penn State Journal of Law & International Affairs* 2, 2(2013): 293-97.

74. Reisman and Armstrong, *The Past and Future of the Claim of Preemptive Self-Defense*, 528-29.

75. Mastrolembo, *Imminence and States' Right to Anticipatory Self-Defence*, 149-51.

76. Nilsson, *The Legality of Anticipatory Self-Defence in International Law*, 25.

77. Paul H. Robinson and Adil Ahmad Haque, "Advantaging Aggressors: Justice & Deterrence in International Law", *Harvard National Security Journal* 3, 1 (2011): 211.

78. Ibid., 214-15.

present, and unavoidable dangers could potentially legitimize anticipatory action.[79]

3-2. Post-UN Charter

The adoption of the UN Charter in 1945 fundamentally reshaped the legal landscape governing the use of force. Article 2(4) established a comprehensive prohibition, while Article 51 preserved the 'inherent right' of individual or collective self-defence, but crucially, only 'if an armed attack occurs.' This explicit temporal reference – 'if an armed attack occurs' – ignited intense scholarly and diplomatic debate: did it completely outlaw anticipatory self-defence, confining the right solely to responses *after* an attack had materialized, or did it implicitly preserve the customary right as encapsulated by Caroline, applicable when an attack was demonstrably imminent?

As noted by James Crawford, 'since 1945, the practice of states generally has been opposed to anticipatory self-defence'.[80] A stark illustration of international opposition to anticipatory self-defence is the response to Israel's 1981 airstrike on the Osirak nuclear reactor in Iraq. Despite Israel's claim that the attack was necessary to prevent a future existential threat, the UN Security Council unanimously adopted Resolution 487, condemning the operation as 'a clear violation of the Charter of the United Nations and the norms of international conduct'.[81] The Council further warned that the strike undermined the IAEA safeguards regime and posed a threat to international peace and security.[82] The UN General Assembly went even further, characterizing the act as a 'premeditated and unprecedented act of aggression' and calling for compensations.[83] These resolutions underscore that the international community does not accept broad claims of pre-emptive self-defence as lawful. Israel's rationale in 1981 was explicitly rejected by both the Security Council and General Assembly, reinforcing the prevailing view that pre-emptive/preventive self-defence, particularly in response to non-imminent threats, is incompatible with the Charter's restrictive *jus ad bellum*

79. Ibid., 215; The distinction between pre-emptive [truly imminent threat] and preventive [possible future threat] warfare is crucial. Legal commentators unanimously reject a 'preventive' doctrine that allows force against remote or speculative threats. As one expert states, a 'preventive' form of self-defence is simply *not* self-defence at all. For further information, see: Henderson, *The Use of Force and International Law*, 274-307.

80. Crawford, *Brownlie's Principles of Public International Law*, 723.

81. UN Security Council, "Resolution 487 (1981)" (19 June 1981) S/RES/487(1981). https://digitallibrary.un.org/record/22225?ln=en&v=pdf

82. Ibid.

83. UN General Assembly, "Armed Israeli Aggression Against the Iraqi Nuclear Installations and its Grave Consequences for the Established International System Concerning the Peaceful Uses of Nuclear Energy, the Non-Proliferation of Nuclear Weapons and International Peace and Security" (25 November 1981) A/RES/36/27. https://digitallibrary.un.org/record/27621?ln=en&v=pdf

regime.[84]

However, over the past quarter-century, concerted attempts have been made to expand the scope and reinterpret the concept of self-defence under the UN Charter. In 2003, then-UN Secretary-General Kofi Annan established the 'High-Level Panel on Threats, Challenges, and Change' to assess how the United Nations should respond to emerging global security risks. The Panel's final report, A More Secure World: Our Shared Responsibility, was submitted in December 2004. In Part III of the report, titled Collective Security and the Use of Force, the Panel examined the compatibility of the UN Charter, particularly Article 51, with contemporary threats, including those posed by non-State actors and weapons of mass destruction:

"In the world of the twenty-first century, the international community does have to be concerned about nightmare scenarios combining terrorists, weapons of mass destruction and irresponsible States, and much more besides, which may conceivably justify the use of force, not just reactively but preventively and before a latent threat becomes imminent".[85]

Thus, the Panel affirmed that Article 51 permits self-defence not only in response to actual attacks but also against manifestly imminent threats. However, it explicitly rejected the legality of using force in response to non-imminent threats.[86] The report draws a clear distinction between threats that are immediate and unavoidable, and those that are merely potential or developing – endorsing pre-emptive self-defence only in the former case.[87] This position was reiterated by Kofi Annan in 2005 during discussions on Charter reform. He emphasized that 'lawyers have long recognized that this covers an imminent attack as well as one that has already happened', reinforcing that any broadening of self-defence to cover non-imminent threats would exceed the bounds of the Charter and erode the integrity of the collective security system.[88]

Although the '2005 World Summit Outcome' resolution ultimately did not include explicit endorsement of pre-emptive self-defence against latent or non-imminent threats,[89] a number of States, most notably the United States

84. Neil J. Kaplan, "The Attack on Osirak: Delimitation of Self-Defense", *NYLS Journal of International and Comparative Law* 4,1 (1982): 144.

