THE USE OF FORCE IN INTERNATIONAL LAW: ANTICIPATORY/PREEMPTIVE ATTACKS, THE STATE OF ISRAEL IN FOCUS

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CERTIFICATION

I, **BENJAMIN ATAGANA OFOCHI** with Matriculation Number, **LAW2002903**, hereby certify that with the exception of references to the works and opinions of other writers duly acknowledged herein, this entire project is a product of my personal research and findings. It has neither in whole or in part been presented for another degree elsewhere.

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APPROVAL

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DEDICATION

This project work is dedicated to my darling wife and children, Christiana, Benita, Belicia, Benjamin, Jr. To my dear mother, Mercy Omenebele Okpodu, my dear sister Kate Ada, and my eldest brother, Pastor Emeke Stanley Nzedinunor, and his virtuous wife, Pastor (Mrs.) Nguwasen Christabel Nzedinunor.

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16. United Nations Charter 1945.

17. Warsaw Pact 1955.

TABLE OF ABBREVIATIONS

ANZUS	-	Australia, New Zealand and United States.
CSTO	-	Collective Security Treaty Organization.
IAEA	-	International Atomic Energy Agency.
ICC	-	International Criminal Court.
ICJ	-	International Court of Justice.
ILC	-	International Law Commission.
IDF	-	Israeli Defence Forces.
ISIL	-	Islamic State in Iraq and the Levant.
ISIS	-	Islamic State in Iraq and Syria.
JCPOA	-	Joint Comprehensive Plan of Action.
NATO	-	North Atlantic Treaty Organization.
NPT	-	Non-Proliferation Treaty.
PLO	-	Palestine Liberation Organization.
UK	-	United Kingdom.
UN	-	United Nations.
UNSC	-	United Nations Security Council.
UNSCR	-	United Nations Security Council Resolution.

9/11 - September Eleven, Two Thousand and One al-Qaeda Terrorists Attacks in the United States.

ABSTRACT

This study examines the Use of Force in Public International Law, the prohibition of the use of force as provided for in *Article 2(4) of the United Nations Charter* and the exceptions to the use of force as provided for in *Article 51 of the Charter*.
It also examines the non-state actors— Hezbollah's and Houthi's attacks against the State of Israel, the unwillingness of the Governments of Lebanon, Syria and Yemen to address those attacks, and the State of Israel's right to self-defense which includes preemptive strikes and preventive strategies with focus on the State of Israel's legitimate rights to resort to the use of armed force guaranteed by the principle of *jus ad bellum*. The significance of the Caroline Test in Customary International Law, the Bethlehem Principles, and state practice as justifications for the State of Israel's anticipatory/preemptive attacks against Lebanon, Yemen and the Islamic Republic of Iran.
By carefully examining the fundamental principles provided for in the United Nations Charter and customary international law, this study aims to explore the key requirements that must be satisfied before a given state can legally resort to anticipatory/preemptive self-defense.
The concept of anticipatory/preemptive self-defense under Public International Law has always been contentious and controversial, however, in the aftermath of the terrorists' attacks of September 11, 2001, the principle has become even more controversial, as the US President, Bush adopted a new national security strategy. Consequently, the Bush administration contended that the United States "must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries… the greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack."[1]The debate as to whether anticipatory/preemptive self-defense is legally justified is largely dependent on the understanding of the contemporary dynamics of Public International Law, as there has been a clear shift from what was obtainable at the Charter was adopted.
There is absolutely no doubt that the resort to anticipatory/preemptive military action without a corresponding imminent threat is unlawful and unjustified, however, if the extant legal framework as provided for by the United Nations Charter does no longer precisely reflect the current Public International Law, then it would be argued that resort to anticipatory/preemptive self-defense may, in fact be lawful, though politically unwise.[2]The focus of this study is to evaluate through doctrinal legal research, analysis of critical international jurisprudence, state practice, and the analysis of case study the extent to which the State of Israel's anticipatory/preemptive self-defense complies with the well-established rules of Public International Law as it pertains to international peace and security which are fundamental to the objectives of the United Nations Charter. Further, it critically examines the doctrine of anticipatory/preemptive use of force against the backdrops of contemporary threats of the acquisition of nuclear weapons, terrorism, proxy warfare, drone and missile attacks.

[1] Anthony Arend, *International Law and the Preemptive Use of Military Force* [2003], available at https://ciaotest.cc.columbia.edu/olj/twq/spr2003/twq_spr2003a.pdf (accessed on 17/07/2025).
[2] Ibid.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The need to maintain world peace and prevent the outbreak of World War III and its scourge, in the immediate aftermath of the World War II necessitated the coming together of the representatives of world powers in the city of San Francisco, the United States. The gathering culminated in the establishment of the United Nations, UN in 1945, thereby, succeeding the League of Nations whose spectacular failure led to the outbreak of the devastating World War II.[3] Subsequently, the United Nations Charter was adopted. The aforesaid primary objective is succinctly captured in the *Preamble* to the Charter:

We the peoples of the United Nations determined to ***save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind****, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in* ***peace*** *with one another as good* ***neighbors****, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and institution of methods, that* ***armed forces shall not be used****, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples…*

Interestingly, the need to *save succeeding generations from the scourge of war* binds not just the member states of the United Nations but also non-member states.[4]

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[3] The League system did not prohibit war or use of force, but it did set up a procedure designed to restrict it to a tolerable level. In an effort to achieve a total prohibition of war and the use of force, the 1928 General Treaty for the Renunciation of War, the Kellogg-Briand Pact was signed.

[4] Article 2(6).

In the *Military and Paramilitary Activities in and against Nicaragua* Judge Jennings in his dissenting judgment noted that *Article 2(6)* contemplates obligations for non-members arising immediately upon the coming into operation of the Charter.[5] As a way to realize the primary objective of the organization, the Charter provides for the prohibition of the use of *armed forces* by members states (and non-member states), save in the common interest.[6]

The need to maintain world peace giving rise to the prohibition of the use of force was emphasized in 2003 by the then Secretary-General of the United Nations, Kofi Annan during the Iraq conflict, thus:

No principle of the Charter is more important than the principle of the non-use of force… Secretaries-General confront many challenges in the course of their tenures, but the challenge that tests them and defines them inevitably involves the use of force.[7]

According to Brunnée and Toope, a sweeping prohibition on the use of force in *Article 2(4) of the UN Charter*, and complementary rules limit the right of states to resort to war to instances of collective security intervention and self-defense. The rules in the Charter ask leaders to pause and inquire whether war is truly necessary… Given the constitutive function of the Charter, and its undoubted influence in shaping the regime of post-World War II international law, the rules of the Charter are owed deference; there is at least prima facie case that they represent legitimately created obligations in international society. But merely asserting that rules are binding, because they are in the Charter is not sufficient to address the trues state obligation.[8]

This essay is a discussion on the use of force and the exceptions to the prohibition of the use of force in public international law with special focus on the State of Israel's preemptive attacks against Hezbollah in Lebanon (September, 2024) and the Islamic Republic of Iran (June, 2025).

Is preemptive attack justified by the provisions of *Article 51* of the United Nations Charter?

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[5] Amos Enabulele & Bright Bazuaye, *Basic Topics in Public International Law,* (Malthouse Law Books 2019), 455.

[6] Preamble, *United Nations Charter*.

[7] Ralph Zacklin, *The United Nations Secretariat and the Use of Force in a Unipolar World: Power v. Principle,* xii-xiii [2010] available at https://brill.com/display/edcoll/9789004386242/BP000101.xml (accessed 07/07/2025).

[8] Jutta Brunée & Stephen J.Toope, *Legitimacy and Legality in International Law,* (Cambridge Studies in International and Comparative Law 2010), pg. 272-273.

When a state had previously been attacked, and it receives intelligence report that another attack is imminent, should it wait to be attacked a second time, before it defends itself, and its people or is there justification for the state to attack preemptively?

There has been divided opinions as to whether the State of Israel's use of force against Hamas (Palestine), Hezbollah (Lebanon), Houthi (Syria) and the Ayatollah Regime in the Islamic Republic of Iran is within the provisions of the *Article 51*. No doubt the apparent differences in opinions can be traced to the ideological leanings of states.

Before the entry into force of the United Nations Charter, there were opposing views about the use of force by states. One group of states considered that the use of force on behalf of the right of self-defense is *ius naturale*, absolute right, and it should not be limited. Another group of states represented the view that unlimited measures for using force in self-protection should not be undertaken. However, from1945 onwards, there is continuous effort to limit the unilateral use of force by states.[9] States have invoked a number of justifications for the use of force, some of which have gone unchallenged by the international community. This raises a strong presumption in favor of their legitimacy.[10]

However, one thing is clear, the question as to the legality or otherwise of the use of force by the State of Israel against its neighboring states will be hugely determined by the acceptance or rejection of the argument whether or not the State of Israel wholly satisfies the requirements of necessity and proportionality before launching anticipatory self-defense/preemptive attacks against its enemies' territories. This is critical in resolving the legality and legitimacy of the State of Israel's recent attacks in Lebanon, Syria, Yemen and Iran.

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[9] Milorad Petreski, *The International Public Law and the Use of Force by the States, Journal of Liberty and International Affairs*, Vol. 1, No. 2, [2015] available at https://e-jlia.com/index.php/jlia/article/view/25 (accessed 07/07/2025).

[10] The Bush Administration used the possession of weapons of mass destruction as a justification for the invasion of Iraq and assassination of Saddam Hussein.
The Obama Administration and its NATO allies used human rights violations as justification for the invasion and assassination Muammar Gaddafi's regime in Libya in 2011.
Also, the Putin Regime used human rights violations as justification for the annexation of Crimea, Eastern Ukraine in 2014.

Brunée and Toope opine that the argument for the use of force ran that human rights abuses in other states are themselves dangerous to 'our' society, that global terrorism is bred in (failing) states, and that even potential weapon of mass destruction programme, or the mere existence of a 'rogue' regime, required *pre-emption*.[11]

The provisions of *Article 2(4) of the United Nations Charter* is the basis upon which the prohibition of use of force is premised.

However, the two basic conditions for exceptions are provided for in *Article 51*. One of the conditions is the inherent right to self-defense, although there is no consensus on the scope and application of the right to self-defense, especially as it concerns anticipatory/preemptive attacks.

In recent times, the evolution of armed conflict in the Middle East has seen the rise of non-state actors- Hamas, Hezbollah and Houthi proxies, advancement in nuclear programmes, the deployment of intercontinental ballistic missiles and drones.

The aforementioned advancements have given rise to difficulty in the traditional interpretations of acts amounting to armed attacks, and the level of imminent existential threat, necessity and proportionality required to justify the use of force in self-defense.

There is no gainsaying the fact that the State of Israel is encircled by hostile Arab neighbors who have sworn to wipe out the State of Israel from the "map", hence, it has largely relied on anticipatory/preemptive military actions to neutralize any threat whether imminent or not, so as not to be caught unaware, as was seen in the Hamas attack of *October 7, 2023* which recorded more deaths than the previous attacks.

The State of Israel's anticipatory/preemptive attacks include precision strikes in Syria mainly targeted at eliminating Iran's military infrastructure, attacks against Hezbollah in Lebanon. Also, its defense system has severally succeeded in intercepting missiles fired against it, in addition to intercepting drones drone threats coming from Yemen.

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[11] Ibid, 5.

More recently, the State of Israel launched what it dubbed, "*Operation Rising Lion*" with the objective of eliminating the top brass of the Iranian Revolutionary Guard in Tehran who are threat to its security, and striking key sites of the nuclear programmes and the missile factories of the Iranian Regime.[12]

However, while the State of Israel says that its operations are necessary to eliminate threats of imminent attacks, its critics argue that the operations are in contravention to the integrity of the United Nations Charter.

The focus of this work is to examine the legal justifications for the State of Israel's anticipatory/preemptive use of force against its neighbors- Lebanon, Syria, Yemen and Iran. This work places the State of Israel's attacks within the broader and normative legal arguments on self-defense and the responsibility of states for non-state actors. Also, the contemporary Public Law interpretation of the meaning of "imminent".

By referencing historical state practices, jurists' opinions and jurisprudential facts, this work aims to show that the actions of the State of Israel are in consonance with the contemporary interpretation of *Article 51 of the United Nations Charter*, thereby, legally justifying the State of Israel's anticipatory/preemptive attacks as satisfying the conditions of necessity and proportionality to warrant self-defense.

1.2 Aim and Objectives of the Study

The main aim of this study is to evaluate and critically examine the legality and justification for the State of Israel's anticipatory/preemptive military operations against Lebanon, Syria, Yemen and the Islamic Republic of Iran under Public International Law.

