

**ISREAL, IRAN: INTERROGATING LIMITS OF ARTICLE 51 OF THE UN  
CHARTER IN SHADOWS OF NUCLEAR THREATS**

By

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### **Abstract**

*This article examines the legal architecture of the prohibition on the use of force under the UN Charter and evaluates whether Israel's strike on Iran can be justified within, or as an evolution of, Article 51's self-defense framework. While the Charter system traditionally restricts unilateral force to narrow circumstances involving an actual armed attack, the article argues that existential threats, particularly those involving declared intentions of annihilation combined with nuclear capability, may warrant a more flexible interpretation of 'imminence'. By contrasting Israel's situation with controversial precedents such as the 2003 Iraq invasion and Russia's 2022 attack on Ukraine, the article contends that preventive force, though legally fraught, may be justified where a State faces credible, explicit, and long-standing threats to its survival.*

## 1. INTRODUCTION

Modern international law on the use of force emerged from humanity's darkest moments, described by the renowned international relations theorist, Alexander Wendt, as "the 'Hobbesian anarchy' (the 'war of all against all') in which actors operate on the principle of 'kill or be killed', which is explained as a self-help system"<sup>1</sup>. The twentieth century proved that unregulated force could annihilate entire societies, pushing States to adopt the United Nations (UN) Charter's strict prohibition on the use of force and its narrow exceptions<sup>2</sup>. The 1919 League of Nations Covenant and the 1928 Kellogg-Briand Pact failed to prevent World War II. The introduction of Article 2(4) of the UN Charter aimed to close the door on military conquest, while Article 51 preserves only a tightly confined right of self-defense. But in recent decades, States have begun prying that door open again<sup>3</sup>. Claims of "anticipatory" or "preemptive" self-defense, which used to be fringe arguments, are increasingly invoked to justify military action before any armed attack occurs<sup>4</sup>. The pattern has exacerbated this debate: the 2003 invasion of Iraq by the allied forces of the USA, UK, and Australia<sup>5</sup>, Russia's assault on Ukraine launched in 2022<sup>6</sup>, and now the joint US–Israel strike on Iranian territory<sup>7</sup> all rely on the idea that future threats can excuse present force. This shift raises an important question: if States can decide for themselves when a threat is "imminent," does the Charter's collective security system still mean anything? This article looks at the legal basis of self-defense, examines whether anticipatory force is lawful, and examines the military strike on Iran within the wider pattern of preventive uses of force. It proposes the need for a more context-sensitive

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<sup>1</sup> Sonja M. Amadae, 'Hobbesian Anarchy' Chapter (pp. 153–174). In Sonja M. Amadae (ed.) *Prisoners of Reason: Game Theory and Neoliberal Political Economy* (Cambridge: Cambridge University Press, 2016), the summary section.

<sup>2</sup> UN Charter, arts. 2(4) and 51.

<sup>3</sup> Ibid. p. 2: "The military actions by the United State, the UK and Australia against Iraq in 2003 provides an example of actions prohibited by art. 2(4) of the UN Charter".

<sup>4</sup> Onur Senturk, 'The Legal Implications of Preemptive Strikes Under International Law: A Case Study of the Israel-Iran Tensions' *Vision Factory* (16 August 2024), available at [https://www.visionfactory.org/post/the-legal-implications-of-preemptive-strikes-under-international-law-israel-iran-case-study?utm\\_source=chatgpt.com](https://www.visionfactory.org/post/the-legal-implications-of-preemptive-strikes-under-international-law-israel-iran-case-study?utm_source=chatgpt.com), accessed 24 March 2026.

<sup>5</sup> Christian Henderson, *The Use of Force and International Law* (Cambridge University Press, 2018), p.1, para.1.

<sup>6</sup> Robert Person and Michael McFau, 'What Putin Fears Most' (April 2022) 33(2) *Journal of Democracy*, pp. 18-27. Available at <https://www.journalofdemocracy.org/articles/what-putin-fears-most/>, accessed 24 March 2026.

<sup>7</sup> Nicholas Vinocur, 'Israel warns of 'military option' against Iran as Netanyahu embraces Trump' *Politico* (Europe, 26 February 2025), available at <https://www.politico.eu/article/israel-benjamin-netanyahu-donald-trump-gideon-saar-politics-war-foreign-policy/>, accessed on 24 March 2026.

understanding of imminence and preventive self-defense, arguing that the time has come for the Charter's rules to be adaptive.