85. United Nations, *A More Secure World: Our Shared Responsibility: Report of the High-level Panel on Threats, Challenges and Change* (New York: United Nations, 2004), 64, para. 194. https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/hlp_more_secure_world.pdf

86. Ibid., 106: "Article 51 of the Charter of the United Nations should be neither rewritten nor reinterpreted, either to extend its long-established scope (so as to allow preventive measures to non-imminent threats) or to restrict it (so as to allow its application only to actual attacks)."

87. Ibid.

88. United Nations, *In Larger Freedom: Towards Development, Security and Human Rights for All* (New York: United Nations, 2005), 33, para. 124. https://digitallibrary.un.org/record/550204?ln=en&v=pdf#files

89. General Assembly, "2005 World Summit Outcome" (24 October 2005) A/RES/60/1. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

and Israel, persistently advocated for its recognition in the lead-up to the summit. Israel itself advocated for explicit recognition by the United Nations of the right to self-defence not only in response to armed attacks but also in anticipation of 'imminent' ones, thereby pushing for formal endorsement of a broader interpretation of Article 51.[90] These States have often invoked the Caroline doctrine as a historical foundation for such claims, despite its narrow and exceptional nature.[91]

Specifically, the U.S. articulated what has been termed a 'last window' or contextual approach, arguing that an attack may be lawfully pre-empted where the threat is virtually certain and only a brief opportunity remains to act before it materializes.[92] Rejecting what it characterized as the outdated 'reactive posture' of the past, the U.S. declared its willingness to strike first against so-called 'rogue States' and terrorist actors – sometimes even in the absence of concrete knowledge about the precise time or location of a potential attack.[93] For instance, the U.S has proposed criteria for lawful anticipatory strikes that include a demonstrable intent and capability to launch an attack, along with a plausible justification that waiting would forfeit the ability to effectively defend.[94]

Some scholars have also advanced more flexible interpretations.[95] Notably, the Chatham House Principles and the Bethlehem Principles advocate for a holistic assessment of factors such as the gravity of the threat, the nature and pace of the adversary's military preparations, and any established pattern of hostile conduct in determining whether a threat qualifies as 'imminent'.[96] According to this view, the mere capability for accumulation of weapons of mass destruction, combined with inflammatory rhetoric or a history of aggression, could suffice to meet the threshold of imminence – thereby justifying pre-emptive self-defence, even in the absence of a clearly unfolding attack.[97]

90. Christian J. Tams, "The Use of Force against Terrorists", *European Journal of International Law* 20, 2 (2009): 375.

91. Timothy Kearley, "Raising the Caroline", *Wisconsin International Law Journal* 17,2 (1999) 325.

92. David Kretzmer, "The Inherent Right to Self-Defence and Proportionality in Jus ad Bellum", *European Journal of International Law* 24,1 (2013): 275.

93. Michael N. Schmitt, "21st Century Conflict: Can the Law Survive?", *Melbourne Journal of International Law* 8,2 (2007): 453; *see also*: International Law Association, "Final Report on Aggression and the Use of Force" (Sydney: ILA, 2018), 13. https://repository.essex.ac.uk/24215/1/ILA%20Use%20of%20Force%202018.pdf

94. Ibid.

95. International Law Association, "Final Report on Aggression and the Use of Force", 13-15. https://repository.essex.ac.uk/24215/1/ILA%20Use%20of%20Force%202018.pdf

96. Daniel Bethlehem, "Self Defence against Non-State Actors", in *British Contributions to International Law, 1915-2015,* vol. I*,* eds. Jill Barrett and Jean-Pierre Gauci, (Leiden, Brill-Nijhoff, 2020), 2489.

97. Russell Powell, "The Law and Philosophy of Preventive War: An Institution-Based Approach to Collective Self-Defence", *Australian Journal of Legal Philosophy* 32,1(2007): 73.