The specific objectives of this study are as follows:

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[12] The Economic Times, *Where does the name 'Rising Lion' come from? Why did Israel choose it to attack Iran - and what does it mean* [2025] available at https://m.economictimes.com/news/international/us/where-does-the-name-rising-lion-come-from-why-did-israel-choose-it-to-attack-iran-and-what-does-it-mean-operation-rising-lion-news-israel-attack-iran-news/articleshow/121834801.cms (accessed 10/07/2025)

1. To critically examine the provisions of *Articles 2(4) and 51 of the United Nations Charter* within the framework of the use of force and its exemptions in both Public International Law and customary international law.
2. To critically examine the doctrine of anticipatory/preemptive use of force against the backdrops of contemporary threats of the acquisition of nuclear weapons, terrorism, proxy warfare, drone and missile attacks.
3. To critically evaluate the threats posed to the State of Israel's national security by non-state actors, such as Hamas, Hezbollah and Houthi rebels.
4. To examine the State of Israel's anticipatory/preemptive attacks against Lebanon, Syria, Yemen and the Islamic Republic of Iran in line with the fundamental principles of imminence, necessity and proportionality.

1.3 Research Methodology

This study uses a simple doctrinal methodology to guarantee an elaborate and comprehensive examination and analysis of the legality of the State of Israel's resort to anticipatory/preemptive military actions against its enemy states- Lebanon, Syria, Yemen, and the Islamic Republic of Iran under Public International Law. Its emphasis is on the interpretation and application of the provisions of *Article 51 of the United Nations Charter* and the legal framework on the use of force in customary international law.

1.4 Research Question

This study seeks to answer the following critical questions.

5. Does Public International Law permit anticipatory/preemptive self-defense in the face of evolving threats to national security such as acquiring nuclear weapons, terrorism, proxy warfare, drone and missile attacks, and to what extent?
6. Does the unwillingness of Lebanon, Syria and Yemen to prevent threats coming from their territories targeted against the State of Israel not a legal justification for the latter's resort to anticipatory/preemptive military actions?

1.5 Statement of Research Problem

This study examines the legality and justification of the State of Israel's anticipatory/preemptive use of force under the spotlight of Public International Law, with special focus on its military strikes in Lebanon, Syria, Yemen, and the Operation Rising Lion in Tehran, the Islamic Republic of Iran.

This study explores the evolving interpretation of the provisions of *Article 51 of the United Nations Charter*, and the customary international law vis-á-vis the inherent right of self-defense.

The crux of this study is a considered legal answer to the question: whether anticipatory/preemptive military operations carried out by one state in response to imminent threats to its national security is lawful in view of the present circumstance in which there is an unholy alliance between state and non-state actors to unleash mayhem in another state.

Further, the study examines whether the jurisprudential and state practice requirements of imminent, necessity and proportionality are fully satisfied by the State of Israel before its use of force in self-defense. Considering the peculiar circumstances of the threats of extermination the State of Israel face in the Middle East, especially from Hamas in Palestine, Hezbollah in Lebanon, Houthi rebel in Yemen, Islamic Republic of Iran's forces in Syria, and the Ayatollah Regime in Tehran, Iran, this study analyses how the threats impact the legal threshold for anticipatory/preemptive self-defense.

Against the backdrop of the debate whether the State of Israel's anticipatory/preemptive military operations cross the line of legitimate self-defense or is within the provisions of the Article 2(4) of the United Nations Charter, this work aims to provide answer to the debate citing relevant precedents, international legal instruments, state practice and jurists' commentaries.

1.6 Scope and Limitation of the Study

The main focus of this study is to examine the legal justification of the State of Israel's anticipatory/preemptive military operations against Lebanon, Syria, Yemen, and the Islamic Republic of Iran, in the light of the provisions of Article 51 which provides the legal framework for self-defense in the face of threat to its national security, as it has been argued that, "The safest plan is to prevent evil, where that is possible. A Nation has the right to resist the injury another seeks to

inflict upon it, and to use force and every other just means of resistance against the aggressor. It may even anticipate the other's design, being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor."[13]

It further examines the grounds upon which a threatened State of Israel can legally and justifiably engage in anticipatory/preemptive self-defense, considering the threats of neighboring Arab states to "wipe the Jewish state out of the map", in furtherance of which, they have been attacked countless number of times by the proxies of the Islamic Republic of Iran, in addition to Tehran's nuclear programmes.

It will further examine the State of Israel's recent military actions- Operation Rising Lion, and official statements which include the State of Israel's official communications to the United Nations Security Council, to determine whether those actions meet the legal requirements for anticipatory/preemptive self-defense, to wit imminence, necessity, proportionality and last resort.

As a limitation, this study does not provide a wholistic military or intelligence examination of each specific military operation undertaken by the Israeli Defense Forces, IDF, especially with classified information or unverified sources. This study rather relies on available United Nations reports, official state communications, legal texts and academic literature.

Also, this study is restricted to a legal analysis. It does not aim at assessing the Middle East conflict on the grounds of morality, politics, or humanitarian ground.

The crux will be on the legality of the State of Israel's military operations under Public International Law, however for context, it may cite ethical and political grounds.

This study is not an attempt to postulate new legal principles, it is rather an interpretation of extant legal doctrines in view of contemporary challenges which non-state actors acting as proxies in warfare pose.

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[13] Louis R. Beres, *Israel, Preemption and Anticipatory Self-Defense*, available at https://www.jurist.org/commentary/2021/10/louis-rene-beres-israel-preemption-self-defense/ (accessed 11/07/2025).

Lastly, the scope of this research work does not cover a wide analysis of other aspects of self-defense including preventive or retaliatory attacks which does not meet the requirement of imminence.

1.7 Significance of the Study

There is no doubt that one of the most challenging principles of Public International Law and the United Nations Charter is the non-use of force.[14]

This research work contributes to the current legal, policy and scholarly debate on the complex interpretation and scope of *Article 51 of the United Nations Charter* on anticipatory/preemptive self-defense, with focus on the State of Israel's military operations against Lebanon, Syria, Yemen and the Islamic Republic of Iran, it provides a contemporary case study that clearly demonstrates the way and manner states interpret the basic requirements of imminence, necessity and proportionality in actual circumstances where their national security is threatened.

This study further helps to explain the legal requirements needed to justify the resort to anticipatory/preemptive self-defense, especially where there is an apparent unholy alliance between enemy states and non-state actors.

By drawing instances from judicial precedents in both the Caroline case and the Nicaragua case, state practice and opinio juris, this study gives a very critical opinion on the emerging nature of Public International Law which is helping to shape the interpretation of the right to self-defense in the evolving national security threats posed by terrorism, proxy warfare and nuclear programmes which may lead to the acquisition of weapons of mass destruction.

Lastly, this study is remarkably significant to international bodies, policymakers and legal scholars, as it provides a legal framework for the analysis, examination and assessment of the legality of anticipatory/preemptive military operations, ultimately influencing the evolution of customary international law in this regard.

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[14] ibid, 6.

CHAPTER TWO

PROHIBITION OF THE USE OF FORCE IN INTERNATIONAL LAW

2.1 The United Nations Charter, Article 2(4)

The most important principle of post-World War II in Public International Law is the prohibition on the use of force which is codified in *Article 2(4) of the United Nations Charter*. The aforesaid importance was emphasized by the then United Nations Secretary-General, Kofi Annan in the wake of the 2003 *Iraq conflict* where he was quoted according to Zacklin, thus:

> "*No principle of the Charter is more important than the principle of the non-use of force as embodied in Article 2, paragraph 4 …. Secretaries-General confront many challenges in the course of their tenures but the challenge that tests them and defines them inevitably involves the use of Force*."[15]

Judge Elaraby in his dissenting opinion in the *Oil Platforms case* argued that:

The principle of the prohibition of the use of force in international relations as enshrined in Article 2, paragraph 4, of the Charter is, no doubt, the most important principle in contemporary international law to govern inter-State conduct; it is indeed the cornerstone of the Charter. It reflects a rule of jus cogens from which no derogation is permitted. This fundamental principle draws a distinction between post-Charter era of law-abiding, civilized community of nations and the pre-Charter era when the strong and powerful States were not restrained from attacking the weak at will and with impunity.[16]

Article 2(4) provides inter alia:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations

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[15] Ibid, 7.

[16] Islamic State of Iran v. United States of America [2003], Merit, ICJ Rep, 161 pg. 20, available at https://api.icj-cij.org/sites/default/files/case-related/90/090-20031106-JUD-01-08-EN.pdf (accessed on 30/07/2025).

Historically, the end of the devastating World War I necessitated the reawakening of the concerns of the international community in a state's resort to the use of armed force as a national policy. Hence, Article 11 of the League of Nations Covenant declared inter alia:

Any war or threat of war, whether immediately affecting any of the Members of the league or not, is hereby declared a matter of concern to the whole League…

Article 10 of the Covenant also provides, thus:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League…

Remarkably, the extant provision of the Article 2(4) of the Charter is a clear reflection of the combined spirit of Articles 10 and 11 of the Covenant. However, Article 2(4) substitutes "war" for "force". Hence, Gordon argues that, "*The policies underlying the Covenant initiated the process and framed the words through which Article 2(4) came to be fashioned.*"[17]

A critical analysis of the provisions will clearly show that the provisions of Article 2(4) does not use the word "*armed*" or a synonym from which it can be inferred. The aforementioned has given rise to two views- the traditional view and the third world view, sometimes referred to as the global North and the global South views, especially as it concerns the use of economic and political force.

The proponents of the traditional cum global North view interpret Article 2(4) as referring only to the use of military force, therefore, it is interpreted using the instrument-based approach— the employment of military weapons was necessary to qualify as a use of force. It is argued that the proponents of traditional view are pro-West, as their views are interpreted as a reflection of the reluctance of the developed Western countries which possess great economic and political power to apply Article 2(4) against this category of force. They are of the view that the language of Article 2(4) speaks only of "force" with no further reference to either economic or political force.

A review of some of the traditionalists' works gives support to this argument. Bowett argues that taking the words in their plain, common-sense meaning, it is clear that, since prohibition is of the

[17] Edward Gordon, *Article 2(4) in Historical Context*, [1985], Yale Journal of International Law, vol. 10 pg. 273, available at https://openyls.law.yale.edu/server/api/core/bitstreams/348c896c-58f6-48bd-9a99-a5f8bb2f44aa/content (accessed 09/08/2025).

"use or threat of force," they will not apply to economic or political pressure but only to physical armed force.[18] Eagleton says that, state is free to set up almost any sort of barrier to trade and intercourse, against one or all states. She may prohibit trade entirely, or in certain articles, or with certain states; she may establish high tariffs against some or all states, so far as customary international law is concerned…[19] Stone opines that any kind of forcible or coercive measures whereby one State seeks to exercise a deterrent effect or to obtain redress or satisfaction, directly or indirectly, for the consequences of the illegal acts of another State, which has refused to make amends for such conduct (are lawful).[20]

More so, some traditionalists have argued that the provisions only prohibit military force, excluding non-military forms of force, to wit, economic sanctions, cyberattacks, etc. Again, others opine that a state may be able to use force outside of its territory in circumstances that do not affect the territorial integrity, or political independence of another state. Circumstances as aforementioned might include deployment of force for humanitarian purposes or to protect the citizens of the intervening state who are living abroad. For instance, a US Embassy in Niger report released by Secretary Pompeo in October 31, 2020 is quoted, thus:

"The United States is committed to the safe return of all U.S. citizens taken captive. We delivered on that commitment late last night in Nigeria, where some of our bravest and most skilled warriors rescued a U.S. citizen after a group of armed men took him hostage across the border in Niger."[21]

Remarkably, the aforementioned US military operation stricto sensu does not violate Nigeria's territorial integrity nor its political independence, therefore, cannot be seen to violate Article 2(4). However, the United Nations Charter does not acknowledge these circumstances as exceptions to

[18] Derek W. Bowett, *Self-Defense in International Law*, (Frederick A. Praeger 1958), 148.
[19] Clyde Eagleton, *International Government*, (3rd edn. The Ronald Press Co. 1957), 87.
[20] Julius Stone, *Legal Controls of International Conflict*, (2nd rev. edn. Reinhardt & Co. Inc. Publisher 1959), 289.
[21] U.S. Department of State, *U.S. Rescue American Held Hostage in Nigeria*, available at https://ne.usembassy.gov/u-s-rescues-american-held-hostage-in-nigeria/ (accessed on 28/07/2025).

the prohibition on the use of force. A huge population of the international community feel that states cite these justifications to hide improper motives.[22]

Interestingly, since the advent of cyber-attacks, traditionalists who had hitherto held a narrow interpretation of "force" have struggled to define the threshold at which an act can be interpreted as use of force.[23] They have proposed abandoning the traditional "instrument-based approach" in favor of an "effect-based approach" to the interpretation and understanding of Article 2(4).[24]

The third world view has a wider interpretation of Article 2(4) to include economic and political force.[25]

Beginning from the early 1950s, third world nations— communist bloc, Africa, and Asian nations supported an expansive definition of force, arguing that "political independence could just as easily be threatened by economic and political pressure as by armed force. In the early debates of the United Nations regarding the interpretation of "aggression", third world nations argued that economic sanctions aimed at coercing another nation should be considered as unlawful use of force in the same vein as armed attack.

