

The Myth of Preemptive Self-Defense: A Legal Assessment of Israel's Use of Force Against Iran

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Abstract

This article examines the legality of Israel's claim to preemptive self-defense against Iran within the framework of international law. It argues that such conduct lacks a valid legal basis and is contrary to the fundamental principles of the United Nations Charter and the established jurisprudence of international courts, particularly the International Court of Justice (ICJ). According to Article 51 of the UN Charter, the right to self-defense is permissible only in the event of an actual armed attack, and any military action based merely on perceived threats or imminent attacks lacks legal justification. The ICJ, in landmark cases such as *Nicaragua v. United States* (1986), *Legal Consequences of the Construction of a Wall* (2004), and *Democratic Republic of the Congo v. Uganda* (2005), has consistently emphasized a narrow interpretation of self-defense and has rejected the legitimacy of preemptive use of force. Israel's assertion of facing a constant threat from Iran, absent clear evidence of an actual and immediate attack, fails to satisfy the legal threshold for invoking self-defense under international law. Such conduct constitutes an act of aggression and represents a serious violation of international law and a threat to international peace and security. Based on authoritative sources and comparative legal analysis, the article concludes that the form of preemptive self-defense claimed by Israel is not only legally unjustifiable but also in direct conflict with the peremptory norms of international law (*jus cogens*).

Keywords: Preemptive self-defense, Israel, Iran, International Court of Justice, UN Charter, use of force, international law.

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1. Introduction

The States' right to resort to self-defense is a fundamental and widely recognized principle in international law, explicitly enshrined in the Charter of the United Nations. Pursuant to Article 51 of the Charter, states possess an "inherent right" to defend themselves in the event of an armed attack (United Nations, 1945, Art. 51). Conversely, Article 2(4) of the Charter explicitly prohibits the threat or use of force against the territorial integrity or political independence of any state (United Nations, 1945, Art. 2(4)). These two provisions, when read together, form a complex and interpretive framework for the lawful use of force in the international legal order.

Given the limitations imposed by international law, the use of force in the context of self-defense must adhere to the principles of necessity, proportionality, and temporariness. The use of force is deemed lawful only in response to an actual, armed attack, and must cease once the Security Council takes measures to maintain or restore international peace and security (United Nations, 1945, Arts. 39–42).

Nevertheless, some states have sought to invoke the doctrine of preemptive self-defense—or even preventive defense—to justify the use of force based on alleged or hypothetical future threats. One of the most controversial contemporary examples is Israel's invocation of preemptive self-defense against Iran, purportedly in response to potential threats posed by Iran's nuclear program. This article aims to critically examine the legal validity of such a claim.

According to established international practice, the legitimacy of preemptive self-defense remains highly contested. The classical doctrine of customary international law, rooted in the historical *Caroline* incident of 1837, permits the use of force only when the danger is imminent, inevitable, and leaves no choice of peaceful alternatives. Moreover, the response must be immediate, necessary, and proportionate to the threat posed (The Open University, 2017). In the *Caroline* case, British forces entered U.S. territory without consent, set fire to the ship *Caroline*, and sent it over Niagara Falls, resulting in the death of an American civilian. This incident established the customary criteria for lawful self-defense for the first time in a structured manner: necessity, proportionality, and immediacy.

Under this conceptual framework, Israel's claim of preemptive self-defense against Iran lacks a legal basis both in terms of temporal immediacy and the actual occurrence of an attack. It stands in clear contradiction to the UN Charter and the foundational principles of international law. As Elgawari

(2025) notes, international law permits the use of force only in response to a confirmed and actual armed attack, not in anticipation of hypothetical or distant threats. He argues that any preemptive action without Security Council authorization constitutes a violation of the target state's sovereignty and a threat to international order and stability.

From the perspective of the UN Charter, it is solely considered the Security Council that holds the authority to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and to decide upon appropriate measures under Articles 41 and 42 to maintain or restore international peace and security (United Nations, 1945, Arts. 41–42). Any unilateral action by states, particularly against a sovereign state like Iran and without Security Council approval, constitutes a violation of *jus cogens* norms of international law, including the prohibition of the use of force and the principle of non-intervention in the internal affairs of states.

Accordingly, the aim of this article is to demonstrate—through the examination of international instruments, ICJ decisions, and customary international legal doctrine—that Israel's invocation of preemptive self-defense against Iran lacks legal validity under international law, and that such conduct not only violates international obligations but also poses a direct threat to regional and global peace and security.

2. The Concept of Preemptive Self-Defense

Preemptive self-defense is a concept in international law that refers to a state's right to prevent an imminent military attack by an adversary. Sometimes referred to as preventive defense or preventive strike, it allows a state to use military force before an actual attack has occurred, with the goal of neutralizing the perceived threat (Dumitrița, 2021, p. 16).