3-2-1. Practice of the United States: Sufficient Threat

Nevertheless, the concept of pre-emptive or anticipatory self-defence experienced a notable revival in the aftermath of the 9/11 attacks, particularly in the context of the so-called 'War on Terror'.[98] In this climate, certain States – most prominently the United States of America – sought to expand the legal understanding of self-defence beyond the Charter's traditional confines. The U.S. articulated a doctrine authorizing 'anticipatory' action against emerging threats. The 2002 U.S. National Security Strategy (NSS) explicitly endorsed the right to 'use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy's attack'.[99] Recognizing a 'sufficient threat,' it declared:

"The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. […] and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains […] the United States will, if necessary, act preemptively".[100]

Proponents of a more flexible self-defence against threats argue that rigid temporal constraints are ill-suited to the realities of modern, non-conventional threats, particularly those posed by actors with access to weapons of mass destruction.[101] They assert that the law must accommodate a State's duty to act before a threat materializes to the point where defensive measures would be ineffective. In this context, the American approach is the so-called 'Bush Doctrine' which proclaims that if a threat, especially involving weapons of mass destruction, is judged sufficiently grave, the U.S. may strike first, even absent an actual armed attack. In practice, this rationale underpinned the 2003 invasion of Iraq.[102]

Although the U.S. largely framed Iraq in terms of UN Security Council mandates,[103] rather than invoking Article 51, the underlying logic was anticipatory: acting now against a non-imminent but feared threat to future security.[104] The U.S. officials repeatedly emphasized that diplomatic and inspection options had been exhausted, effectively treating force as a last resort when no other means sufficed. Thus, in U.S. practice post-2001, necessity and immediacy were loosely interpreted: the emphasis was on

98. Crawford, *Brownlie's Principles of Public International Law*, 723.

99. United States, "National Security Strategy 2002" (Washington: The White House, 2002), Section V. https://2009-2017.state.gov/documents/organization/63562.pdf

100. Ibid.

101. Matthew C. Waxman, "Regulating Resort to Force: Form and Substance of the UN Charter Regime", *European Journal of International Law* 24,1 (2013): 151-189.

102. United States, "National Security Strategy 2002", Section V. https://2009-2017.state.gov/documents/organization/63562.pdf

103. UN Security Council, "Resolution 678" (November 1990) S/RES/678; "Resolution 687" (8 April 1991) S/RES/687. https://www.un.org/depts/unmovic/documents/687.pdf

104. Bellamy, *International Law and the War with Iraq*, 517.

'sufficient threat' and WMD proliferation rather than the classic Caroline test of an 'instant, overwhelming danger'.[105]

3-2-2. Practice of the United Kingdom: Restraint and Caroline

The United Kingdom has maintained a more restrictive stance. The traditional UK position emphasizes that Article 51 of the UN Charter protects self-defence only in response to an actual or immediately impending attack.[106] Reflecting this view, senior officials such as Lord Goldsmith, then Attorney General of the UK, have asserted that modern self-defence must encompass both 'actual and imminent' attacks, while rejecting only those actions taken in response to more speculative or remote threats.[107] Goldsmith, at the Iraq Inquiry, explained that in 2002-03 there was not any evidence of imminent threat from Iraq and that Saddam's regime did not pose a threat that could justify an attack on the grounds of self-defence.[108] Indeed, in April 2004 Goldsmith stated that the inherent right of self-defence had always been understood to extend only to situations of an imminent armed attack, not to 'mount a pre-emptive strike against a threat that is more remote'.[109] In Goldsmith's view, Article 51 codified an existing customary rule: it 'did not create a new right' to use force beyond what was already accepted in 19th-century law - as exemplified by Caroline. Thus, successive UK governments have publicly rejected any broad Bush Doctrine.[110]

This fidelity to Caroline's imminence persisted into the 21st century. As the then-Attorney General Sir Jeremy Wright reaffirmed in 2017, UK policy is that Article 51's inherent right includes force against an imminent attack under customary law.[111] Wright emphasized that force may be used in self-defence *only* if the threatened attack is sufficiently imminent (necessity) and any response is proportionate. His opinion obviously recounted the Caroline correspondence definition of imminence – an attack 'instant, overwhelming,

105. Ibid.

106. UK Parliament, Committee on Foreign Affairs, "Written evidence submitted by Daniel Bethlehem QC, Director of Lauterpacht Research Centre for International Law, University of Cambridge" (London: UK Parliament, 2004), para. 35. https://publications.parliament.uk/pa/cm200304/cmselect/cmfaff/441/4060808.htm

107. Daniel Bethlehem, "Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors", *American Journal of International Law* 106,4 (2012):770-77.