Specifically, in the 1952 special committee meeting to determine the "Question of Defining Aggression", the delegate representing Bolivia argued that it should be "considered as an act of aggression" when one state takes "unilateral action to deprive another State of the economic resources derived from the fair practice of international trade, or to endanger its basic economy.[26] The Dahomey delegate aligning with the argument of his Bolivian counterpart stated that *by adopting coercive economic measures and by using economic pressures, the industrialized countries [global North] could imperil the economic and hence the political independence of*

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[22] Justia, *Use of Force Under International Law*, available at https://www.justia.com/international-law/use-of-force-under-international-law/, (accessed on 28/07/2025).

[23] Marco Roscini, *World Wide — Jus ad Bellum and the Use of Cyber Force*, (Max Planck Yearbook of United Nations Law 2010) vol. 14, available at https://www.mpil.de/files/pdf3/03_roscini_14.pdf (accessed on 26/08/2025).

[24] Advocates of the "effects-based approach" have suggested that under its framework, acts that are presumptively unlawful are more likely than acts widely understood as legal to qualify as uses of force.

[25] These third world nations generally possess little economic and political strength and see themselves as victims of Western economic and political dominance.

[26] States within the Soviet Bloc and nonaligned movement suggested similar definition.

developing countries [global South]. This form of aggression is contrary to certain principles of the United Nations.

In 1964, Czechoslovakia and Yugoslavia submitted proposals to include economic coercion as a prohibited use of force. In the definition proposed by Ghana, India and Yugoslavia later that year, prohibited uses of force included not only "armed force", but "other forms of pressure. In a joint proposal in 1968, Algeria, Cameroon, China, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic, and Yugoslavia proposed to the committee that "the meaning of the term 'force' shall include… all forms of pressure, including those of an economic and political character which have the effect of threatening the territorial integrity or political independence of any State. Similarly, a prominent member of states of the nonaligned movement opined that "economic and political forms of pressure were sometimes even more dangerous than armed force, particularly for third world nations.[27]

Further, the provisions of Article 2(4) raise some critical issues for States on the use of force, or aiding or assisting others to resort to use of force. The first is the distinction between the rules of Public International Law on the use of force and the conventions or rules of constitutional law regarding when a government may deploy the State's armed forces or otherwise become involved in a conflict. This first issue was a subject of intense debate on whether or not the President Obama's Administration should intervene in a Syrian civil war,[28] thus in September 2013, as reported by the US press, there was an oral opinion given by the US Justice Department to President Obama that he would be acting lawfully if he attacked Syria even without the support of the Congress, however, it focused on the US law rather than Public International Law.

The second issue is the one raised by the provisions of *Article 16 of the 2001 Articles on State Responsibility*. It provides inter alia,

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[27] Egyptian President Gamal Adel Nasser, a leader in the nonaligned movement, argued that it was "essential to include economic and political pressure as an illegal use of force, because in view of the present political and economic interdependence of States, powerful States could strangle weaker States with pressure of that kind to the point of threatening their political independence and territorial integrity.

[28] Reuters, *How Obama Crossed His Own Line on Syria After Months of Debate*, available at https://www.reuters.com/article/world/how-obama-crossed-his-own-line-on-syria-after-months-of-debate-idUSBRE95E02H/ (accessed on 28/07/2025).

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

The ILC Commentary to this Article as cited by Wood gives the following instance: "The obligation not to use force may also be breached by an assisting State through permitting the use of its territory by another State to carry out an armed attack against a third State".[29] Considering the fact that the Islamic Republic of Iran's regime in Tehran allegedly uses Hezbollah and Houthi rebels who are non-state actors as proxies to attack the State of Israel from the territories of Lebanon, Syria and Yemen, the issue is: are these States which either aid, assist or allow their territories to be used, to wit Iran, Lebanon, Syria and Yemen responsible for the attacks launched by those proxies and non-state actors? The answer to the above poser varies depending on whether the view is restrictive, intermediate or expansive.[30]

The third issue is how strong the aggression has to be before a State resorts to the use of armed force. This is ultimately a policy question rather than law. However, government advisers can and should advise on the risks of acting on the basis of 'reasonable', or 'arguable' or 'reasonably arguable' case. In the British Attorney General's advice to Prime Minister Tony Blair on *Iraq: Resolution 1441*, he advised thus:

"*In these circumstances, I remain of the opinion that the safest legal course would be to secure the adoption of a further resolution to authorize the use of force. I have already advised that I do not believe that such a resolution need be explicit in its terms. The key point is that it should establish that the Council has conduced that Iraq has failed to take the final opportunity offered by resolution 1441, as in the draft which has already been tabled. Nevertheless, having regard to the information on the negotiating history which I have been given and to the arguments of the US Administration*

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[29] Michael Wood, *International Law and the Use of Force: What Happens in Practice*, available at https://legal.un.org/avl/pdf/ls/Wood_article.pdf (accessed on 29/07/2025).

[30] Adil H. Haque, *Self-Defense Against Non-State Actors: All Over the Map*, (Just Security 2021), available at https://www.justsecurity.org/75487/self-defense-against-non-state-actors-all-over-the-map/ (accessed on 29/07/2025).

which I heard in Washington, I accept that a reasonable case can be made that resolution 1441 is capable in principle of reviving the authorization in 678 without a further resolution… In reaching my conclusions, I have taken account of the fact that on a number of previous occasions, including in relation to Operation Desert Fox in December 1998 and Kosovo in 1999, UK forces have participated in military action on the basis of advice from my predecessors that the legality of the action under international law was no more than reasonably arguable. But a "reasonable case" does not mean that if the matter ever came before a court, I would be confident that the court would agree with this view."[31]

As earlier stated, the question as to how strong a legal basis is required before a State resorts to armed force are ultimately a question of policy rather than of law. For instance, the risk of domestic or international prosecution, not excluding criminal prosecution. It is worth referencing the Kampala definition of 'crime of aggression', thus:

For the purpose of this Statute, "*crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.*[32]

Wood argues that "In any event, it is important to bear in mind that the definition of crime of aggression for the purpose of the Rome Statute of the International Criminal Court, ICC is not aimed at having any effect on the jus ad bellum."[33]

The fourth issue is the proof of relevant facts. In proceedings after a State had resorted to the use of armed force in self-defense, it is required that the State tender factual evidence available to it which met the international law requirements of imminence, necessity and proportionality to justify the use of armed force, as the burden of justification for use of armed force always rests with the State using it. It is argued that:

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[31] Global Policy Forum, *British Attorney General's Advice to Blair*, [2003], available at https://archive.globalpolicy.org/security/issues/iraq/document/2003/0307advice.htm, (accessed on 29/07/2025).

[32] Amendment to the Rome Statute of International Criminal Court, Kampala [2010], available at https://asp.icc-cpi.int/sites/asp/files/asp_docs/RC2010/AMENDMENTS/CN.651.2010-ENG-CoA.pdf, (accessed on 29/07/2025).

[33] Ibid, 19.

"Given the inherent nature of the right to self-defense, it is axiomatic that only the State itself can assess the threat it faces and how to respond. This is, however, emphatically not to say that the State's own assessment is, as it were, final and binding; nor is it to say that, just because it is self-defense, it somehow escapes the possibility of objective judgement after the event, just like any other claim to exercise a right under international law."[34]

Where full disclosure of intelligence and sources of imminent threat is required, this may raise a difficult issue for the attacking State to prove relevant facts.

Lastly, is the issue raised on the legitimacy of resort to use of force. Legitimacy and legality is sometimes deliberately blurred. However, the question whether resort to armed attack in self-defense is lawful or not is distinct from the question as to its legitimacy. The concept of legitimacy needs to be distinguished from legality, which in this context means adherence or conformity with the rules of international law.

The decision of the International Court of Justice, ICJ in the *Military and Paramilitary Activities in and Against Nicaragua,*[35] classified and distinguished use of force into 'most grave forms of the use of force' and 'less grave forms' of the use of force. The most grave forms involve armed attacks which falls within the Article 2(4) of the Charter. Conversely, the less grave forms do not involve armed attacks and are not within the framework of Article 2(4).[36]

Further, the ICJ in the *Oil Platforms case*,[37] the court held that even taken cumulatively, the incidents of use of force attributed to Iran did not constitute armed attack on the United States in that it did not qualify as a 'most grave' form of the use of force.[38] In the light of the aforementioned, the use of economic coercion or resort to other non-violent measures, although those may be unlawful under specific treaty provisions or customary law but are not prohibited by Article 2(4) of the Charter.

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[34] Franklin Berman, *The UN Charter and the Use of Force*, (Singapore Year Book of International Law and Contributors 2006), vol. 10, pg. 14, available at https://www.commonlii.org/sg/journals/SGYrBkIntLaw/2006/3.pdf (accessed on 30/07/2025).

[35] Nicaragua v. the United States, [1984] ICJ, 39.

[36] Ibid, 5, pg. 460.

[37] Ibid, 16.

[38] Ibid, 5: pg. 461.

Interestingly, before the founding of the United Nations and the codification and coming into force of the United Nations Charter, there has been several attempts by world powers to collectively regulate the use of force vis-a-vis resort to war as a mechanism for international dispute resolution, however, none of the attempts was sufficient to prevent the use of armed forces.

2.2 PRE-UNITED NATIONS CHARTER

(a) Just War (b*ellum justum*)

War is the most drastic means of resolving conflicts between two or more nations; therefore, certain rules and codes of conduct are put in place to ensure that war is fought fairly and not entered into lightly. Collectively, all of the philosophical doctrines about how war is fought are known as the *just war theory*.[39]

The doctrine of *just war theory* emerged as a way to morally regulate warfare. Historically, the theory can be traced to the earliest human civilizations— the ancient Egypt, Anatolia, Mesopotamia, and the Levant, philosophy and religious practices. There is no doubt the existence of war *ab initio*, as war is seen as an inevitable aspect of human nature or political necessity, however, there is the unending question of its legitimacy, morality, and adverse impact on the human society, hence, the earliest civilizations sought to justify and regulate warfare within moral and ethical constraints. It provides a framework to evaluate whether a war can be morally justified.

The *just war theory* is founded in both philosophical and theological thoughts which has shaped the discussions on the ethics of war for centuries and continues to echo in contemporary debates on military intervention, self-defense and international relations.[40]

The ancient Egyptians saw war as a defense of *Ma'at* (order, justice, righteousness) against the destructive powers of *Isfet* (chaos, injustice, evil).[41] To them, war is necessary for either self-defense or in defense of its allies.

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[39] Michael Smathers, *What is the Just War Theory*, (Historical Index 2024), available at https://www.historicalindex.org/what-is-the-just-war-theory.htm (accessed on 18/07/2025).

[40] Tsvety, *The Just War Theory: Origin, Principles, and Modern Reflections,* (Tsvety 2024), available at https://thelawtoknow.com/2024/11/01/just-war-theory/ (accessed on 18/07/2025).

[41] Rory Cox, *On the (Very) Ancient Origins of Just War and Its Lessons for Today,* (E-International Relations 2023), available at https://www.e-ir.info/2023/11/02/on-the-very-ancient-origins-of-just-war-and-its-lessons-for-today/ (accessed on 18/07/2025).

The ancient Hittites— an Anatolian civilization evolved a sophisticated range of considerations concerning whether or not a war was just. The Hittites were sensitive to the notion that just wars had to satisfy the requirement of just causes such as self-defense, defense of allies, restitution of property, or vengeance for divine and mundane injuries (especially treaty violations).[42]

The theory gained prominence in the Ancient Greece and Rome, as it was Aristotle who argued that war should be the last resort when all other efforts to resolve conflict and restore peace have been futile, he emphasized self-defense rather than conquest. His idea of political ethics focused on the pursuit of the "good life" within the state, he therefore recognized the legitimacy of war as a means to protect civic virtue or defend against attack.[43]

Similarly, Cicero argued that war is only necessary for just causes such as self-defense or to seek redress for wrong done.