The philosophical and practical basis of this right lies in the principle of individual and collective self-preservation, whereby, if there is no possibility of averting an attack through peaceful or diplomatic means, preemptive self-defense may be deemed permissible. However, precisely determining the timing and nature of the anticipated attack that justifies such a defense remains a fundamental challenge in defining the concept (Andreias, n.d., p. 2–4).

Preemptive self-defense is presented as an exception to the general prohibition on the use of force in international relations. In contemporary international law, the use of force is only justifiable within the narrow confines of self-defense and under specific, limited conditions. Therefore, preemptive self-defense must meet strict criteria such as immediacy, lack of viable

alternatives, and proportionality of response (Reis, 2021, p. 65).

According to some scholars, preemptive self-defense is an “inherent right” that has existed in customary international law since ancient times. However, the development of new international structures and global institutions has sought to limit this right and, at times, convert it into a political instrument (Khamdan, 2025, p. 35–37).

The UN Charter (1945), in Article 51, explicitly recognizes the right of states to self-defense against armed attacks. However, it does not explicitly endorse preemptive self-defense and instead focuses on actual armed attacks. The Charter provides that self-defense is applicable only in response to an attack that has already occurred or is in progress (Dumitrița, 2021, p. 18).

Nonetheless, since the Charter’s inception, legal debates regarding the interpretation of Article 51 have persisted, with some states and jurists recognizing the right to preemptive self-defense in the form of imminent attack. This notion has been particularly highlighted in two historical cases: Israel’s attack on Iraq’s Osirak nuclear reactor in 1981 and the United States’ military response in Afghanistan following the events of September 11, 2001 (Elgawari, 2025, p. 33).

The principle of imminent threat, derived from the legal theory of John Basset Moore, emphasizes the necessity of defense before an actual attack takes place. However, establishing clear temporal and substantive criteria for such imminence remains exceptionally difficult. Generally, the attack must be so imminent that there is no time for deliberation or consideration of alternative responses (Sandin, 2021, p. 23).

Another important aspect is that the UN Charter requires that any state invoking the right of self-defense must immediately report the measures taken to the Security Council. This underscores the importance of international oversight over the exercise of this right and the prevention of potential misuse (Reis, 2021, p. 75).

While preemptive self-defense may appear defensive and deterrent in nature, in practice—and particularly in the absence of effective international monitoring—it can become a tool to legitimize offensive actions, escalate insecurity, and undermine the legal foundations of the international order. The concept, often conflated with legitimate self-defense in legal literature, when invoked without strict adherence to conditions such as necessity, proportionality, and imminence, is incompatible with both the letter and spirit of the UN Charter. Under Article 2(4), any threat or use of force against the territorial integrity or political independence of any state is prohibited, except

within the framework of self-defense or with the express authorization of the Security Council (Dumitrița, 2021, p. 18).

In recent years, the unrestrained and expansive interpretation of preemptive self-defense has blurred the line between lawful self-defense and illegal military aggression. For example, the United States, invoking preemptive self-defense, launched an attack on Iraq in 2003—despite the absence of any imminent and verifiable threat from Iraq. This action, notably undertaken without Security Council authorization, is a prime example of the unilateral and improper use of the concept, and it set a worrying precedent for other international actors. Countries such as Israel, Turkey, Saudi Arabia, and Russia have similarly relied on this rationale to justify unilateral military actions—many of which were neither condemned nor effectively regulated by international institutions, and in some cases were met with silence by the international community (Khamdan, 2025, pp. 48–52).

The consequences of such practices include a growing erosion of mutual trust among states, the proliferation of arms races, and the undermining of international peace. When one state engages in preemptive military action, targeted states—and even third-party states—often respond by increasing their military capabilities and adopting aggressive defense strategies. This process gradually creates a cycle of threat and counter-deterrence that ultimately fails to prevent conflict and instead raises the risk of preventive wars and wider confrontations (Reis, 2021, p. 81).

Moreover, these developments significantly weaken the role of international institutions, particularly the UN Security Council. The UN Charter stipulates that states may resort to self-defense only until the Security Council takes measures to restore international peace and security. However, in many cases, states invoking preemptive self-defense bypass these mechanisms and proceed with unilateral military operations. This not only undermines the authority and competence of the Security Council but also severely damages states' confidence in the collective security system (Elgawari, 2025, pp. 40–45).

The U.S. invasion of Iraq stands as the most prominent example. Despite the Security Council's refusal to authorize the use of force, the United States and its allies launched a large-scale military operation without obtaining prior approval. This action drew intense criticism from several permanent and non-permanent members of the Council and raised serious concerns about the legitimacy of the collective security structure and the capacity of international law to restrain unilateral actions. Many scholars argue that continued reliance on such practices could lead to the erosion of the international legal order and

the eventual collapse of the prohibition on the use of force, a foundational pillar of the UN system (Reis, 2021, p. 82).