108. Christian Henderson, "Reading Between the Lines: The Iraq Inquiry, Doctrinal Debates, and the Legality of Military Action Against Iraq in 2003", *British Yearbook of International Law* 87,1 (2017): 110-12.

109. UK House of Commons, "The Report of the Iraq Inquiry", vol. V (London, Report of a Committee of Privy Counsellors, 2016). https://www.gov.uk/government/publications/the-report-of-the-iraq-inquiry

110. Ibid.

111. Bethlehem, *Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors*, 772-77.

leaving no choice of means, and no moment of deliberation'.[112] While acknowledging that modern threats, e.g. terrorism, require the law to adapt, Wright did not discard the imminence requirement.[113]

In sum, the UK view remains that self-defence is lawful against an attack in progress or imminently impending; it rejects strikes against merely potential or latent threats.[114] As Wright noted, the Chatham House Principles, reflecting UK and allied practice, insist that lethal force be a last resort once law-enforcement or other measures are inadequate. These official positions align with the broader practice of leading Western states.[115]

3-2-3. Bethlehem Principles and Chatham House Reports on Imminence

Beyond specific national statements, transnational forums have produced detailed guidelines. Notably, Daniel Bethlehem, former UK Legal Adviser, distilled many such discussions in his 2012 'Principles Relevant to Self-Defence'.[116] In those principles, he allows force against 'imminent or actual' attacks by non-State actors, but insists on a multi-factor view of imminence. Bethlehem's Principle 8, for instance, expressly states that whether an attack is 'imminent' must be judged by 'all relevant circumstances' including threat probability and gravity.[117] Bethlehem explicitly recognizes that imminence depends on other factors that relate to the wider circumstances of the threat.[118] Principle 9 adds that lack of precise timing or identity does *not* bar a finding of imminence if an objective basis exists. Principle 9 further provides that the absence of precise information about when an attack may take place does not preclude a conclusion that an armed attack is imminent, so long as there is a reasonable basis.[119]

These formulations have been interpreted by some scholars as sanctioning 'contextual imminence' or a multi-factor test – sometimes called a pressing quality test of threat.[120] Yet Bethlehem himself cautions that the 'principles are not intended to be enabling of the use of force'; they were drafted to

112. UK Government, "Attorney General Discusses the Modern Law of Self-defense" (Speech, International Institute for Strategic Studies, 11 January 2017). https://www.gov.uk/government/speeches/ attorney-generals-speech-at-the-international-institute-for-strategic-studies

113. Ibid.

114. Ibid.

115. Ibid.

116. Bethlehem, *Self Defence against Non-State Actors*, Chapter 102.

117. Elizabeth Wilmshurst and Michael Wood, "Self-Defense Against Nonstate Actors: Reflections on the Bethlehem Principles", *American Journal of International Law* 107,2 (2017): 390-95.

118. Noam Lubell, "The Problem of Imminence in an Uncertain World" in *The Oxford Hand-book on the Use of Force in International Law*, ed. Marc Weller,(Oxford: Oxford University Press, 2015) 697, 701-2.

119. Ibid.

120. Christopher O'Meara, "Necessity and Proportionality and the Right of Self-Defence in International Law" (PhD Dissertation, University College London, 2018).

restrain, not expand, self-defence.[121]

Chatham House, the Royal Institute of International Affairs, has also weighed in through working papers and conferences. Chatham House analysts similarly confirm that anticipatory defence may only target threats meeting stringent imminence criteria.[122] Its analyses have stressed Caroline's lessons: for example, a Chatham House report notes that 'for action in self-defence to be necessary, it must first be clear that measures of law enforcement would not be sufficient'.[123] This underscores that even in the face of terrorism, force should be a last resort. Chatham House discussions concede that 9/11 has led some States to invoke force against non-State threats, but they generally urge adherence to traditional imminence and proportionality.[124]

4. Scholarly Advocacy and Critique of Expanded Imminence

4-1. Arguments for a Broader 'Imminence'

Some modern commentators argue that the classical definition of imminence is too rigid for today's security environment. In their view, states should not be forced to wait for a high-tech, sudden attack by a conventional army. Instead, they propose considering contextual factors – threat severity, likelihood, patterns of hostile acts, exhaustion of alternatives – in judging imminence.[125] For example, Christian Henderson suggests a 'contextual' concept of imminence:

"While 'imminence' has traditionally been provided with a temporal meaning, these States argue that it is necessary to instead view imminence in a contextual sense, thereby permitting a range of factors to be taken into account in determining whether it is necessary to take action in self-defence".[126]

That is to say, even if an attack is not immediately about to occur, the combination of an adversary's grave intent and the unavailability of peaceful

121. Bethlehem, *Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors,* 773; David Hughes and Yahli Shereshevsky, "State-Academic Lawmaking", *Harvard International Law Journal* 64,2 (2023): 274.