The Stoic philosopher, Panaetius though interpreted war to be evil and inhuman, but argued that *just war* was justified when it became practically impossible to restore peace and justice by peaceful means. To him, resort to just war could be justified when its main objective is for retribution or defense. However, he argued that the conquered must be treated in a dignified and civilized way, most importantly those who willingly surrendered, irrespective of how prolonged the war had been.

The Romans evolved the basic element of a just cause to include the necessity to repel an enemy attack, or revenge for pillaging or an unjust violation of treaty. A *just war* must be ritually declared by fetial priests.

The ancient Hindu epic, Mahabharata contains discussions on the ethical warfare, with emphasis on D*harma* which is righteousness or moral duty and the idea that war should be fought within the strict confines of the rules of engagement. The epic portrays warfare as a profound moral and existential dilemma which provides that the prosecution of war, the moral justification, and the

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[42] Ibid, 32.

[43] Wikipedia, *Just War Theory*, (Wikipedia 2025) available at https://en.wikipedia.org/wiki/Just_war_theory (accessed 18/07/2025).

treatment of enemies should all be regulated by the most stringent ethical codes of conduct founded in Sanatana Dharma.[44]

In Christianity, St. Augustine was the first to engage in the discussion justifying *just war* under certain moral conditions. He argued that war is justified if its objective is to bring peace and order, but must be conducted with the right intention not motivated by personal gain, retaliation or unnecessary cruelty, and must be declared by the sovereign who is the legitimate authority.

St. Thomas Aquinas in his work, Summa Theological elaborated the ideas exposed by St. Augustine by incorporating into the Christian theology the Aristotelian ethics. Aquinas suggested three basic requirements for a *just war*— the war must be declared by the sovereign who is the legitimate authority, having a just cause, therefore, it must be in response to genuine reason, such as self-defense, defense of an ally or punishing an aggressor, and it must be for the right intention of achieving peace and justice, rather than power or greed.

The Spanish jurist and theologian, Francisco de Vitoria considered as one of the founders of Public International Law, argued that war should only be fought under strict moral and legal guidelines.

Lastly, Hugo Grotius, a Dutch legal scholar in his book, *On the Law of War and Peace* (1625) secularized *just war theory* by separating it from purely religious justifications and grounding it in natural and human reason. He argued that war should be regulated by rules applicable to all nations, irrespective of religion.[45]

After the 1648 Peace of Westphalia, the doctrine of *just war* disappeared from international law. States were sovereign and equal and therefore one state had no authority to judge whether or not the cause of another state was just. By the end of the eighteenth century and throughout the nineteenth century, war was recognized as an instrument of national policy and customary law placed no limitations on the rights of states to resort to war.[46]

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[44] Sanatana Dharma means eternal law. It is the universal code of conduct for all intelligent living being with conscience. Therefore, these laws apply not only to human beings but also to the gods, asuras, and other intelligent species. The term is often used interchangeably with Hinduism.

[45] Jacob Billings, *The History of Just War Theory: Origins, Thinkers, and Its Necessity,* (Jacob Billings 2025), available at https://jacobbillings.com/the-history-of-just-war-theory-origins-thinkers-and-its-necessity/ (accessed on 18/07/2025).

[46] Alina Kaczorowska, *Public International Law,* (4th edn. Routledge 2010), 689.

The lack of accountability for wartime actions, and an apparently weak dispute resolution system largely contributed to the outbreak of the World War I following the assassination of Archduke Franz Ferdinand in the Serbian capital of Sarajevo.

2.3 The League of Nations Covenants

The outbreak of the World War I signaled the end of the balance of power system and raised anew the question of unjust war. It also culminated in efforts to rebuild international affairs upon the basis of general international institution which would oversee the conduct of the world community to guarantee that aggression could not occur again. Towards the end of the World War I, the US President Woodrow in his Fourteen Point Plan, presented on 8 January 1918 to the US Congress, set his vision for the post-War world. He advocated the establishment of a collective security system which would ensure lasting peace and would make World War I the 'war to end all wars', the last war in the history of mankind.[47]

After the World War I, the international community founded the League of Nations, the first international organization with permanent institutions for the purpose of safeguarding world peace and institutionalizing international co-operation.

The League of Nations reflected a completely different attitude to the problems of force in the international order. However, the Hague Convention II of 1907 provided that with a view to obviating as far as possible recourse to force in the relation between States, the contracting powers agree to use their best efforts to ensure the pacific settlement of international differences.[48] In addition, it prohibited the use of force to recover contract debts, unless the debtor state refused to go to arbitration or refused to carry out arbitral awards. More so, prior to the outbreak of the World War I, the Geneva Convention 1864 provided for the treatment of injured soldiers and medical personnel, also there were some diplomatic norms founded on state sovereignty and non-

[47] Ibid 37, 697.

[48] Article 1, 1907 Convention for the Pacific Settlement of International Disputes.

intervention. The major drawback was the absence of an international body saddled with the responsibility and authority to resolve disputes or punish violations.

However, due to some violations of the ethics of war such as Germany's submarine attacks against neutral and civilian vessels, especially the 1915 sinking of the Lusitania violated the neutrality rights and principles of proportionality. In addition, the violation of the 1899 Hague Declaration on the use of chemical weapon; and the massacre of unharmed civilians, forced deportation, and the destruction of cultural property, especially in Armenia and Belgium which were occupied territories. The aforementioned violations pinpointed the apparent inadequacies of the then existing legal framework and underpinned the need for a more effective and stronger legal institutions.

Remarkably, post-World War I saw the emergence of significant legal framework and institutions. First was the *Treaty of Peace of Versailles 1919*. Article 231 of the Treaty imposed legal responsibility of the war on Germany for "causing" the war, thus:

The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.

The Treaty of Peace of Versailles further mandated reparations.[49] It also provided for territorial changes and the trial of war criminals.

In 1920, the League of Nations was established. The Covenant of the Leagues of Nations introduced two critical innovations as far as resort to war. Thus, Article 10 of the Covenant abolished wars of aggression, whilst Article 12(1) provided that:

The members of the League agree that, if there should arise between them any dispute likely to lead to rupture, they will submit the matter either for arbitration or judicial settlement or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council.

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[49] The Reparation Commission was established pursuant to Article 233 of the Treaty.

The three months of delay was intended to provide a cooling-off period for passions to subside and supported the view that such a delay might well have broken the seemingly irreversible chain of tragedy and catastrophe that the world witnessed following the assassination of Archduke Franz Ferdinand in Sarajevo culminating in the outbreak of general war in Europe but rapidly expanded due to entangled alliances and competing national interests. The British decision to go to war in 1914, and the US decision to follow 3 years after was shaped by international law, and not by just war theory, theology, or ethics.[50]

The provisions of Article 16 established the first collective security system and provided for sanctions against a member who violated the specific prohibitions against war. Article 16(2) envisaged military sanctions in order to 'protect the covenants of the League', as recommended by the League Council and executed by the member states' forces. Sadly, as members were unwilling to enforce sanctions against a covenant-breaking state, and due to limited membership of the League of Nations, the system did not work and ultimately failed to prevent another war, even more catastrophic than the one from which the League had emerged.

The League system did not, it should be noted, prohibit war or the use of force, but it did set up a procedure designed to restrict it to tolerable levels. It was a constant challenge for the inter-war years to close the gaps in the Covenant in an effort to achieve the total prohibition of war in international law, and this resulted ultimately in the signing in 1928 of the General Treaty for the Renunciation of War (the Kellogg-Briand Pact, or the Pact of Paris).[51]

2.4 The General Treaty for the Renunciation of War, *the Kellogg-Briand Pact*[52]

The first comprehensive legal framework prohibiting war as a national policy was signed in 1928. The *General Treaty for the Renunciation of War*, also referred to as either the *Kellogg-Briand Pact* or *the Pact of Paris*. The treaty was signed on the 27 August, 1928. It was initiated by the duo of

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[50] Michael H. Hoffman, *The Law of the Great War as an Ethical Paradigm, 1918-2038*, (2020) available at https://ndupress.ndu.edu/Portals/68/Documents/Books/persistent-fire/persistent-fire_ch-5.pdf?ver=2019-10-31-145936-530 (accessed on 21/07/2025).

[51] Malcolm N. Shaw, *International Law,* (2nd edn. Grotius Publications Ltd. 1986), 543.

[52] The Kellogg-Briand Pact has was not terminated, however, it has been superseded by Article 2(4) of the United Nations Charter.

Aristide Briand and Frank Kellogg, the French Minister of Foreign Affairs, and the US Secretary of State respectively. They were 15 representatives of governments who signed the General Treaty for the Renunciation of War, and on the same day, invited other governments to ratify the Treaty. However, at the time of the outbreak of the World War II in 1939, 63 States were signatory States to the Kellogg-Briand Pact. The Kellogg-Briand Pact is a very short treaty having just the Preamble and 2 Articles.[53]

Historically, the officials of the US and some private citizens made significant efforts to ensure that the US would not be drawn into another war. Consequently, one group focused on disarmament, another focused on cooperation with the newly established League of Nations and the World Court, while others initiated movements with the objective of outlawing war. The French Minister of Foreign Affairs, relying on the influence and assistance of some US peace advocates proposed a peace pact as a bilateral agreement between the United States and France to outlaw war between them. In April 1927, Briand published an open letter containing the proposal. It is reported that the US President Calvin Coolidge and his Secretary of State, Frank Kellogg were not too keen to accept the proposal despite the enthusiastic support the proposal received from the members of the US peace movement. To President Coolidge and Secretary Kellogg, the proposal could be viewed as a bilateral alliance that would require the US government to respond if France is threatened. However, they suggested that the two states lead the talks to invite more states to join them to outlaw war. The invitation to other states was well received, owing to the large-scale losses states recorded in the World War I, hence, the proposal to declare war unlawful was immensely popular in international public opinion, as a result of the fact that the pact was couched in a way that provided for only war of aggression not military acts of self-defense. It was a widely accepted opinion that if the objective of the pact would be to limit conflicts, then it would be beneficial to all states.[54]

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[53] General Treaty for the Renunciation of War (Kellogg-Briand Pact), [1928], available at https://www.iilj.org/wp-content/uploads/2016/08/General-Treaty-for-the-Renunciation-of-War-Kellogg-Briand-Pact.pdf (accessed on 23/07/25).

[54] The Kellogg-Briand Pact, 1928, *Office of the Historian, Department of State, United States of America*, available at https://history.state.gov/milestones/1921-1936/kellogg, (accessed 23/07/2025).

Signatory states at the end agreed on two articles. Article I outlawed war as an instrument of national policy, thus:

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

Article II provided that signatory states should settle their disputes by peaceful mean, thus:

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

The Soviet Union and its western neighbors including Romania on February 9, 1929 in Moscow signed the *Litvinov Protocol* providing an agreement to put the Kellogg-Briand Pact in effect without waiting for ratification by the other western signatories.[55]

Interestingly, the treaty failed to prohibit war, especially wars of self-defense or certain military obligations arising from the League Covenant, the Monroe Doctrine, or postwar treaties of alliance. These conditions, in addition to the treaty's failure to establish a means of enforcement, rendered the agreement completely ineffective.[56] Japan's invasion of Manchuria following an explosion that destroyed a section of railway track near the city of Mukden which was owned by Japan served as the first major test of the Kellogg-Briand Pact. Though, Japan was signatory to the pact, however, a combination of the worldwide depression and a limited desire to go to war to preserve China prevented the League of Nations or the United States from taking any action to enforce the pact. Further, threats to the pact also came from fellow signatories, Germany, Austria and Italy. Also, the 1935 Italian invasion of Abyssinia, the 1939 Soviet Union invasion of Finland, and the 1939 Polish Defensive War in which Nazi German, the Slovak Republic and the Soviet Union jointly invaded Poland.

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[55] Wikipedia, *Litvinov Protocol*, available at https://en.wikipedia.org/wiki/Litvinov_Protocol (accessed on 26/07/2025).

[56] Britannica, *Kellogg-Briand Pact*, available at https://www.britannica.com/event/Kellogg-Briand-Pact (accessed on 25/07/2025).

It soon became clear that there was no way to enforce the pact or sanction those who violate its provisions.

The pact never fully defined actions that constituted self-defense, so there were several ways around its provisions. In the end, the Kellogg-Briand Pact was ineffective in preventing the outbreak of World War II.[57] However, it was the basis for the trial and execution of wartime German leaders in 1946, also it was the legal basis for the concept of a crime against peace, for which the Nuremberg Tribunal and the Tokyo Tribunal tried and executed top leaders responsible for initiating the World War II.