Hence, preemptive self-defense, if not exercised within strict legal boundaries, under the supervision of international bodies, and only in exceptional and well-substantiated cases, risks becoming a tool for undermining the rule of law, increasing regional instability, and weakening the legitimacy of peaceful dispute resolution mechanisms. The international community—including the International Court of Justice and the UN Security Council—must emphasize binding precedents and narrow interpretations of self-defense to prevent the dangerous expansion of this concept and to preserve the delicate balance between legitimate security and lasting peace.

3. Historical Cases and Precedent of Preemptive Self-Defense

3-1. Israel's Attack on Iraq's Nuclear Reactor (1981)

In 1981, the Israeli Air Force conducted an operation named "Opera," during which Iraq's under-construction nuclear reactor in Osirak was bombed. Israel presented this operation as a preemptive self-defense measure against an imminent nuclear threat. The attack sparked widespread international reactions, and the International Court of Justice (ICJ), in consultation with the Security Council, declared that the action violated international law. However, ambiguities remained regarding the legitimacy of preemptive self-defense (Elgawari, 2025, p. 31–35).

3-2. U.S. Attacks on Afghanistan and Iraq after September 11

Following the terrorist attacks of September 11, 2001, the United States launched a military offensive against Afghanistan and, in 2003, invaded Iraq, arguing that these states posed an imminent threat to U.S. national security. These actions were met with severe global backlash and extensive legal debates, as sufficient evidence proving the existence of imminent attacks or weapons of mass destruction was not provided (Khamdan, 2025, p. 48–52).

3-3. The Use of Preemptive Self-Defense in Other Conflicts

Other examples include U.S. drone strikes in various countries and Israeli strikes against Palestinian armed groups, where states have invoked security threats to justify preemptive attacks. These instances have led to new legal challenges regarding the legitimacy and limitations of preemptive self-defense (O'Connell, 2021, p. 7–11).

3-4. Comparative Analysis of Preemptive Self-Defense in Various Legal Systems

Preemptive self-defense, as one of the most controversial concepts in international law, is interpreted and applied differently across various legal systems worldwide. These differences often stem from the philosophical, political, and structural contexts of individual states. In Western legal systems, particularly among states committed to the United Nations Charter, preemptive self-defense is recognized only under the condition of an imminent armed threat, and only if strict adherence to the principles of necessity and proportionality is observed. Article 51 of the UN Charter permits the use of force solely in response to an "armed attack," and many Western states, including EU members and Canada, uphold these limitations (Dumitrița, 2021, pp. 17–19).

The precedent of the ICJ, especially in the landmark case of *Nicaragua v. United States*, reinforces this restriction and explicitly states that lawful self-defense cannot be based on hypothetical threats or indirect actions (Elgawari, 2025, p. 40).

In contrast, the United States has adopted a broader and more interventionist approach to the concept of preemptive self-defense. After the September 11 attacks, the Bush Doctrine explicitly declared that the U.S. reserves the right to take military action even against non-imminent threats. This approach—commonly referred to in legal terminology as a "preemptive strike"—was exemplified in the 2003 invasion of Iraq and provoked widespread criticism from the international community. Many legal scholars have regarded this policy as a threat to the foundations of international law and the principle of the prohibition on the use of force, as it contradicts the core rules of the UN Charter and the rulings of the ICJ (Khamdan, 2025, pp. 50–55; Reis, 2021, pp. 79–82).

Similarly, Israel considers preemptive self-defense an integral part of its defense strategy and justifies it by citing the unique regional security conditions and ongoing threats it faces. The 1981 aerial operation against Iraq's Osirak reactor is among the clearest examples of Israel's invocation of preemptive self-defense. Although the UN Security Council condemned the attack, Israel maintained that it was a necessary measure to prevent an imminent danger. Furthermore, Israel's repeated actions against non-state armed entities in Lebanon and Gaza are frequently framed as preemptive self-defense operations (Shukurlu, 2024, pp. 10–14).

Nonetheless, legal analysis of such actions demonstrates that Israel's

approach does not align with the stringent criteria established under international law for justifying preemptive self-defense. The requirement of an imminent threat, the principle of proportionality, and the absence of peaceful alternatives are fundamental prerequisites for the legitimacy of preemptive self-defense in international law. Even in the face of continuous threats, military action must be a last resort and strictly limited to neutralizing a real and immediate danger. Consequently, Israel's repeated use of preemptive self-defense—particularly in the absence of Security Council approval—is legally problematic and largely unjustified.

3-5. The Relationship Between Preemptive Self-Defense and the Principles of Necessity and Proportionality

One of the most critical pillars of lawful self-defense under international law is the observance of the two fundamental principles of necessity and proportionality. These principles have consistently appeared in ICJ jurisprudence, legal scholarship, and interpretations of the UN Charter as key standards for evaluating the legality of the use of force. However, when it comes to preemptive self-defense, the application of these principles becomes more complex. Unlike responding to an actual armed attack, preemptive self-defense is based on the anticipation of a threat and security intelligence. Under such circumstances, proving necessity and proportionality becomes significantly more difficult (Dumitrița, 2021, p. 19; Reis, 2021, p. 68).