122. Elizabeth Wilmshurst, "Principles of International Law on the Use of Force by States in Self-Defence" (Chatham House, Report No, ILP WP 05/01, 2005). https://www.chathamhouse.org/2005/10/principles-international-law-use-force-states-self-defence

123. Elizabeth Wilmshurst, "The Chatham House Principles of International Law on the Use of Force in Self-Defence", in *British Contributions to International Law, 1915–2015*, vol. I, eds. Jill Barrett and Jean-Pierre Gauci, (Leiden, Brill-Nijhoff, 2020), 2433.

124. Wilmshurst, *Principles of International Law on the Use of Force by States in Self-Defence*, 39-45, 52-60.

125. International Law Association, "Final Report on Aggression and the Use of Force", 7, 13-15; https://repository.essex.ac.uk/24215/1/ILA%20Use%20of%20Force%202018.pdf. Onder Bakircioglu, "The Right to Self-Defence in National and International Law: The Role of the Imminence Requirement", *Indiana International & Comparative Law Review* 19,1 (2009): 19.

126. Henderson, *The Use of Force and International Law*, 403-04.

means can render the threat sufficiently pressing.[127] Similarly, some authors have asserted that self-defence can lawfully be used in anticipation of an imminent armed attack, noting that the requirement of no time to pursue non-forcible measures could justify action when delay invites catastrophe.[128]

In academic literature, Dapo Akande and Thomas Liefländer examine necessity and imminence, emphasizing that imminence 'describes a certain pressing quality' of the threat.[129] They note that modern assessments often weigh the type of attack, its gravity, and probability of occurrence – essentially blending imminence with necessity.[130] Noam Lubell likewise argues that imminence in an 'uncertain world' may be satisfied by an imminent danger, not just a scheduled attack, so long as that danger is serious and cannot be averted by other means.[131] Even among retired State advisers, figures like William Schenider, have posited that the stark classical test may not capture situations where lethal threats take long to materialize (e.g. nuclear programs) but are real enough to demand pre-emptive measures.[132] These advocates typically stress that self-defence in international law is a unitary right applying to all grave threats. They point to Security Council language, e.g. post-9/11 Resolutions 1368 and 1373, as recognizing the right to act to prevent future attacks – although these resolutions have been framed in the context of terrorism, the same logic is extendable to other high-risk domains, such as WMDs:

"The U.S. Leaders would not do […] unilaterally use of force without international cooperation, especially against a sovereign territory, unless there was the imminent threat of nuclear or radiological weapon use".[133]

These authors argue that in a world of diffuse terrorist threats and WMD proliferation, the old dockside Caroline model is inadequate. Thus, they defend a broadened imminence test that incorporates multiple contextual factors and treats force as lawful up to the last moment when peaceful alternatives fail.[134]

127. Nonetheless, it should be emphasized that the author acknowledges: "This might be seen as controversial, and, as discussed […] it cannot be said – at this stage at least – to represent the general view of the international community." Ibid.

128. Christine Chinkin and Mary Kaldor, "Self-Defence as a Justification for War: The Geo-Political and War on Terror Models", in *International Law and New Wars* (Cambridge: Cambridge University Press, 2017) 129-74.

129. Dapo Akande and Thomas Lieflaender, "Clarifying Necessity, Imminence, and Proportionality in the Law of Self-Defense", *American Journal of International Law* 107, 3 (2013): 563-70.

130. Ibid.

131. Noam Lubell, "The Problem of Imminence in an Uncertain World", in *The Oxford Handbook of the Use of Force in International Law,* 1st ed, ed. Marc Weller, (Oxford: Oxford Academic Press, 2015), 679-719.