The treaty's main provisions renouncing the use of war, and promoting peaceful settlement of disputes and the use of collective force to prevent aggression were incorporated into the United Nations Charter and other treaties.

[57] Ibid, 45.

CHAPTER THREE

EXCEPTIONS TO THE USE OF FORCE

The prohibition on threat or use of force in settling international disputes as provided for in Article 2(4) of the UN Charter is neither all-sweeping nor absolute, as there are exceptions. One of such defenses include the right to self-defense.

Self-defense is a right grounded in both customary international law and the United Nations Charter. It permits to an extent some degree of anticipatory action to counter a manifest threat of attack in the immediate, or at least proximate future.

This chapter aims to discuss the exceptions to the threat or use of force both under customary international law and the United Nations Charter. Under the customary international law, the exercise of the right of self-defense is subject to proportionality, necessity and immediacy, while under the Charter, the occurrence of "armed attack" is a fundamental requirement for the exercise of the right of self-defense. The customary international law right of self-defense co-exists with the treaty-based right in Article 51, which is an indication that the two rights have come to have the same meaning. In practice, the differences between the customary international law and the treaty-based rights would only be significant for the very few non-United Nations member States, and in a case such as the *Nicaragua case*, in which the ICJ had only customary international law jurisdiction.[58] Self-defense is any act in response to an imminent or actual threat.[59]

3.1 The Right of Self-defense under Customary International Law: *the Caroline Doctrine*

The right of a state to resort to the use of force in self-defense is a well established principle of customary international law. It can be traced back to the 19th century following the correspondence between Great Britain and the United States of America in the wake of the *Caroline case* in 1837.[60] The case arose out of the Canadian Rebellion of 1837. The rebel leader, despite steps taken by

[58] David Harris, *Cases and Materials on International Law*, (7th edn. Thomson Reuters 2010), 746–747.

[59] A plea of justification for the use of force; the use of force to protect oneself from an attempted injury by another; the use of reasonable force to protect oneself or members of the family from bodily harm from the attack of an aggressor, if the defender has reason to believe that he is or they are in danger.

[60] See Jennings, [1938] 32 A.J.I.L. 82; and Rogoff and Collins, [1990] 16 Brooklyn J.I.L. 493.

United States authorities to prevent assistance being given to them, managed on 13 December, 1837 to enlist at Buffalo in the United States the support of a large number of American nationals. The resulting force established itself on the Navy Island in Canadian waters from which it raided the Canadian shore and attacked passing British ships. The force was supplied from the United States shore by an American ship, the *Caroline*. On the night of 29–30 December, the British seized the *Caroline*, which was then in the American port of Schlosser, fired her and sent her over the Niagara Falls. Two United States nationals were killed. The legality of the British acts was discussed in detail in correspondence in 1842–1842 when Great Britain sought the release of a British subject, McLeod, who had been arrested in the United States on charges of murder and arson arising out of the incident.[61] In the correspondence with the British authorities which followed the incident, the American Secretary of State outlined what is now the essentials of self-defense which includes, "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment of deliberation." Also, the legitimacy of self-defense is determined when the action of the State is proportional, too excessive and unreasonable, thus, "since the act, justified by the necessity of self-defense must be limited by that necessity, and kept clearly within it." According to Shaw, "These principles were accepted by the British government at that time and are accepted as part of customary international law." He further cited the example of the Legal Adviser to the U.S. Department of State, who noted that the exercise of the inherent right of self-defense depends upon a prior delist, an illegal act that presents an immediate, overwhelming danger to an actual and essential right of the State. When these conditions are present, the means used must then be proportionate to the gravity of the threat or danger".[62]

According to Greenwood, the significance of self-defense in customary international law in the 19th century was limited by the fact that international law then recognized a general right to resort to war, so that self-defense was significant (at least in legal, as opposed to political terms) only with regard to lesser instances of the use of force. It was not until there evolved in international law a general

[61] Ibid 58, 748.
[62] Ibid 51, 550.

prohibition on the recourse to force through the Covenant of the League of Nations 1919, the General Treaty for Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact 1928), and the United Nations Charter 1945, that self-defense assumed its modern significance in international law.[63]

Further, the right to self-defense was considered natural and as a part of the inherent powers of state. Therefore, states could resort to war based on the whims and caprices of their rulers. There was no international law prohibiting a state's right to use force against another state, however, some states adopted internal rules to regulate themselves. The circumstance posed a great challenge in establishing an effective and functional international law rule regulating the exercise of the right to self-defense by states.

The International Court of Justice, ICJ made several references to the principle of customary international law in cases such as the *Nicaragua v. United States*, *Islamic Republic of Iran v. United States of America*, *Democratic Republic of Congo v. Uganda*,[64] etc. In the *Nicaragua case*,[65] the Court recognized, that the United Nations Charter does not contain any specific rule whereby self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law. Also, the Court assessed the principle of immediacy. It stressed that the reaction of the United States in the context of what it regarded as self-defense was continued long after the period in which any presumed armed attack by Nicaragua could have reasonably been contemplated. In the *Oil Platform case*, the Court referred to the principle of necessity and proportionality and pointed out that "***the United States must also show that its actions were necessary and proportional to the armed attack made on it and that the platforms were a legitimate military target open to attack in the exercise of self-defense***".[66] The decision of the Court in the case of *Armed Activities on the Territory of the*

[63] Christopher Greenwood, *Self-Defense*, (Max Planck Encyclopedias of International Law 2011), available at https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e401, (accessed on 04/09/2025).
[64] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda, [2005], ICJ, 168.
[65] Ibid 35.
[66] Ibid 16.

Congo,[67] is of equal importance, as it held that "***since the preconditions for the exercise of self-defense do not exist in the circumstances of the present case, the Court has no need to enquirer whether such an entitlement of self-defense was in fact exercised in circumstances of necessity and in a manner that was not proportionate***".[68] However, in these above cases, the Court did not examine the question of the use of force for self-defense in the circumstance of existence of the threat of the use of armed force from the part of adversary.[69]

From the foregoing, it is apparent that a high threshold of necessity and proportionality are required to justify the right of self-defense.

3.2 Right to Self-Defense under the United Nations Charter: *Article 51*

Nothing in the present Charter shall impair the inherent right of individual or collective ***self-defense*** *if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*[70]

A comprehensive analysis of the above provision of the United Nations Charter clearly reveals *self-defense* as an exception to the prohibition against the threat and use of force in Article 2(4),[71] which had hitherto not codified under customary law. Self-defense could be either by *individual* state attacked by another or *collective*, in which case the United Nations Security Council,[72] or other regional organizations[73] intervene to restore international peace and security.

[67] Ibid 64

[68] Democratic Republic of the Congo v. Uganda, *Judgement of International Court of Justice*, [2005], para. 147, available at http://www.icj-cij.org/docket/files/116/10455.pdf, (accessed 05/09/2025).

[69] Vita Upeniece, *Conditions for the Lawful Exercise of the Right of Self-Defence in International Law*, (Rigas Stradina University 2018), available at https://www.shs-conferences.org/articles/shsconf/pdf/2018/01/shsconf_shw2018_01008.pdf, (accessed on 05/09/2025).

[70] Article 51 UN Charter.

[71] Supra.

[72] Article 40 United Nations Charter.

[73] Article 52 United Nations Charter.

3.3 Individual Right of Self-Defense

Individual self-defense is when a State against which an armed attack had occurred is defending itself against attack.[74] A State's right of self-defense is natural owing to the use of the word "inherent", as a result, it has been argued that the provision of Article 51 is grounded on customary international law.[75] The "inherent right" of self-defense under the Charter is to be exercised temporarily "until" the Security Council intervenes, and the defending State is obligated to "immediately" report any measure taken in the exercise of its "inherent right" of self-defense to the Security Council. It has been argued by some scholars that the requirement of a member State reporting to the Security Council the measures taken in its exercise of its right of self-defense serves to show transparency and accountability. However, compliance with this reporting requirement has been inconsistent. Whilst some States provide detailed notifications, others offer minimal information or completely fail to report. The ICJ has not treated the lack of compliance to reporting as invalidating an otherwise lawful exercise of the right of self-defense, however, it has considered it a factor in assessing claims. A State claiming the right of self-defense must be a victim (or an imminent victim) of an "armed attack". Hence, a State's right of self-defense is only exercisable where there is "armed attack" against it.

The ICJ in the *Nicaragua case* considered the meaning of "armed attack". Regarding the cross-border use of force by "regular armed forces", the Court in that case was of the view that not every such use of force is considered an "armed attack", its "scale and effects" must be factored in. The narrow definition of "armed attack" by the Court equally excludes "assistance to rebels in the form of provision of weapons or logistical or other support". However, in the aftermath of the 9/11 al-Qaeda terrorists attacks, state practice concerning the 9/11 accepts that terrorist action on the scale

[74] Ibid 5, 463.
[75] Supra.

and with the effects of 9/11 may be an “armed attack”, justifying self-defense against the State giving the terrorists a base or haven.[76]

The United States relying on the “inherent right” of self-defense as the basis for its use of force against Afghanistan began *Operation Enduring Freedom,*[77] on the 7th October, 2001 with the goal of disrupting the use of Afghanistan as a terrorist base. It has been argued in the light of the previous doubts as to whether a State’s “inherent right” of self-defense could cover actions against past terrorist attacks, however, *Operation Enduring Freedom* garnered huge support and the action was almost accepted as self-defense globally.

One of the many controversial issues raised under Article 51 is whether it cuts down the customary right of self-defense to situations where the attack provoking it has actually been launched. Authorities have provided three approaches to its interpretation, to wit:

i. some authorities have interpreted ‘if an armed attack occurs’ to mean ‘after an armed attack has occurred’ i.e. ***strict constructionism***;
ii. some authorities argue that a State is allowed to resort to self-defense to respond to an imminent armed attack that has not yet occurred (the “*Caroline standard*” of necessity where danger is “instant, overwhelming, leaving no choice of means, and no moment of deliberation”) i.e. ***anticipatory self-defense***; and
iii. some authorities say that a State is allowed to resort to self-defense to respond to an armed attack which is neither actual nor manifestly imminent but which may take place in the future if no action is taken, i.e. ***preemptive self-defense***.

The Bush administration (the ***“Bush Doctrine***”) relied on the third approach, however, it was rejected by the international community.

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[76] RightsRecall, *Article 51 of the United Nations Charter: Historical Evolution, Legal Interpretation, and Contemporary Relevance*, (RightsRecall 2025), available at https://rightsrecall.com/article-51-of-the-united-nations-charter/, (accessed 12/09/2025).

[77] George W. Bush, *Operation Enduring Freedom: One Year Accomplishments*, [2002], available at https://georgewbush-whitehouse.archives.gov/infocus/defense/enduringfreedom.html, (accessed on 12/09/2025).

3.4 Collective Right of Self-Defense

Collective right of self-defense occurs when a group of States jointly defend another State which has suffered armed attack, the victim-State. It extends beyond individual protection, allowing States to come to the aid of others under attack. The right has provided the solid legal foundation for many military alliances. The Chapter VIII of the United Nations Charter provides, thus:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.[78]

Flowing from the foregoing provision, the North Atlantic Treaty Organization, NATO was established on 4 April, 1949. The Preamble to the NATO Treaty provides, inter alia:

The Parties to this Treaty reaffirm their faith in the ***purposes and principles of the Charter of the United Nations*** *and their desire to live in peace with all peoples and all governments.*

They are determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law. They seek to promote stability and well-being in the North Atlantic area.

They are resolved to unite their efforts for ***collective defence*** *and for the preservation of peace and security. They therefore agree to this North Atlantic Treaty.*

Further, Article 5 of the NATO Treaty provides:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

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[78] Article 52(1) United Nations Charter

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

The above provision was invoked by NATO in the immediate aftermath of the 9/11 terrorist attack against the United States.

The ANZUS Pact, a security treaty between Australia, New Zealand, and the United States was signed on 1 September, 1951. The objective of the Treaty is to provide collective assistance in the event of aggression and for the peaceful settlement of disputes. The Treaty provides that the States Parties maintained a consultative relationship with one another and worked to ensure their collective security in the Pacific region. The three nations remain formal parties to the Treaty, however in practical terms, ANZUS has been inoperative since 1986 when there was dispute between the United States and New Zealand.