The principle of necessity implies that the use of force is only lawful when no other alternative exists to repel the threat, and when the danger is such that an immediate response is justified. But how can one prove that, in the context of a hypothetical and future threat, political, diplomatic, or even deterrent solutions would not have sufficed? States that have invoked preemptive self-defense often resort to military action without exhausting diplomatic avenues or utilizing international mechanisms, which casts doubt on the legal validity of the "necessity" claim (Elgawari, 2025, p. 40–43).

A prominent example is Israel's 1981 attack on Iraq's nuclear reactor. Israel claimed that the Osirak reactor posed an imminent threat to its existence and that the attack was the only way to prevent Iraq's nuclear program from advancing. However, available evidence indicated that the facility was still in its early stages and that diplomatic measures or more limited actions were possible. By condemning the act, the Security Council explicitly stated that Israel's invocation of the necessity principle lacked legal merit (Shukurlu, 2024, p. 14).

The second principle, proportionality, requires that any military response be limited to what is necessary to neutralize the threat. Any action exceeding this threshold may be considered aggression. In the context of preemptive self-defense, distinguishing between a proportional response and excessive use of force is extremely difficult. For instance, if State A claims that State B is preparing to launch an attack within the next six months, would the destruction of military infrastructure, territorial occupation, and regime change be considered proportional? Most legal experts would answer in the negative (O'Connell, 2021, p. 7).

In the case of the U.S. invasion of Iraq, the principle of proportionality was grossly violated. Not only were Iraq's political and military structures dismantled, but the indirect human, economic, and security consequences of the invasion inflicted damage far exceeding the alleged threat. Even if the claim regarding weapons of mass destruction had been true—which it was not—the scale and nature of the military response were far beyond what could be deemed proportionate in a preemptive self-defense context (Khamdan, 2025, p. 52).

Today more than ever, these two principles require redefinition and institutionalization within legal mechanisms. Proposals such as developing new interpretative protocols under Article 51 of the UN Charter or drafting specific procedural guidelines through the General Assembly or the Human Rights Council have been put forward to define the scope of necessity and proportionality in modern threats. Some have even proposed that any act of preemptive self-defense must be registered and reviewed within 48 hours by the Security Council or an independent international body. Such procedures—even if advisory—could help prevent abuse of these two principles and require states to present clear evidence and justification (Andreias, n.d., p. 19–20).

Another important point is that, in the absence of legal oversight, preemptive self-defense becomes a tool for imposing a top-down international order. Major powers, invoking self-serving interpretations of necessity and proportionality, apply force and then manage the costs of legitimizing it through political and media control. In other words, the fundamental principles of self-defense, originally intended to limit the use of force, are now being transformed into tools for justifying dominance (Reis, 2021, p. 88; Sandin, 2021, p. 8).

Ultimately, analyzing these two principles in the context of preemptive self-defense reveals that security claims made without legal transparency can become instruments of international insecurity. Returning to the authentic

concepts of "necessity" and "proportionality" is not merely a legal imperative but a fundamental requirement for sustainable peace in a world where the lines of conflict are increasingly blurred.

4. Detailed Analysis of Preemptive Self-Defense in Contemporary International Law

4-1. Necessity and Criteria for Preemptive Self-Defense

One of the most significant issues concerning preemptive self-defense is determining the criteria of "necessity" and "proportionality" in exercising this right. Necessity implies that a preemptive attack is only permissible when the threat is imminent and no alternative means exist to avert it (Dumitrița, 2021, p. 19).

Proportionality means that the response must be limited to means capable of neutralizing the threat without exceeding the necessary intensity, in order to avoid turning the response into an act of aggression (Reis, 2021, p. 67).

In legal literature, the "Caroline standard" is recognized as the benchmark for determining imminent attacks. This standard states that an attack is imminent when the threat is so immediate that no moment is left for deliberation or delay in defense (Sandin, 2021, p. 24).

However, in today's world—where threats have become more complex and unconventional—these criteria have been increasingly challenged. For instance, cyberattacks or support for terrorist groups may present threats that do not fit the traditional definition of "imminent attack," yet can be equally dangerous (Khamdan, 2025, p. 55).

4-2. Preemptive Self-Defense and the Fight Against International Terrorism

Since the beginning of the 21st century and with the rise of international terrorism, the concept of preemptive self-defense has taken on a new dimension. States have attempted to justify their military operations against terrorist groups and their supporters under the guise of preemptive self-defense (Elgawari, 2025, p. 38).

However, this approach has led to serious ambiguities in international law, as terrorism is unconventional and informal in nature, making it extremely difficult to accurately identify an "imminent attack." Moreover, states targeted by terrorist attacks often view themselves as victims of aggression and violations of sovereignty, resulting in heightened tensions in international

relations (O'Connell, 2021, p. 12).