## 2. THE LEGAL ARCHITECTURE OF THE PROHIBITION ON FORCE

Article 2(4) of the UN Charter, as read with Article 1 of the same, declares that in pursuit of the purpose to develop friendly relations and to maintain international peace and security, among others, the UN and its member States “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the [p]urposes...” Clearly, this provision **prohibits both the threat and use of force**, and it is referred to as “the cornerstone provision of the UN Charter”<sup>8</sup>. The International Court of Justice (ICJ) has repeatedly affirmed the status of this provision as a cornerstone of the Charter system and a rule of customary international law<sup>9</sup>. Apparently, the purpose of this provision of the Charter is to prevent unilateral recourse to war and to channel disputes into peaceful mechanisms<sup>10</sup>. The general rule prohibiting military force allows for certain exemptions<sup>11</sup>. Thus, the breadth of Article 2(4) reflects the Charter's structural design, which projects that unilateral force is the exception, not the rule. It is without surprise therefore that courts have always interpreted restrictively any deviation from this principle.

Article 51 of the Charter permits self-defense, stating that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security” requiring that such defensive measures taken be immediately reported to the UN Security Council”. The language of Article 51 asserts an inherent retaliatory right of any State or a collective of States in an event of an armed attack<sup>12</sup>. The ICJ has consistently interpreted the phrase “if an armed attack occurs” as

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<sup>8</sup> James L. Brierly, *The Law of Nations* (6<sup>th</sup> edn., Oxford University Press, 1963), p. 414; Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (Martinus Nijhoff, 2009).

<sup>9</sup> Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*). Merits, Judgment. I.C.J. Reports 1986; Corfu Channel Case (*UK v Albania*) (Merits) [1949] ICJ Rep 4; North Sea Continental Shelf Cases (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*) (Merits) [1969] ICJ Rep 3; Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, ICJ Reports 1985, p 13.

<sup>10</sup> *Supra* n.2, art. 1(1).

<sup>11</sup> *Supra* n.9, p.92, para.193.

<sup>12</sup> *Ibid*.

establishing a high threshold. In the *Nicaragua Case*,<sup>13</sup> for example, the Court held that only the gravest forms of force, those comparable in scale and effects to conventional military operations, constitute armed attacks and that lesser uses of force, or indirect support to armed groups, do not trigger Article 51. Subsequent cases, including the *Oil Platforms Case*<sup>14</sup> and the *Armed Activities on the Territory of the Congo Case*<sup>15</sup>, reaffirmed this restrictive approach.

The "Caroline" incident, an 1837 raid by British Canadian militia across the Niagara River border to sink an American steamboat being used by Canadian insurgents, is well-known to many international law scholars and practitioners<sup>16</sup>. In that case, an expedition of Canadian militia, under the authority of Great Britain, crossed the Niagara River to the U.S. shore, where the American steamer *Caroline* was docked. Rebels fighting the Canadian government were encamped along the border between Canada and the U.S. The vessel had been used by sympathetic Americans to transport supplies and arms to the Canadian rebel group. The Canadian forces set the *Caroline* ablaze. Mutual diplomatic accusations and retaliations ensued and border tensions ran high for years. United States Secretary of State, Daniel Webster's, resulting correspondence with British representative Lord Ashburton is often cited today as a key authority on customary international self-defense standards.

While the International Court of Justice (ICJ) has consistently refused to endorse a doctrine of preventive or preemptive self-defense, the 1837 *Caroline incident* is frequently invoked to justify anticipatory self-defense. Yet the standard articulated by U.S. Secretary of State Daniel Webster, that necessity must be "instant, overwhelming, leaving no choice of means, and no moment for deliberation", is exceptionally narrow, presupposing an imminent and unavoidable attack. Modern scholarship remains divided on whether anticipatory self-defense forms part of customary international law, with some arguing that preventive force aimed at distant or speculative threats has no basis in law<sup>17</sup>.

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<sup>13</sup> *Supra*, n.9.

<sup>14</sup> (Islamic Republic of Iran v. United States of America), *Oil Platforms* (Islamic Republic of Iran v United States of America) (Judgment) [2003] ICJ Rep 161.

<sup>15</sup> (Democratic Republic of the Congo v. Uganda) (Judgment) [2005] ICJ Rep. 168.