The Warsaw Pact was signed on 14 May, 1955, however was terminated in July 1991. The Treaty established a mutual-defense organization, the Warsaw Treaty Organization. The Treaty which was renewed on 26 April, 1985 provided for a collective military command and for the maintenance of Soviet military units on the territories of the other participating states.[79]

The Collective Security Treaty Organization, CSTO is a military alliance of six post-Soviet states, to wit Russia, Armenia, Kazakhstan, Kyrgyzstan, Tajikistan, and Belarus. The Treaty was established in 2002 for the purpose of collective defense.[80] The CSTO originates from the conclusion of the Collective Security Treaty, which was signed in Tashkent, Uzbekistan on 5 May, 1992 by the heads of Armenia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan. Later, it was joined by Azerbaijan, Belarus and Georgia in 1993.

The *Article 4* of the CSTO Treaty mirrors the provisions of the *Article 5* of the NATO Treaty, thus:

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[79] Britannica, *Warsaw Pact*, [2025], available at https://www.britannica.com/event/Warsaw-Pact, (accessed on 12/09/2025.

[80] Britannica, *Collective Security Treaty Organization*, [2025], available at https://www.britannica.com/topic/Collective-Security-Treaty-Organization, (accessed on 13/09/2025).

If one of the States Parties is subjected to aggression by any state or group of states, then this will be considered as aggression against all States Parties to this Treaty. In the event of an act of aggression against any of the participating States, all other participating States will provide him with the necessary assistance, including military, and will also provide support at their disposal in exercising the right to ***collective defense*** *in accordance with the* ***Article 51 of the UN Charter****.*

In January 2022, in connection with the appeal of the President of the Republic of Kazakhstan, J.K. Tokayev and in view of the threat to national security and sovereignty of the country caused, among other things, by interference from outside, the CSTO Collective Security Council, in accordance with Article 4 of the Collective Security Treaty, decided to conduct a peacekeeping operation in the Republic of Kazakhstan. The collective mission, which lasted from January 6 to 19, was successful and was completed after the situation had normalized.[81]

In September 2023, the military regimes in Mali, Niger and Burkina Faso, three West African Sahel states signed the Sahel Security Pact to aid one another in case of any rebellion or external aggression.[82]

Irrespective of the regional arrangements, the International Court of Justice in the *Nicaragua case*, established additional requirements for lawful collective self-defense thus, the state under attack must declare itself a victim and request assistance; the States engaging in collective self-defense must report their actions to the Security Council; and actions taken in collective self-defense must meet the threshold of necessity and proportionality. It has been suggested that the reason for these requirements is to prevent powerful states from using self-defense as a pretext for intervention in conflicts where they have not been attacked.

3.5 Self-Defense against Non-State Actors

The conservative interpretations of Article 51 focuses on armed attacks by states. However, in the aftermath of the al-Qaeda terrorists attacks at Pentagon and the World Trade Center, there has been

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[81] Collective Security Treaty Organization 2002 - 2021, available at https://en.odkb-csto.org/structure/, (accessed on 13/09/2025).

[82] Reuters, *Mali, Niger and Burkina Faso sign Sahel Security Pact*, (Reuters 2023), available at https://www.reuters.com/world/africa/mali-niger-burkina-faso-sign-sahel-security-pact-2023-09-16/ (accessed on 09/09/2025).

a reconsideration of whether non-state actors such as terrorist groups could trigger the right to self-defense.

The *Security Council Resolutions 1368* and *1373*, adopted after 9/11, recognized the right to self-defense in the context of terrorist attacks. State practice has increasingly accepted self-defense against non-state actors, though legal questions remain about the attribution standard for linking non-state actors to host states; the "unwilling or unable" doctrine for actions in territories of states not responsible for attacks; and the threshold for terrorist actions to constitute an "armed attack". The 2016 surgical strikes and the 2019 Balakot airstrikes are examples where India cited defensive justifications for using force against non-state actors operating in a cross-border fashion from the territories of another states.

The United Nations Security Council's informal meeting convened by Mexico on February 24, 2021,[83] discussed as one of its subjects the issue of whether the UN Charter permits the use of armed force by one State against non-State actors on the territory of another State without the consent of the host State. The United States airstrikes against several facilities used by Iraqi militias in Syria less than 24 hours on February 25,[84] further raised the debate on the legality or otherwise of the use of armed force against non-State actors operating in another State's territory. In view of the foregoing, there are three main classifications of views expressed by States—restrictive, intermediate, and expansive. However, the position expressed by some of the participating states appeared ambiguous.

The **restrictive views** expressed by China, Mexico, Brazil, and Sri Lanka categorically rejected the use of force against non-State actors without the consent of the territorial State. According to the view expressed by China,

The use of force against non-state actors in the territory of another state, which is for the purpose of self-defense, shall be subject to the consent of the state concerned. No state should interfere in

[83] Ibid, 30.

[84] Jim Garamone, *U.S. Conducts Defensive Airstrikes Against Iranian-Backed Militia in Syria*, (U.S. Department of War 2021), available at https://www.war.gov/News/News-Stories/Article/Article/2516530/us-conducts-defensive-airstrikes-against-iranian-backed-militia-in-syria/, (accessed on 15/09/2025).

other's internal affairs under the cloak of "counter-terrorism" or use force arbitrarily in the name of "preventive self-defence."[85]

The **intermediate view** was expressed by Austria which argued in line with the view held by Belgium in the past that the use of force may be lawful against non-State actors if the territorial State is "unable, as a consequence of the total absence of State authority and effective control over the respective territory, to prevent or suppress the group's activities.

The **expansive view** was expressed by Australia, Azerbaijan, Belgium, Denmark, Estonia, the Netherlands, Turkey, the United Kingdom, and the United States argued a broad right to use force in self-defense against non-State actors in the territory of another State. Australia argued for the recognition of the right, thus:

Australia recognizes that the right to exercise individual or collective self-defense is available against non-state actors in the territory of another State, where those actors are involved in carrying out an actual or imminent armed attack, and where the territorial State is unwilling or unable to prevent such attacks originating from its territory.[86]

Estonia, the Netherlands, and the United Kingdom also argued that force may be used in self-defense only against an actual or imminent attack. Turkey equally alluded to imminent attacks. However, the United States argued that "*the exercise of the inherent right of self-defense is subject of the customary international law requirements of necessity and proportionality",* but did not mention any requirement of imminence. Interestingly, in 2016, the United States took the position that:

Once a State has lawfully resorted to force in self-defense against a particular armed group following an actual or imminent armed attack by that group, it is not necessary as a matter of international law to reassess whether an armed attack is imminent prior to every subsequent action taken against that group, provided that hostilities have not ended.[87]

[85] Ibid.
[86] Ibid.
[87] Ibid.

Flowing from the position of the United States, it is clear that the imminence of an armed attack is legally relevant only to a 'first strike' against a non-State actor, not to military operations following an armed attack. The United States appears to take an extreme position even among States expressing expansive view. It asserts a right to use cross-border force when no ongoing or imminent armed attack originates from another State's territory. The other States holding this view indicate that cross-border force may only be used to halt or repel an ongoing or imminent armed attack originating from another State's territory which that State is unwilling or unable to prevent.

The views expressed by some States on the issue are somewhat neither here nor there, hence, the views of France, India and Russia, as well as those of Norway, Pakistan, Qatar, and St. Vincent and the Grenadines. France in 2019 stated, thus:

In accordance with the ICJ case law, France does not recognize the extension of the right to self-defense to acts perpetrated by non-state actors whose actions are not attributable, directly, to a State.

France has, in exceptional cases, invoked self-defense against an armed attack perpetrated by an actor having the characteristics of a "quasi-State", as with its intervention in Syria against the terrorist group Daesh (ISIS/ISIL). However, this exceptional case cannot constitute the definitive expression of recognition of the extension of the concept of self-defense to acts perpetrated by non-state actors acting without the direct or indirect support of a State.[88]

From the aforementioned, it is clear that France recognized the extension of the right of self-defense, but only in exceptional cases to acts perpetrated by a "quasi-State". Apparently, this placed France outside the "restrictive view". However, France on February 24 stated that

While the victim of attack must be a State, according to Article 51 [of the UN Charter], the status of the aggressor is not delimited or defined. Unfortunately, some non-state groups, particularly terrorist groups, now have the means to commit acts that amount to armed attack against States…[89]

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[88] Ibid.
[89] Ibid.

This statement makes no reference to exceptional cases or to quasi-States. It appears to extend the right of self-defense to any non-state group with the means to commit violent acts of sufficient gravity.

Further, Russia stated that:

The issue of the use of Article 51 against non-state actors is a difficult one, because this article was not intended for this purpose. We must recognize that it was drafted in order to describe the right of self-defense against armed attacks of States. However, the language of this article allows for broader interpretation. This broader interpretation became practical after 9/11, which demonstrated that an attack of terrorists may rise to the level of an armed attack of a State. It was confirmed in SC resolution 1368 (2001).

However, it does not mean that any terrorist attack in a cross-border context gives rise to the right of self-defense. Firstly, the criteria applicable to the definition of an armed attack must be fulfilled in particular in terms of the magnitude of the event. Secondly, the position of the government of a State from whose territory terrorists strike must be carefully assessed. It is one thing when a government directs and supports such an attack and another if it uses all available means to fight such terrorists and is open for cooperation with other States. In the latter case, it is obvious that cooperation and consent of the government must be required. The level at bilateral relations or lack thereof may not be the ground for avoiding this requirement.[90]

From the foregoing position expressed by Russia, it is clear that if the territorial State is 'willing' to fight the non-state actors on its territory but 'unable' to defeat them, then the victim-State must seek its cooperation and consent. Interestingly, the position of Russia is silent in a situation in which the territorial State arbitrarily refuses consent and cooperation.

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[90] Ibid.

Other participating States which include Armenia, Finland, Georgia, Iran, Ireland, Kenya, Liechtenstein, Ukraine in the February 24, 2021 United Nations Security Council meeting failed to address the specific legal question, while Ecuador, Peru, Syria, Tunisia, Vietnam said nothing from which their legal position can be validly inferred.[91]

[91] Ibid.

CHAPTER FOUR

ISRAEL'S WAR AGAINST ITS NEIGHBORS

4.1 Arab-Israeli Wars (1917 – 2023)

The collapse of the Ottoman Empire during the World War I led to the dismemberment of the Turkish-held territories of Iraq, Lebanon, Palestine and Syria into various British- and French-administered territories following the *Sykes-Picot Agreement 1916*.[92] The agreement saw Britain acquiring southern Mesopotamia, including Baghdad, and also the Mediterranean ports of Haifa and Acre. France acquired Adana, Cilicia, Lebanon, the Syrian littoral, and the hinterlands of Aintab, Diyarbakir, Mardin, Mosul and Urfa. Russia acquired the Armenia Provinces of Erzurum, Trebizond, Van, and Bitlis, with some Kurdish territories to the southeast. Also, between the British and the French acquisitions, there was a confederation of Arab states divided into British and French spheres of influence. Iskenderun was to be a free port, while Palestine was left under international regime due to the territory being host to several holy sites. The *Sykes-Picot Agreement* was seen by the Arabs to be a betrayal of the pledges given by Britain to the Hashemite dynast Hussein ibn Ali, the Sharif of Mecca following the Hussein McMahon Correspondence, 1915-1916.[93]

On November 2, 1917, the British government decided to endorse the establishment of a Jewish home in Palestine following deliberations within the cabinet and consultations with Jewish leaders, the decision was announced in a letter from British Foreign Secretary, Lord Arthur James Balfour to Lord Walter Rothschild. The letter is now known as the *Balfour Declaration*.[94] It has been argued that the *Balfour Declaration* was actually based on the ludicrous belief that the Zionist[95]

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[92] Britainnica, *Sykes-Picot Agreement 1916*, (Britannica 2025), available at https://www.britannica.com/event/Sykes-Picot-Agreement, (accessed on 23/09/2025).
[93] Britainnica, *Hussein-McMahon Correspondence*, (Britannica 2025), available at https://www.britannica.com/topic/Husayn-McMahon-correspondence, (accessed on 23/09/2025).
[94] Jewish Virtual Library, *Balfour Declaration: Text of the Declaration*, (Jewish Virtual Library 2025), available at https://www.jewishvirtuallibrary.org/text-of-the-balfour-declaration, (accessed on 23/09/2025).
[95] A believer of Zionism, a Jewish nationalist movement that originated in Europe in the 19th century with the goal of creating and supporting a Jewish national state in Palestine.

leaders of the time controlled the *Bolshevik Revolution in Russia* and the political destiny of the United States.