Therefore, establishing clear legal frameworks and reaching international consensus to address modern threats has become one of the main necessities of contemporary international law (Andreias, n.d., p. 20).

4-3. Preemptive Self-Defense and International Security: Insecurity Under the Guise of Security

Despite its seemingly defensive nature, preemptive self-defense—especially when applied unilaterally and without international oversight—can become a source of increased regional and international insecurity. One of its most serious consequences is the erosion of the principle prohibiting the use of force in international law. The United Nations Charter, particularly Article 2(4), prohibits the use of force except in cases of lawful self-defense or authorization by the Security Council. However, with the expansive interpretation of preemptive self-defense, this prohibition is being undermined (Dumitrița, 2021, p. 18).

When a state launches or threatens to launch an attack under the pretext of preemptive self-defense, such actions may lead to a reverse deterrence cycle. The targeted state, perceiving the need to prevent similar attacks, increases its offensive capabilities. Consequently, conditions are created for arms races, heightened mistrust, and even preventive wars (Reis, 2021, p. 81).

The United States, through its attack on Iraq in 2003 and the justification of that act as preemptive self-defense, effectively set a precedent for other states. Countries such as Israel, Saudi Arabia, Turkey, and even Russia have adopted similar reasoning in their defense policies—without any effective constraints imposed by international mechanisms (Khamdan, 2025, p. 48-52).

The increasing unilateral resort to preemptive self-defense has effectively weakened the authority of the United Nations Security Council. According to the UN Charter, legitimate self-defense is permitted only in cases of armed attack and only until the Security Council takes necessary measures. However, states acting preemptively often proceed without obtaining Security Council authorization and sometimes in outright disregard of it (Elgawari, 2025, p. 40-45).

In the case of the U.S. invasion of Iraq, the Security Council refused to issue a formal authorization; nonetheless, the United States proceeded with military action unilaterally. This trend has raised serious questions about the effectiveness of collective peace and security mechanisms.

5. The Approach of the International Court of Justice to Preemptive Self-Defense

The International Court of Justice (ICJ) has addressed the legality of the use of force under international law in multiple rulings, consistently emphasizing the framework established under Article 51 of the United Nations Charter. According to this article, the right of self-defense is only acceptable when a state has been subjected to an armed attack (International Court of Justice, 1986).

This conservative approach to preemptive self-defense, repeatedly affirmed by the Court, aims to maintain international peace and security and to prevent the justification of unilateral acts of aggression. In the case of *Nicaragua v. United States of America* (1986), the Court held that only an actual and concrete armed attack—direct or indirect—can give rise to the right of self-defense, and not merely a threat or possibility of such an attack (ICJ, 1986). This decision highlighted the importance of accurately determining the occurrence of an armed attack as a precondition for lawful defensive measures and deemed the United States' military support to the Nicaraguan rebels a violation of international law. This view clearly rejects broad interpretations of preemptive self-defense based on hypothetical or speculative threats.

In the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), the Court reiterated its position that the use of force is limited to actual armed attacks. It held that Israel's actions, justified on the basis of security concerns and threats, could not be deemed lawful unless a real armed attack had occurred (ICJ, 2004). Once again, the Court emphasized that preemptive use of force is highly restricted and that states may not invoke potential or anticipated threats as grounds for the use of force, as doing so could lead to widespread violence and breaches of international law.

In the case of *Democratic Republic of the Congo v. Uganda* (2005), the ICJ explicitly stated that Uganda's military incursion into Congolese territory, absent any armed attack, was unlawful and did not fall within the scope of preemptive self-defense (ICJ, 2005). This ruling underlines the requirement of an actual attack to justify the use of force and confirms that preemptive self-defense is permissible only within a narrowly defined legal framework.

Overall, the jurisprudence of the ICJ reflects a restrictive, conservative approach to the doctrine of preemptive self-defense (Schmitt, 2019). These limitations are intended to prevent potential abuse of the right of self-defense and to deter the initiation of illegitimate wars. In contemporary international

law, preemptive self-defense is only acceptable when a threat is imminent, inevitable, and certain, and where the response is proportionate to the threat (Dinstein, 2017).

Numerous legal studies also confirm that the concept of preemptive self-defense must be interpreted in a way that prohibits states from using vague or unreliable predictions to justify the use of force, as this could destabilize the international legal order (Gray, 2008). Moreover, through its jurisprudence, the ICJ has contributed to maintaining a balance between upholding the legitimate right of states to self-defense and preventing unilateral aggression.

Ultimately, the ICJ views preemptive self-defense as an exception, not a general rule, and permits it only under extremely limited conditions and strict legal criteria. Any action beyond this framework constitutes a violation of the UN Charter and international law (ICJ, 1986; Dinstein, 2017).