<sup>16</sup> Matthew C. Waxman, 'The Caroline Affair in the Evolving International Law of Self-Defense' (AUGUST 28, 2018) *Lawfare*. Available at [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3511&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3511&context=faculty_scholarship), accessed on 25 March 2026.

<sup>17</sup> Bothe Michael, 'Terrorism and the Legality of Pre-emptive Force' (2003) 14(2) *European Journal of International Law*, pp. 227 – 240; Council of Europe, Parliamentary Assembly, 'The concept of preventive war and its consequences for international relations' (8 June 2007) Doc 11293 ("de PUIG Report") available at <https://pace.coe.int/files/11677/html>, accessed on 27 March 2026.

### 3. ASSESSMENT OF ISRAEL'S STRIKE ON IRAN

There is no publicly available evidence that Iran launched an armed attack against Israel at the time of the strike. This may be, and has been, used to advance the argument that Israel's military action fails the *Caroline test*. For example, the UN experts characterised the US/Israel joint "‘military operation’ against Iran as ‘entirely illegal under international law’ and that it ‘constitutes an act of aggression’."<sup>18</sup> The thesis of this article, which is that there should be room to enlarge or shrink the scope of Article 51 of the UN Charter based on circumstances, disagrees with this finding by experts under the United Nations Human Rights (UNHR) for the following reasons.

The Israeli government has reportedly asserted that the strike was a “preventive” measure intended to address an imminent and inevitable threat posed by Iran's efforts to develop a nuclear weapon<sup>19</sup>. A ‘preventive’ attack is defined as “an armed conflict initiated in the belief that military conflict, while not imminent, is inevitable, and that to delay would involve greater risk”<sup>20</sup>. Supported by this definition, my thesis is that the right to exist should perch above what I think is a mechanical approach of preserving the restrictive approach. A dead nation will not be available to assert its right to exist. If a nation awaits a nuclear attack and perishes without defending itself when it had a chance to do so, can that reflect justice? I submit that it cannot.

I reckon that Iran's enrichment of nuclear and reported development of nuclear weapons should, in itself, not constitute a threat or ground to launch an attack against it in the name of self-defense. Iran's enrichment of nuclear foe whatever economic or military purposes may be argued to fall within its right to a wider principle of self-determination, which is expressly established in Articles 1 and 55 of the UN Charter. This wider principle recognizes that “all peoples have the right to freely determine their political status and pursue their economic, social, and cultural development, including internal rights to self-governance and external rights to sovereign statehood, free from alien subjugation and foreign domination”<sup>21</sup>.

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<sup>18</sup> UN Special Procedures, 'UN experts denounce aggression on Iran & Lebanon, warn of devastating regional escalation' (12 March 2026) available at <https://www.ohchr.org/en/press-releases/2026/03/un-experts-denounce-aggression-iran-and-lebanon-warn-devastating-regional>, accessed on 27 March 2026.

<sup>19</sup> Ori Goldberg, 'The Real Reason Israel Attacked Iran' *Al-Jazeera* (15 June 2025). Available at <https://www.aljazeera.com/opinions/2025/6/15/the-real-reason-israel-attacked-iran>, accessed on 27 March 2026.

<sup>20</sup> Office of the Chairman of the Joint Chiefs of Staff, *DOD Dictionary of Military and Associated Terms* (Washington DC: The Joint Staff, January 2021), as amended in 2022.

<sup>21</sup> Aureliu Cristescu, Special Rapporteur, 'The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments' (1981) UN Doc E/CN.4/Sub.2/404/Rev.1.

That as it may be, in judging whether Israel's preventive attack on Iran's nuclear threat is justified or not, it is very important to consider "the historical animosity expressed by successive Iranian governments, who have consistently denied the existence of the State of Israel and have sought its destruction, referring to it as the 'Zionist regime'"<sup>22</sup>. In an annual speech in support of the Palestinians, renewing threats against Israel, Iran's former supreme leader, the late Ayatollah Ali Khamenei, made a statement on Friday, 22 May 2020, calling Israel a "cancerous tumor" that "will undoubtedly be uprooted and destroyed"<sup>23</sup>. Before this statement, former Iranian president Mahmoud Ahmadinejad is reported to have remarked that the eradication of Israel is a fundamental tenet of Iran's ideology<sup>24</sup>. A day after declaring that Israel "should be wiped off the map," President Ahmadinejad reportedly incited students to scream "death to Israel" at a government-sponsored conference called the "World without Zionism"<sup>25</sup>. This anti-Israel hostility has been consistently professed and preserved over the years by the Iranian regime<sup>26</sup>.