The roots of the *Arab-Israeli Conflict* lie the between 1917 and 1920. The Jewish people had a hereditary presence in Palestine going back more than three thousand years. There had always been significant numbers of Jews there, especially in Jerusalem. However, after the British government had committed itself to the Jewish national policy, Palestinian Arab opposition to the returning Jewish community was unrelenting. Some writers have argued that the returning of the Jewish people to Palestine would not have mattered had Britain ran their empire the way the Romans and the Ottomans had by boldly declaring their policies and pushing them through, regardless of resistance, sadly, the British conquerors failed to behave as "conquerors", as anti-Semitic prejudice was commonplace in the British Army's Occupied Enemy Territories Administration, which ruled Palestine from 1917 – 1920. During those inglorious years, officers and administrators at the highest level of the British bureaucracy, such as Haj Amin al-Husseini,[96] the mufti (Muslim religious leader in Jerusalem) gave encouragement, protection, and promotion to the most murderous and extreme anti-Jewish Palestine leaders, interestingly, their favorites turned out to be equally vicious enemies of the British as well.

One of the favorite anti-Jewish claims is that the creation of the State of Israel was meant to drive Arabs from the Holy Land, meanwhile there is room for both populations to live in peace and harmony side by side. Ironically, the influx of illegal Arab immigrants to Palestine during the post-World War I period of British Mandate, largely from Syria, Iraq, and Lebanon, by far exceeded the number of Jews immigrating into the country in absolute numbers at the same period. The British government limited the number of Jewish immigrants based on presumed economic absorptive capacity of the land. In contrast, the British never bothered to limit the influx of Arabs, as they did not have sufficient troops to shut down the borders even if they would have wanted to.

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[96] al-Husseini, a cousin of Yasser Arafat was a Palestine Arab nationalist and Muslim leader in Mandatory Palestine, al-Husseini was the scion of the al-Husayni family of Jerusalemite Arab nobles who trace their origin to the Islamic prophet Muhammad. He was born in Jerusalem, Ottoman Empire in 1897. al-Husseini is easily the main source of the strife and hatred in the Arab-Israeli conflict.

It was al-Husseini who pioneered a form of diplomacy his cousin Arafat would later adopt on a grand scale, he internationalized and Islamicized the native Palestine Arab opposition to the Jewish settlement in Palestine. It is suggested that he took advantage of the 1929 riots in Jerusalem to claim that the Jews were plotting to destroy the *Dome of the Rock* and the *al-Aqsa Mosque*.[97] Also, the governments of neighboring Arab nations of Egypt, Iraq, and Saudi Arabia, eager to distract their populations from domestic issues and establish their own credentials, followed Husseini's lead. In 1936 when the main Palestinian Arab revolt began against the British authorities and the Jewish Zionist settlers, Husseini was the undoubted dominant figure among Palestinian Arab.

The outbreak of the World War II saw Husseini take the logical ultimate step to becoming an eager accessory to the H*olocaust*.[98] He spent the war years in Fascist Italy and Nazi Germany.

Husseini was very active in urging the *Schutzstaffel*[99] bureaucrats in charge of the *Final Solution.*[100] The methodically planned genocide of the entire Jewish people in Europe in order to ensure that children, especially from the Sephardic Jewish communities in the Balkan region were not spared from the gas chambers in Auschwitz. He recruited the Schutzstaffel regiment regiments for the Nazis from the Bosnian Muslim community in Yugoslavia. They guarded the security of the railway lines carrying cattle trucks filled with hundreds of thousands of Balkan Jews for the extermination chambers and cremation ovens of Auschwitz. He was a close friend of Adolf Eichmann and Heinrich Himmler, two henchmen of Adolf Hitler and the Nazi Party. Husseini was said to have visited Auschwitz at least once to ensure that the job was being done right. As the British prepared to leave Palestine, following the United Nations votes on Palestine partition after the British submission of the "Palestine question", the war between Jews and Arabs in Palestine that

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[97] The violent Arab riots killed scores of Jews around Palestine. However, it was crushed by General Bernard Montgomery in 1939.

[98] The Holocaust, was the genocide of European Jews during the World War II. From 1941 to 1945, Nazi Germany and its collaborators systematically murdered some six million Jews across German-occupied Europe, around two-thirds of Europe's Jewish population. The murders were committed primarily through mass shooting across Eastern Europe and poison gas chambers in extermination camps, chiefly Auschwitz-Birkenau, Treblinka, Belzec, Sobibor, and Chelmno in occupied Poland.

[99] The Schutzstaffel was a major paramilitary organization under Adolf Hitler and the Nazi Party in Nazi Germany, and later throughout German-occupied Europe during the World War II. It began with a small guard unit known as the Saal-Schultz made up of party volunteers to provide security for party meetings in Munich.

[100] The Final Solution was a euphemism for Nazi Germany's plans to solve what they called the "Jewish problem" by annihilating the Jewish population. It was implemented in stages.

Husseini had lusted for finally came in 1947, Haj Amin al-Husseini's unrelenting policy of seeking to drive every Jew into the sea led instead to the shattering and scattering of his own people.

On 15 May, 1948, the Jewish inhabitants of the British Mandatory Palestine declared independence as the new State of Israel. The following day, 16 May, 1948, the *1st Arab-Israeli War* broke out,[101] as armies of Egypt, Iraq, Lebanon, Transjordan (now Jordan), Saudi Arabia and Syria joined forces with the local Arab Palestinian forces to fight Israel. This phase of the war ended in 1949 with an armistice but without a peace treaty. Israel gained control over most of the territory.

In 1949, Palestinian guerrillas, the Fedayeen continued the fight, often infiltrating from the Egyptian territory, as Egypt had occupied Gaza Strip after the war, while Jordan occupied the West Bank and East Jerusalem, and Israel occupied West Jerusalem following the agreements. However, Israel frequently retaliated with attacks into the territories of Egypt, Jordan, and Syria.

In 1956, there was the *2nd Arab-Israeli War*, often referred to as either the *Suez War* or the *Sinai War*. In this war, Israel with the backing of Britain and France invaded Egypt, seizing the Gaza Strip and the Egyptian Sinai. Although, both territories were returned back to Egypt after the ceasefire agreement and pressure from the United States. Interestingly, between 1956 and 1967, there were series of raids by Palestinian groups, and retaliations from Israel.

In 1964, smaller Palestinian groups merged to form a larger organization, *Palestine Liberation Organization,*[102] *PLO* which was led by Yasser Arafat who was the head of the largest Palestinian resistance group, the Fatah.

In 1967, the *3rd Arab-Israeli War*, known as the *Six-Day War* broke out.[103] In a preemptive attack, Israel crushed the military forces of Egypt, Jordan and Syria, consequently seizing large swaths of land from each. Iraq fought in support of its fellow Arab States. In the aftermath of the war, Israel occupies the Gaza Strip, Egyptian Sinai, the West Bank part of Palestine that hitherto was

[101] The war is known in Israel as its "War of Independence". Palestinians call it "al-Nakba", which means 'catastrophe' in Arabic.

[102] The Palestinian Liberation Organization, PLO was formed to centralize the leadership of the various Palestinian groups that previously had operated as clandestine resistance movements. It came into prominence only after the Six-Day War of June, 1967.

[103] This war changed the boundaries in the Middle East and had major consequences for the Palestinians.

controlled by Jordan, and the Golan Heights area from Syria. About a million Palestinians in the West Bank, Gaza and East Jerusalem came under Israel's control.[104] Israel till date still occupies these areas, however, it signed a peace treaty with Egypt in 1979 and returned the Sinai.

The War of Attrition which was waged between 1968 and 1970 was a border war between Egypt and Israel in the immediate aftermath of the *Six-Day War*. It was started by Egypt in an attempt to recapture the Sinai Peninsula, after losing it in 1967. Despite a ceasefire agreement reached in 1970 which ended the war, the borders remained unchanged. For a period of a decade, beginning from 1968 to 1978, the Palestine Liberation Organization, PLO continued their guerrilla and terrorist attacks and Israel responded accordingly. One of such terrorist attacks was the hostage-taking of Israeli athletes at the 1972 Olympic Games in Munich, Germany.

In October, 1973, there was the outbreak of the *4th Arab-Israeli War*.[105] The war began with a surprise attack launched on the Jewish Yom Kippur holiday, which incidentally was during the Muslim Ramadan holiday, as Egypt and Syria attacked Israel, despite assistance from Iraq, the Arabs forces were unable to conquer Israel. Arab states in 1974, recognized the Palestine Liberation Organization, PLO as the legitimate representative of Palestinian people. From 1973 through to 1978, the PLO attacks on Israel from Lebanon was relentless, in addition to terrorist attacks around the world on Israeli targets, including airline hostage-taking and the Israeli raid on Entebbe Airport Airport in Uganda aimed at freeing Israeli citizens held hostage by pro-Palestinian terrorists.

In 1978, Israeli forces invaded Lebanon in what is dubbed, *Operation Litani*, as the invasion stretched up to the Litani River. This military operation was a success, as the Israeli military successfully expelled the PLO from Southern Lebanon, where they had created a de facto state within a state. However, an international condemnation and outcry over the invasion forced a partial Israeli retreat and the creation of a United Nations patrolled buffer zone between the Arab guerrillas and the Israeli military.

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[104] BBC, *Israel and the Palestinians: History of the Conflict Explained*, (BBC 2025), available at https://www.bbc.com/news/articles/ckgr71z0jp4o, (accessed on 24/09/2025).

[105] The Israelis refer to this war as the Yom Kippur War, while the Arabs call it the Ramadan War. It is equally called the October War.

The PLO attacks on Israel persisted from Lebanon, in addition to several terrorist attacks around the world on Israeli targets from 1978 to 1982.

In 1981 *Osirak Raid*, an Israeli air attack destroyed Iraq's Osirak nuclear reactor, as the Iraqi maximum ruler, Saddam Hussein had wanted to develop nuclear warheads. Iraq was a major supporter of the Palestine Liberation Organization, PLO.

From 1982 to 1984, the *5th Arab-Israeli War,*[106] saw Israeli forces invading Lebanon in response to repeated guerrilla attacks by the PLO. The attacks were often launched from the southern Lebanon, Israeli forces carried out military operations with the intent of degrading and ultimately crushing Arafat's forces. Syria which maintained a large troops of army in Lebanon, also fought Israeli forces, but they suffered embarrassing defeat. In the years between 1984 to 2000, after Israel had withdrawn its forces from Beirut and central Lebanon, Israel set up a buffer zone in southern Lebanon in order to protect their northern border. Hezbollah, a Lebanese Shiite militia engaged in a war of resistance against the Israeli occupation forces and the Israeli-allied South Lebanon Army. However, Israel withdrew its force from the territory of Lebanon in 2000, yet cross-border raids by Hezbollah persisted.

The *1st Intifada War* was fought between 1987 to 1993. This war was caused by urban uprising against Israeli rule in Gaza Strip and the West Bank. It led to the founding of *Hamas.*[107] However, the *Oslo Peace Accord,*[108] brought an end to the *Intifada*,[109] ultimately leading to the formation of the Palestinian Authority with Yasser Arafat as the official leader of the Palestinians, as Israel accepted the PLO as the representative of the Palestinians, and the PLO renounced terrorism and recognized Israel's right to exist in peace.

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[106] The Israelis call this war, the 1st Lebanon War.

[107] Hamas is an Islamic Resistance Movement. It is a Sunni Islamist Palestinian nationalist political organization with a military wing, the Qassam Brigades. It was founded by Palestinian Islamic scholar Ahmed Yassin in 1987, after the outbreak of the 1st Intifada.

[108] It was signed on 13 September, 1993 by the Israeli Prime Minister Yitzhak Rabin and the Palestine Liberation Organization, PLO Negotiator Mahmoud Abbas. It was a Declaration of Principles on Interim Self-Government Arrangements.

[109] A protracted grassroots campaign of protest and sometimes violent resistance against perceived oppression or military occupation.

In 1991, there was the *2nd Persian Gulf War*. Israel did not take offensive military action in this war, yet Iraq launched *Scud missiles*,[110] which struck Israel and almost caused Israel's intervention in the Gulf War. It has been argued that Iraq attacked Israel in the hope of baiting them to join the war and potentially cause multi-national coalition fighting against Iraq to crumble, but Israel wisely did not take the bait.

In the years between 2000 and 2007, the *2nd Intifada War* broke out, this war is sometimes referred to as the *Al-Aqsa Intifada*. It was a war fought between Israeli forces and urban Palestinian guerrilla groups, including *Hamas*. This war led to the withdrawal of Israeli troops from the Gaza Strip.

In 2006, Israeli forces in response to the relentless guerrilla attacks by Hezbollah militia, invaded southern Lebanon, setting up a naval blockade, and launching a sporadic bombing campaign in order to force the release of two captured Israeli soldiers. In the course of the war, Hezbollah launched thousands of rockets and missiles into Israeli territory. This is often referred to by the Israelis as the *2nd Lebanon War,* and it lasted 34 days.