The ICJ has emphasized that preemptive self-defense is only lawful when the threat is imminent, unavoidable, and certain. In *Nicaragua v. United States* (1986), the Court held that “the right of self-defense cannot be interpreted as authorization for a preemptive strike against another state” (Elgawari, 2025, p. 43).

The United Nations Security Council has attempted through resolutions and declarations to prevent the abuse of preemptive self-defense. However, in cases where the interests of major powers are involved, the Council has often failed to act impartially (Reis, 2021, p. 83). This indicates a persistent tension between legal norms and political interests, which remains a major challenge in international law.

A key issue is the relationship between preemptive self-defense and the collective security regime. The UN Charter emphasizes cooperation and the prevention of conflicts and requires that the use of force be authorized by the Security Council (Dumitrița, 2021: 20). However, when the Council is unable to act promptly, some states may resort to preemptive self-defense, raising a profound debate about the prioritization of national security over collective security (Sandin, 2021, p. 25).

The *Nicaragua v. United States* case (1986) remains one of the most significant and influential ICJ rulings concerning the right of preemptive self-defense. In this case, Nicaragua accused the United States of supporting armed rebels and rejected the U.S.'s claim of preemptive self-defense. The Court explicitly ruled that preemptive self-defense is only justified if an imminent or actual armed attack exists. The ICJ defined imminence with strict criteria, requiring the threat to be immediate and undeniable—leaving no time for

deliberation or alternative measures. The threat must also be certain and not based on assumptions or ambiguous forecasts. Furthermore, the defensive response must be proportional to the nature and severity of the threat. This ruling provided a clear legal framework for preemptive self-defense and posed a serious barrier to broad and subjective justifications for such attacks (Elgawari, 2025).

The ICJ has addressed preemptive self-defense in various Middle Eastern disputes. A recurring theme in these rulings is the emphasis on the principles of necessity and proportionality. The Court has held that no state may invoke preemptive self-defense as justification for widespread military action or violations of another state's sovereignty. In the context of the Israeli-Palestinian conflict, the ICJ has repeatedly affirmed these principles, asserting that preemptive attacks must be strictly limited and proportionate, and cannot be used as tools to alter political or military balances (Shukurlu, 2024). These rulings affirm the Court's commitment to upholding the fundamental principles of international law and preventing the misuse of preemptive self-defense to justify unlawful or aggressive conduct.

The United Nations Security Council, as the primary body responsible for maintaining international peace and security, plays a key role in supervising and regulating preemptive self-defense measures. Under Article 39 of the UN Charter, the Council has the authority to determine the existence of any threat to peace and to authorize appropriate measures. However, in practice, due to the presence of permanent members with veto power, the Council is often influenced by political considerations and national interests. Consequently, it has frequently failed to respond swiftly or unanimously to preemptive military actions or to determine their legality (Reis, 2021). As a result, some states, particularly major powers, conduct preemptive strikes without Security Council authorization, leading to legal complexities and increased international tensions. This situation highlights the pressing need for structural reform and enhanced effectiveness of the Security Council.

6. Preemptive Self-Defense and the Erosion of Fundamental Principles of International Law: From Sovereignty to the Right of Self-Determination

One of the most significant legal and political consequences of the doctrine of preemptive self-defense is the weakening of the traditional foundations of public international law—particularly the principles of state sovereignty, non-intervention in internal affairs, and the right of peoples to self-determination.

In classical international law, these principles are considered as the pillars of the post-1945 international order, explicitly enshrined in Articles 1, 2, and 55 of the Charter of the United Nations. However, the broad and sometimes hasty application of preemptive self-defense, especially when conducted without authorization from the Security Council, has exposed these principles to erosion and, in many cases, has resulted in their outright violation (Dumitrița, 2021, p. 21; Reis, 2021, p. 85).

For example, the 2003 U.S. military invasion of Iraq, framed as an act of preemptive self-defense, despite lacking evidence of an imminent threat, led to regime change, the collapse of the existing government, and the restructuring of Iraq's political order. This process was effectively viewed as a violation of Iraq's sovereignty and a direct intervention in the people's right to self-determination. In fact, without Security Council authorization or proof of an imminent threat posed by Iraq, a permanent member of the Council invoked preemptive self-defense to dismantle the legal and political order of a sovereign state (Khamdan, 2025, p. 51; Elgawari, 2025, p. 36).

In such instances, even if the initial intent is to counter a real threat, fundamental questions arise regarding the legitimacy of prolonged occupation, regime overthrow, and the imposition of new political structures. Can preemptive self-defense become a justification for broader intervention, long-term occupation, and even political-social engineering in other states? In the absence of clear legal standards and binding judicial precedents, the answer largely depends on political considerations and global power dynamics, rather than objective and predictable rules of international law (O'Connell, 2021, p. 6–9).