It is my considered argument, therefore, that any argument that Israel's references to Iran's long-term threats backed by nuclear development do not satisfy the Article 51 threshold is optionally blind to the reality of a real threat and the true spirit of the law that allows for self-defense.

#### 4. PREVENTIVE FORCE AND THE SCOPE OF THE CHARTER SYSTEM

While opposing views may argue that Israel's justification echoes an attempt to broaden self-defense beyond the legal limits of Articles 2(4) and 51 of the UN Charter, this article advances the argument that the need to survive serious threats of annihilation frantically justifies pre-emptive self-defense as a nation that is dead in the literal sense cannot act against an actual attack that it would have waited for. The use of the 2003 U.S. invasion of Iraq, which was also premised on alleged weapons of mass destruction and hypothetical future threats,

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<sup>22</sup> Roger Motaze, 'Preventive strikes and International Law', *Atlas Institute for International Affairs* (20 June 2025), available at <https://atlasinstitute.org/preventive-strikes-and-international-law/>, accessed on 27 March 2026.

<sup>23</sup> Amir Vahdat and Jon Gambrell, 'Iran leader says Israel a 'cancerous tumor' to be destroyed' AP Newsroom (22 May 2020), available at <https://apnews.com/article/a033042303545d9ef783a95222d51b83>, accessed on 27 March 2026.

<sup>24</sup> Trita Parsi, 'Under the Veil of Ideology' *Middle East Research and Information Project* (9 June 2006). Available at <https://www.merip.org/2006/06/under-the-veil-of-ideology/>, accessed on 27 March 2026.

<sup>25</sup> Gregory H. Stanton, 'Taking Iran's Threats of Genocide Against Israel Seriously' *Genocide Watch* (22 June 2025), available at <https://www.genocidewatch.com/single-post/taking-iran-s-threats-of-genocide-against-israel-seriously>, accessed on 27 March 2026.

<sup>26</sup> Udi Evtental, 'Why the Islamic Regime in Tehran calls for the Destruction of Israel?' *Institute for Policy and Strategy* (17 February 2019). Available at <https://www.runi.ac.il/en/research-institutes/government/ips/publications/spotlight-13-2-19>, accessed on 27 March 2026.

should be distinguished from the present threat faced by Israel because the U.S. claims were later discredited, while the blatant declaration by the Iranian regime's leaders cannot be objectively dismissed or wished away. Neither can Israel simply ignore these threats without committing fatal negligence, which, unfortunately, the nation could possibly not live to regret. Russia's 2022 invasion of Ukraine, which similarly invoked speculative security concerns, including potential NATO expansion, may similarly be distinguished from Israel's concern. This is particularly so because the mere presence of NATO closer to the Russian territory without a full declaration by NATO of its intention to annihilate Russia may not impose the kind of threat requiring pre-emptive self-defense. Therefore, while the 2003 Iraq fate and the 2022 Ukraine fate precedents illustrate the dangers of allowing States to unilaterally redefine 'imminence' of threat, Israel's interpretation of the imminent threat was not merely abstract.

## **6. CONCLUSION**

The UN Charter framework governing the use of force was crafted to constrain unilateral military action and preserve international peace, but its rigid thresholds do not always account for modern threats involving nuclear capability and explicit declarations of intent to destroy another State. While traditional doctrine rejects preventive or pre-emptive self-defense absent an actual armed attack, Israel's situation, marked by decades of open hostility from Iran's leadership and the prospect of nuclear armament, presents a qualitatively different security dilemma. Unlike the discredited claims underpinning the 2003 Iraq invasion or Russia's speculative justifications in 2022, Israel faces a declared and ideologically entrenched threat to its existence. In such circumstances, a strictly mechanical application of Article 51 risks rendering the right of self-defense meaningless for States confronting existential danger. The article, therefore, concludes that the Charter system must be interpreted with sufficient flexibility to allow preventive action where credible, explicit, and imminent threats of annihilation exist, lest international law fail in its fundamental purpose of safeguarding the survival of States.

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