132. William Schneider Jr., "Challenges to Military Operations in Support of U.S. Interests", vol. II (Washington: US Secretary of Defense, 2008), 301. https://dsb.cto.mil/wp-content/uploads/reports/2000s/ADA491393.pdf

133. Ibid., 173.

134. O'Meara, *Reconceptualizing the Right of Self-Defence Against 'Imminent' Armed Attacks*, 281; *see also*: International Law Association, "Final Report on Aggression and the Use of Force", 13. https://repository.essex.ac.uk/24215/1/ILA%20Use%20of%20Force%202018.pdf

4-2. Rebuttal

While the preceding arguments capture intuitive concerns, they conflict with core legal texts and the weight of authoritative interpretation. First, the Charter's wording is inherently restrictive. Article 51 speaks only of armed attack, and the preparatory work shows no intent or possibility to depart from this standard. Neither the scholarly interpretations referenced above nor the limited practice by certain States in relation to preemptive self-defence gives rise to a new right; the UN Charter merely reaffirms the right of self-defence as it existed in 1945 and subsequently. As generally recognized in 1945, the customary right of self-defence is predicated upon the occurrence of an actual armed attack. Expanding 'imminence' to include broad future threats or cumulative dangers would effectively rewrite Article 51 of the UN Chater.[135]

Second, judicial decisions leave little room for innovation. As seen, the ICJ has repeatedly endorsed a narrow scope: Article 51 is triggered by an armed attack, not by generic threats or mere probabilities. In its judgments, the ICJ affirmed that the prerequisites for the lawful exercise of self-defence are not met in the absence of an actual armed attack. Similarly, in the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory advisory opinion, the Court underscored that the right of self-defence arises exclusively in the context of inter-State relations and only in response to an armed attack. None of the Court's jurisprudence supports the permissibility of anticipatory or pre-emptive force in response to merely potential or indeterminate threats. Even the separate and dissenting opinions of individual judges adhere to the stringent requirements of necessity and proportionality. Collectively, these decisions articulate binding norms for United Nations member States, particularly in relation to the foundational framework of *jus ad bellum*. Any doctrinal expansion of the right to use force in self-defence would therefore require a deliberate and explicit reversal by the Court itself – an approach the ICJ has consistently and firmly declined to adopt.[136]

Ultimately, any attempt to bypass the armed attack standard faces insurmountable legal and political barriers. The Charter's framers deliberately channelled prospective enforcement into the Security Council – Articles 39-42 – not unilateral self-help. A generalized so-called 'right of pre-emption' conflicts with Articles 2(4) and 51 as understood. Article 51 was not intended to alter the existing law at the time of its codification, and that body of law did not authorize preventive war. The so-called Caroline incident, often cited

135. Vincent J. Vitkowsky, "Remarks on Customary International Law and the Use of Force Against Terrorists and Rogue State Collaborators", *ILSA Journal of International & Comparative Law* 13,2 (2007): 372-73.

136. For a detailed discussion of the ICJ's jurisprudence, see Section 2 above.

in this context, is insufficient to establish the existence of a customary norm permitting preemption. Moreover, even if such a right existed in the pre-Charter legal framework, it was effectively superseded by the adoption of the UN Charter.

5. Applying the *Jus ad Bellum* Test to Israel's Strikes

The abovementioned expansive formulation, however, ultimately moves beyond even from pre-emptive into preventive self-defence – as previously mentioned, this doctrine lacks any clear basis in international law and remains widely rejected by the international community.[137] The majority of UN Member States, including some that previously expressed conditional support, continue to insist on a strict interpretation of the Charter's rules on the use of force.[138] As Tom Ruys has concluded, it is 'impossible to identify *de lege lata* a general right of pre-emptive self-defence' under existing legal norms.[139]

Against this legal backdrop, the question arises as to whether Israel can plausibly invoke the doctrine of 'pre-emptive self-defence' under international law to justify its strike against Iran's nuclear facilities. To assess the validity of such a claim, it is essential to determine whether the factual and legal circumstances surrounding the alleged threat posed by Iran meet the rigorous threshold established under both customary international law and the post-Charter *jus ad bellum* framework.

As previously discussed, the jus ad bellum framework established by the UN Charter restricts the lawful exercise of self-defence to instances involving an actual armed attack – a threshold that, in Israel's case, was manifestly not met. Consequently, Israel's sole remaining legal justification rests on the invocation of the pre-Charter Caroline doctrine, the contemporary legal status of which remains highly contested within international legal scholarship.[140] This raises two critical questions: First, does the Caroline standard retain normative validity within the contemporary framework of international law? Second, assuming its continued relevance, do Israel's actions satisfy its stringent requirements – namely, that the necessity of self-defence must be 'instant, overwhelming, leaving no choice of means, and no moment for deliberation'?