Moreover, unilateral invocation of preemptive self-defense directly conflicts with the principle of sovereign equality among states. A state that assumes the right to attack another's territory upon perceiving a threat essentially places itself in the roles of judge, prosecutor, and executor, thereby disregarding the sovereignty of the target state. This approach is incompatible with the post-World War II philosophy of international law, which emphasizes legal equality of states, respect for territorial integrity, and the prohibition of the use of force (Andreias, n.d., p. 13).

In this context, powerful states can exploit the vague and elastic concept of "preemptive self-defense" as a tool for exerting influence and achieving political dominance in strategic regions. Recent decades have provided numerous examples of weaker states, particularly in the Global South, falling victim to such unilateral interpretations of international law.

Another dimension of the issue lies in the imbalance of legal legitimization. When a powerful state launches a preemptive strike, its vast influence over international institutions and media allows it to shape the global narrative. As a result, the global audience is often exposed to a one-sided account in which preemptive self-defense is portrayed not as a threat to global peace, but as a legitimate, rational, and even responsible act. Accordingly, some scholars have referred to the emergence of a dual system of international law—one for the powerful and another for the rest (Reis, 2021, p. 73; Shukurlu, 2024, p. 16).

Ultimately, this trajectory leads to a selective architecture of international order, in which global norms become binding only when aligned with the interests of major powers. Otherwise, these norms can be circumvented or interpreted loosely under the pretext of preemptive self-defense, thereby undermining the legitimacy of the international legal system. While preemptive self-defense may, in exceptional circumstances, be a necessary tool for ensuring national security, without legal limitations, institutional oversight, and precise definitions, it can become one of the most dangerous means for legitimizing unlawful aggression.

7. Legal Analysis of Israel's Use of Force Against Iran and Its Claim of Preemptive Self-Defense

Israel's invocation of preemptive self-defense against Iran lacks legal legitimacy under international law and the jurisprudence of the International Court of Justice (ICJ). Preemptive self-defense refers to the use of force to repel an imminent attack, yet specific legal criteria limit this type of force, and Israel has failed to adhere to these standards in practice.

According to the Charter of the United Nations—specifically Article 51—the right of self-defense is lawful only in response to an actual armed attack (United Nations, 1945). The ICJ, in the *Nicaragua v. United States* case (1986), clearly stated that the mere existence of a threat or the possibility of an armed attack does not constitute a valid basis for the use of force; self-defense is lawful only in response to an actual and armed attack (ICJ, 1986). Therefore, in the case of Israel, even if Iran's security and military threats are understandable, the absence of an actual attack or confirmed imminence renders any preemptive military action unjustifiable.

Additionally, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004), the ICJ emphasized that the use of force must meet the requirements of necessity and proportionality and cannot be justified by general or abstract security threats.

The Court clarified that preemptive self-defense is permissible only in the presence of an immediate, serious, unavoidable, and specific threat, and only after peaceful alternatives have been genuinely exhausted (ICJ, 2004). In this context, Israel has not provided sufficient evidence of an immediate and unavoidable threat from Iran that would justify preemptive military action.

In the case of *Democratic Republic of the Congo v. Uganda* (2005), the ICJ once again emphasized that the use of force is lawful only in response to an actual armed attack and that any preemptive military action without such an attack constitutes aggression (ICJ, 2005). This ruling reflects the Court's sensitivity to any expansive interpretation of preemptive self-defense that could be used to justify unilateral and aggressive military actions.

International law scholars such as Yoram Dinstein and Christine Gray insist that preemptive self-defense must meet strict criteria of imminence and the absence of reasonable alternatives (Dinstein, 2017; Gray, 2008). These standards are essential to prevent preemptive self-defense from being misused as a cover for unauthorized military interventions. In the case of Iran and Israel, no armed attack has occurred, and the alleged threats lack the specific, imminent, and unavoidable characteristics necessary to justify preemptive use of force.

Furthermore, in international law, the principles of state sovereignty and non-intervention are fundamental to the maintenance of the international order. Any Israeli use of force against Iran without UN Security Council authorization or the occurrence of an armed attack constitutes a clear violation of these principles and may be deemed an illegal act of aggression. Such conduct not only violates international law but also risks triggering regional and global instability, undermining the entire legal order.

Israel's actions, under the guise of preemptive self-defense, must therefore be carefully evaluated in light of international legal norms and the jurisprudence of the ICJ. As stipulated by Article 51 of the UN Charter, the right to self-defense is narrowly construed and applies only to situations involving an actual armed attack. This right, as a narrow exception to the general prohibition on the use of force, is governed by strict and clear conditions and cannot be expanded to cover hypothetical threats or potential risks (United Nations, 1945).

The ICJ reaffirmed in the *Nicaragua* case (1986) that the presence of a threat, while possibly relevant for political or diplomatic purposes, does not in itself constitute a legal basis for preemptive self-defense (ICJ, 1986). This jurisprudence underscores the objective of international law to prevent the

expansion of the concept of self-defense in a manner that could legitimize acts of aggression.