When the above-mentioned legal principles are applied to the June 2025 Israeli strikes on Iran, the conclusion is clear: *the action was unlawful under international law*. Israel's justification rested on an alleged Iranian nuclear

137. Yaroslav Shiryaev, "The Right of Armed Self-Defense in International Law and Self-Defense Arguments Used in the Second Lebanon War", *Acta Societatis Martensis 3*,1 (2008): 86.

138. Ibid.

139. Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice*, 1st ed (Cambridge: Cambridge University Press, 2011) 511-16.

140. Crawford, *Brownlie's Principles of Public International Law*, 723.

threat – fundamentally a prospective and future-oriented danger. Yet claims that Iran had 'enriched uranium […] to a level with no civilian justification' or possessed 'trigger mechanisms' for a warhead were quickly contradicted by the IAEA Director General, who reported no evidence of an active or systematic nuclear weapons programme in the immediate aftermath of the strike: 'What we [the IAEA] informed and what we reported was that we did not have … any proof a systematic effort to move into a nuclear weapon'.[141]

From a legal perspective, Iran's nuclear capabilities had neither matured into an actual armed attack nor constituted an imminent threat. On the contrary, Iran remained engaged in compliance negotiations and had not initiated any attacks against Israel or its allies during the period preceding the strike. Consequently, Israel did not confront an 'instant, overwhelming' threat that left 'no choice of means and no moment for deliberation'.[142]

Public statements by Israeli officials indicated that the perceived danger derived from the potential future acquisition of nuclear weapons by Iran – an eventuality that squarely falls within the realm of preventive self-defence. This rationale – essentially, 'if we do not act now, we may face a threat later' – effectively inverts the legal framework of Article 51, which prohibits the use of force unless an armed attack has already occurred.

Furthermore, even under Israel's own framing, the principles of necessity and proportionality place critical constraints on the use of force. The scale and scope of the strikes appear excessive relative to any immediate threat: multiple sites were bombed, including civilian infrastructure and scientific facilities, far beyond any narrowly defined military target. If the threat was merely eventual, then the harm inflicted is manifestly disproportionate. Despite claims of operational precision, credible reports indicate civilian casualties and significant collateral damage, including to a hospital complex in Tehran. This raises additional concerns under the *jus in bello* principles of proportionality and distinction.[143]

Conclusion

This article examines whether Israel could legally invoke self-defence under international law to justify its June 2025 strikes on Iran's nuclear facilities. A meticulous application of *jus ad bellum* – anchored in Article 51 of the UN Charter, customary international law, and authoritative ICJ jurisprudence – demonstrates that Israel's recourse to so-called 'pre-emptive' self-defence cannot withstand scrutiny. Article 51 plainly confines self-defence to

141. Christiane Amanpour, 'Interview with International Atomic Energy Agency Director General Rafael Grossi' (17 June 2025) CNN. *available at:* https://transcripts.cnn.com/show/ampr/date/2025-06-17/ segment/01

142. Mastrolembo, *Imminence and States' Right to Anticipatory Self-Defence*, 149-51.

143. "Letter dated 16 June 2025 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council" (16 June 2025) S/2025/387. https://docs.un.org/en/S/2025/387

responses following an 'armed attack', and the Caroline criteria, far from authorizing preventive action, remain confined to strictly imminent threats. No actual Iranian attack materialized, nor did any threat satisfy the stringent imminence requirement; diplomatic avenues remained unexplored, and the scale of the strikes was manifestly disproportionate to the speculative nature of the alleged threats. A question may arise as to why, if the text of the UN Charter is clear enough to leave no room for self-defence against merely imminent attacks, Israel nevertheless claimed it had a right to pre-emption. In this regard, it should be noted that over recent decades, a growing body of State practice and academic commentary has sought to reinterpret Article 51 – expanding it beyond the requirement of an actual armed attack to include a right to anticipate imminent threats and even to mount wholly preventive strikes against perceived dangers. These efforts involve three interlocking strategies:

a. Terminological Expansion
A select group of scholars and national military manuals – primarily originating from Western states – have introduced a proliferation of terminology, including 'anticipatory,' 'pre-emptive,' 'preventive,' and even '*in extremis*' self-defence. These concepts are systematically framed as part of a progressive doctrinal evolution in international law. Through the strategic accumulation of subtly differentiated definitions across successive policy documents, academic publications, and military guidelines, proponents of this expansive interpretation seek to incrementally lower the threshold for the lawful use of force. This gradual normalization of earlier intervention points represents a deliberate attempt to reshape conventional understandings of self-defence under international law.

b. Selective Invocation of Caroline and Customary Law
The traditional Caroline criteria (1842) are frequently invoked in contemporary discourse as though they legitimize non-imminent preventive use of force. However, this interpretation represents a fundamental misreading of both the historical context and modern international law. A comprehensive analysis of post-1945 jurisprudence reveals that every significant ICJ ruling – from Nicaragua v. United States (1986) to Oil Platforms (2003) and DRC v. Uganda (2005) – has consistently maintained that the necessity of self-defence under Article 51 of the UN Charter must be strictly tied to 'an actual armed attack.' This judicial consistency underscores how certain States attempted to stretch nineteenth-century diplomatic correspondence into a blanket authorization for preventive warfare directly contradict the UN Charter's object and purpose.

c. Cumulative Doctrinal Justification
The incremental accumulation of scholarly works and national

> military manuals creates a self-referential cycle that projects the false appearance of an emerging customary international law norm authorizing pre-emption or preventive force. This doctrinal 'snowball effect' – whereby each successive publication cites and amplifies its predecessors – generates an artificial sense of legal evolution. However, this constructed narrative remains fundamentally disconnected from the actual requirements of customary international law formation. The current discourse fails on both counts: it reflects neither general State practice beyond a handful of strategically motivated States, nor genuine *opinio juris*. Rather, it represents a selective justification strategy employed primarily by states seeking to legitimize controversial security policies.

This academic and bureaucratic collation exercise, however extensive, cannot compensate for the absence of these essential constitutive elements of customary law. The historical record demonstrates that no UN member-State has successfully invoked Article 51 to justify preventive force against another State in circumstances failing to meet the traditional imminence requirement. Furthermore, the Security Council's practice reveals a consistent pattern: while it has occasionally tolerated claims of self-defence against non-State terrorist actors operating from foreign territories, it has never endorsed the doctrine of preventive self-defence in inter-State relations – the precise context that Article 51 was designed to regulate. This distinction is crucial, as it preserves the Charter's fundamental prohibition on unilateral force while allowing limited flexibility for transnational counterterrorism operations.

Against this legal and historical backdrop, this article systematically examined whether Israel could legitimately invoke the right of self-defence under international law to justify its military strikes against Iranian nuclear facilities. To conduct a rigorous assessment of such claims, the author applied a two-pronged analytical framework: First, whether such actions comply with the strict limitations imposed by the post-1945 *jus ad bellum* regime, particularly Article 51 of the UN Charter and its interpretation in ICJ jurisprudence. Second, whether the factual circumstances surrounding Iran's nuclear program genuinely meet the stringent threshold of an imminent armed attack as defined by the pre-Charter Caroline criteria: an outdated doctrine selectively invoked by some States to legitimize anticipatory strikes.

A rigorous application of the *jus ad bellum* framework, grounded in Article 51 of the UN Charter, customary international law, and authoritative jurisprudence, reveals that Israel's justification for self-defence fails. Under Article 51 of the Charter, a State may resort to self-defence 'if an armed attack occurs', thus requiring that the use of force be a response to an actual

– not merely potential or hypothetical – attack.

Even the Caroline criteria do not substantiate Israel's legal narrative under contemporary international law. The evidence of imminence was speculative, diplomatic remedies had not been exhausted, and the measures taken were manifestly disproportionate to the threat posed by a non-military nuclear program. Consequently, Israel's recourse to so-called 'pre-emptive' self-defence in June 2025 cannot withstand critical scrutiny and must be rejected as a lawful basis under current international law. Even proponents of anticipatory action concede that such measures are permissible only under the narrowest of circumstances – none of which were met in this case. The evidence demonstrates that no actual Iranian armed attack had occurred or was imminent. The asserted threats remained largely speculative. Thus, under prevailing international law, Israel's strikes on Iran cannot be justified as lawful self-defence. Israel's actions violated the UN Charter and fundamental *jus ad bellum* principles.

In the absence of any new treaty provision or authoritative Court ruling expanding the scope of Article 51, the unilateral doctrine of pre-emptive self-defence lacks a valid legal basis. Upholding the integrity of the Charter requires rejecting such justifications and treating this operation as an act of aggression rather than lawful self-defence. Recognizing a unilateral right to broad pre-emptive self-defence would have profound negative consequences for international order. Article 2(4) reflects a peremptory norm aimed at preserving collective security; permitting States to unilaterally determine when to use force would effectively nullify this norm. Acceptance of anticipatory force empowers States 'to act as judge, jury, and executioner' based on subjective threat perceptions, thereby undermining the collective security system. Such erosion of the Charter's core prohibition is precisely what the *jus cogens* status of Article 2(4) seeks to prevent.

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