Under customary international law, preemptive self-defense must satisfy the requirements of necessity and proportionality. Necessity requires a serious, imminent, and unavoidable threat for which no alternative to the use of force exists (Dinstein, 2017). Proportionality demands that the force used be proportionate to the nature of the threat. Therefore, any preemptive response must be strictly limited to repelling the imminent attack, and excessive or disproportionate use of force is unacceptable.

In the 2004 Wall Advisory Opinion, the ICJ reiterated that preemptive action must be strictly limited to countering an immediate and certain threat and that peaceful alternatives must have been seriously explored prior to the use of force (ICJ, 2004). From this standpoint, Israel's claim of preemptive self-defense against Iran is unsupported in international law due to the absence of compelling evidence of an imminent and unavoidable threat.

In the DRC v. Uganda case (2005), the ICJ again emphasized that the use of force is lawful only in response to an actual armed attack and that preemptive military actions without such an attack constitute aggression (ICJ, 2005). This legal position serves to protect the foundational rules of international law and avoids unilateral justifications for military interventions.

Another key consideration is the principle of state sovereignty and non-intervention, which forms the cornerstone of the international legal order. The use of force against another state without Security Council authorization or the occurrence of an armed attack is a violation of this principle and can potentially lead to regional and international crises. This is well-supported under both the UN Charter and the ICJ's jurisprudence.

Prominent international legal theorists consistently stress the necessity of adhering to strict criteria in the application of preemptive self-defense. Yoram Dinstein, for example, states that preemptive self-defense must not serve as a pretext for preventive warfare or aggressive foreign policy but must be restricted to circumstances involving an imminent and unavoidable attack (Dinstein, 2017). Similarly, Christine Gray underscores that legal interpretations of preemptive self-defense must preserve international stability and prevent unilateral and unrestrained use of force (Gray, 2008).

In conclusion, Israel's invocation of preemptive self-defense against Iran lacks legal grounding under international law and stands in contradiction to the core principles and authoritative jurisprudence of the ICJ. Legally, such action may constitute an unlawful act of aggression that not only violates the

UN Charter but also threatens regional stability. This trend risks exacerbating global tensions and undermining trust in the international legal order. For this reason, strict adherence to the rules governing self-defense is essential.

Preemptive self-defense, as an exception to the prohibition on the use of force, must remain narrowly confined and subject to rigorous legal standards to prevent abuse and the escalation of violence. Israel's actions toward Iran, lacking legal justification under both the ICJ's case law and broader principles of international law, could be deemed violations of the UN Charter and the principle of state sovereignty.

8. Conclusion

Upon analyzing the theoretical foundations, judicial precedents, and binding instruments of international law, it is evident that Israel's claim of a right to anticipatory self-defense against Iran lacks legal legitimacy and cannot be justified under the framework of the United Nations Charter or customary international law. Pursuant to Article 51 of the UN Charter, the essential prerequisite for invoking the right of self-defense is the occurrence of an actual and present armed attack. However, Israel merely relies on potential threats and intelligence assessments that have never amounted to the actual commission of an armed attack.

The International Court of Justice (ICJ), in its landmark judgments—including *Nicaragua v. United States of America* (1986), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (2005)—has consistently adopted a narrow interpretation of Article 51, affirming that anticipatory self-defense based on potential threats or political and security speculations is not legally permissible. This restrictive approach prevents the expansive interpretation of the right of self-defense, which could otherwise erode the prohibition on the use of force and signal a regression to pre-Charter hostile relations. Especially in situations where threat assessments may be based on subjective judgments, incomplete intelligence, or political motivations, recognizing anticipatory self-defense as a customary rule would significantly undermine the legal order of the international community.

Israel's invocation of its unique security situation also fails to justify any deviation from peremptory norms of international law, as no state—regardless of geographical location or regional threats—is permitted to disregard the fundamental principles of the international legal order. Unilateral military

action absent an actual attack and without authorization from the Security Council constitutes a breach of the prohibition on the use of force, and may qualify as an act of aggression within the meaning of Article 3 of General Assembly Resolution 3314 (1974).

Ultimately, Israel's use of anticipatory self-defense against Iran is not only legally unfounded but also undermines the role of the Security Council, exacerbates arms competition, destabilizes the region, and weakens the principle of state sovereignty. If left unchecked, such a practice threatens to hollow out the international legal order from within, granting superficial legitimacy to unilateral violence that is fundamentally incompatible with the purposes and principles enshrined in the United Nations Charter.

Therefore, the anticipatory self-defense claim advanced by Israel against Iran is not only illegitimate under international law, but also constitutes a threat to international peace and security and represents an unlawful use of force. The international community, legal institutions, and particularly the Security Council must resolutely oppose such expansive interpretations of the right of self-defense in order to preserve a rules-based international order.

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