In December 2008, Israeli forces engaged Hamas is the *1st Gaza War*. There were frequent raids and launching of rockets by Hamas from the Gaza Strip into Israel. The Israeli forces equally launched retaliatory attacks.

The *2nd Gaza War* in 2012 was dubbed *Operation Pillar of Defense* by Israel. It was launched on 14 November, 2012 with the killing of Ahmed Jabari, chief of the Gaza military wing of Hamas. It was preceded by a period with a number of mutual Israeli-Palestinian responsive attacks. The war lasted eight days.

Between 2012 and 2014, there was frequent and relentless raids and rocket attacks from Gaza into Israel, leaving Israel to retaliate.

Since 2012 till date, there has been series of clashes and air campaigns along the Syrian border, as a result of the civil war in Syria which began in 2011.[111] Palestinian militias in addition to Hezbollah

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[110] A type of tactical ballistic missile developed by the Soviet Union, originally designed to carry nuclear warheads and capable of delivering conventional or chemical warheads as well.

[111] Britannica, *Syria Civil War*, (Britannica 2025), available at https://www.britannica.com/event/Syrian-Civil-War, (accessed on 25/09/2025).

and Houthi rebels launch multiple attacks along the Israeli-Syrian Demilitarized Zone in the Golan Heights. In order to prevent the Syrian regime from transferring weapons to Hezbollah, Israeli forces have conducted several airstrikes on Syrian, Iranian, and Hezbollah targets inside Syria.

On 8 July, 2014, the *3rd Gaza War* dubbed *Operation Protective Edge* was launched. Israeli forces and Hamas engaged in missile attacks and rocket launch, leading Israeli forces to launch a major operation to end Hamas attacks. Israel accused Hamas of the kidnapping and killing of three Israeli teenagers in the summer of 2014. Both Israeli forces and Hamas launched commando raids into each other's territory, and Israeli forces began a large ground offensive on 17 July, 2014.

From 2014 to 2023, there has been series of raids and rocket attacks from Gaza into Israel, with the Israeli forces equally retaliating.

The *4th Gaza War* started on the 7 October, 2023, almost 50 years to the day of the start of the *1973 Yom Kippur War*. Hamas launched a surprise attack against Israel by firing over 2,200 rockets and missiles into Israel. While under cover of this initial barrage of missiles, about 3000 Hamas fighters infiltrated and launched a combined ground, air and sea-borne invasion of southern Israel. As of the first day, fighting raged across multiple Israeli border towns and military and police outposts. Initial reports estimated over 600 Israeli casualties, most of whom were civilians. News reports also show dozens of Israeli civilians being forcefully taken to Gaza as hostages. In response, Israel launched massive airstrikes into Gaza, while Prime Minister Benjamin Netanyahu declared that Israel was in a full-scale war, and ordered military mobilization.

Since the beginning of the *4th Gaza War*, the Houthi rebel forces in Yemen have joined the war by launching barrage of missiles and drone attacks at Israel and at Red Sea shipping on the 19 October, 2023.[112] Hezbollah has engaged in a low-level border war with Israel in solidarity with Hamas.[113]

There is no gainsaying the fact that this official state of war still rages between the State of Israel and several of its neighbors, especially with Lebanon, Syria, and Yemen as they are States whose

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[112] Reuters, *Israel-Gaza War: A Timeline of Key Events*, (Reuters 2025), available at https://www.reuters.com/world/middle-east/major-moments-israel-gaza-war-2025-01-15/, (accessed on 25/09/2025).

[113] History Guy: War and Conflict News, *Timeline of the Arab-Israeli Wars and the Gaza Wars*, (History Guy 2023), available at https://historyguy.com/arab_israeli_wars.html, (accessed on 25/09/2025).

territories are still being used by non-state actors, Hezbollah and the Houthi rebels, in addition to Hamas in Palestine. On 23 June, 2024, Prime Minister Benjamin Netanyahu was reported to have said, the phase of intense fighting against Hamas is coming to an end, but that the war will not finish until Hamas no longer controls the enclave.[114] Having successfully degraded Hamas' capabilities since the beginning of this war, Israel has set a goal of demilitarizing Hamas in Gaza Strip and ensuring that it can no longer pose threat to Israel.

4.2 Israel's preemptive attack against Lebanon and Yemen- Hezbollah and Houthi Rebels (2024)

Hezbollah which had fired over 8,000 rockets, missiles, and mortars into Israel, killing civilians and soldiers, and displacing nearly 100,000 Israelis in the north, since the beginning of the *4th Gaza War*, in addition to its refusal to withdraw its force from near the Israeli border to the Litani River, as required by the United Nations Security Council Resolution 1701,[115] which stipulates that any forces other than the UN peacekeepers or Lebanese military must vacate.

On 21 September, 2024, the *3rd Lebanon War* between Israel and Hezbollah began.[116] Israel receiving intelligence that there were preparations for a massive attack against it by Hezbollah, resorted to preemptive strikes targeting missile and rocket launchers and storage sites in Lebanon. The Israeli Iron Dome intercepted and shot down the rockets and missiles that managed to launch. Israel followed up the attacks with massive aerial bombardments targeting the remaining stockpiles, depots, and launchers in southern Lebanon, with the aim of substantially degrading Hezbollah's logistical and military capabilities. As both sides adapted to the evolving conflict, their tactical approaches became more aggressive, though they did not cross the threshold into all-out war. Israeli forces intensified their attacks, with Hezbollah adjusting its actions in response to shifts in Israeli

[114] Ibid, 99.
[115] UN Security Council, *Resolution 1701*, [2006], available at https://digitallibrary.un.org/record/581053?v=pdf#files, (accessed on 25/09/2025).
[116] Alex Plitsas, *The Third Lebanon War between Israel and Hezbollah has begun. What's Next?* (Atlantic Council 2024), available at https//www.atlanticcouncil.org/blogs/new-atlanticist/the-third-lebanon-war-between-israel-and-hezbollah-has-begun-whats-next/, (accessed on 25/09/2025).

tactics that became more aggressive to force the group to decouple Lebanon from a Gaza ceasefire. Israel's strategy can be described as carefully testing the boundaries of engagement.

It has been argued that it was necessary for Israel to sustain their offensive against Hezbollah, as it faced with a dilemma. The first was to accept Hezbollah's (and the collective Axis of Resistance's) terms and cease hostilities in the Gaza Strip. This acquiescence would have bought Israel instant peace but allowed Hamas, Palestinian Islamic Jihad, and other allied militias to survive, regenerate, rebuild, and resume hostilities against Israel, thereby, leaving Israeli deterrence in shambles, as the Resistance Axis would have succeeded in imposing terms upon Israel—so soon after the massive setback of October 7, 2023. It would have allowed Hezbollah to claim the unprecedented victory of pushing Israelis out of Israel itself for the first time in the country's history which would increase Hezbollah's popular support. It would have forced Israel to accept American or French ceasefire deals. These initiatives, whose failure was predictable from the beginning, proposed to distance Hezbollah a mere handful of kilometers from the frontier—far below the Litani River, as required by Resolution 1701. Also, the terms also lacked a credible enforcement mechanism to prevent Hezbollah's return from even that limited buffer zone. There were no suggestions regarding disarming the group.[117] Israel has in this war eliminated top commanders of Hezbollah including Fuad Shukur and Hassan Nasrallah.

On 18 July, 2024, Houthi rebels conducted a drone strike in Tel Aviv, Israel, killing one person and wounding several others. The attack constitutes the first lethal strike by the Houthis into Israel since the war in Gaza began in 7 October, 2023. Two days later, the Israeli forces responded with a first lethal attack of its own in Yemen—an airstrike against targets in the Houthi-controlled port city of Hodeidah. The attack destroyed the city's power plant and several fuel storage facilities and large container cranes used to unload ships. Although, the 20 July, 2024 strike was an immediate response to the 18 July, 2024 drone attack against Tel Aviv, it was equally a response to the over 200 Houthi attacks targeting Israel since the 7 October, 2023. According to Israeli official, the

[117] David Daoud & Ahmad Sharawi, *Analysis: The Road to the Third Lebanon War*, (Long War Journal 2024), available at https://www.longwarjournal.org/archives/2024/10/analysis-the-road-to-the-third-lebanon-war.php, (accessed on 25/09/2025).

airstrike focused on the "dual-use facilities" within the port. Hodeidah is reportedly the main entry point for Iranian weapons and other military equipment being illegally smuggled into Yemen in violation of the arms embargo imposed by the UN Security Council Resolution, UNSCR 2216. It also provides a major source of income to fund Houthi terrorist operations. The airstrike was therefore launched to disrupt the Iranian weapons supply route to the Houthis and damage dual-use infrastructure (fuel storage and cargo loading capabilities) used to finance terrorist attacks throughout the region. The Houthis immediately responded to the attack by firing several ballistic missiles toward the port city of Eilat, with a vow to sustain their attacks on Israel. The Houthi rebels have been launching missiles and drones towards Israel as part of what they describe as acts of solidarity with the Palestinians in the *Gaza War*.

The Houthis mourned Hezbollah chief Hassan Nasrallah,[118] its ally in an Iran-backed alliance against Israel.[119] It was reported that the Houthi's self-proclaimed Prime Minister Ahmed Ghaleb Nasser al-Rahawi was killed in an Israeli airstrike.

4.3 Israel's preemptive attack against the Islamic Republic of Iran (June 2025)

Israel's skepticism on the Iranian regime, including whether it could ever be trusted to uphold an agreement that contains it nuclear ambitions has led to the launching of what the Netanyahu government described as "preemptive" military strikes aimed at Iran's nuclear facilities. According to reports, Israeli Prime Minister Benjamin Netanyahu said the airstrikes, which took place on 13 June, 2025 targeted facilities "at the heart of Iran's nuclear weaponization program" including its main enrichment facility.[120] Further, a statement release by the IDF Press on 13 June, 2025 reads, "*A short while ago, following directive of the political echelon, the IDF launched a preemptive,*

[118] The former Secretary-General of Hezbollah and later the leader from 1992, until he was killed in an Israeli airstrike in Beirut, Lebanon on 27 September, 2024.

[119] Reuters, *Israel Strikes Houthi Targets in Yemen, killing at Least Four People*, (Reuters 2024), available at https://www.usnews.com/news/world/articles/2024-09-29/israel-launches-strikes-on-yemeni-houthi-targets, (accessed on 25/09/2025).

[120] Politico, *Israel Launches Strike Against Iran*, (Politico 2025), available at https://www.politico.com/news/2025/06/12/israel-launches-strike-against-iran-00404354, (accessed on 26/09/2025).

precise, combined offensive based on high-quality intelligence to strike Iran's nuclear program, and in response to the Iranian regime's ongoing aggression against Israel."[121]

The strikes were under the *Operation Rising Lion,*[122] and it targeted sites in Isfahan and Natanz.

It is argued that Israel's decision to strike likely came from the belief that Iran is unusually weak after a range of recent Israeli-led attacks on its proxy militias. The proxies include Hamas in Gaza, Hezbollah in Lebanon, and Houthis in Yemen, and several other militia groups in Syria and Iraq.

Statement from the Israel Defense Forces said that

"*Weapons of mass destruction in the hands of the Iranian regime are an existential threat to the state of Israel and to the wider world. The state of Israel has no choice but to fulfill the obligation to act in defense of its citizens and will continue to do so everywhere it is required to do so, as we have done in the past.*"[123]

Israel declared as state of emergency after its strikes, as the Defense Minister Israel Katz was reported to have warned that retaliatory strikes were expected. "Following the State of Israel's preemptive strike against Iran, a missile and drone attack against the State of Israel and its civilian population is expected in the immediate future."[124]

Iran launched waves of missiles against Israel, striking Tel Aviv, Ramat Gan, east of Tel Aviv and other places in Israel. It also reportedly activated its proxy militia groups in the region to carry out further strikes.

A careful examination of the *Iran-Israel War* arguably shows that it began in 1979, following the Islamic Revolution. The overthrow of the Shah and the consequent rise of Ayatollah Khomeini marked a sharp pivot away from the West—and from Israel. Prior to the revolution, Iran and Israel had enjoyed quiet but steady diplomatic and military ties. However, the birth of the Islamic

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[121] IDF Press, *The IDF has Launched a Preemptive Strike Against Iran's Nuclear Program*, (IDF Press 2025), available at https://www.idf.il/en/mini-sites/idf-press-releases-israel-at-war/june-25-pr/the-idf-has-launched-a-preemptive-strike-against-irans-nuclear-program/, (accessed on 26/09/2025).

[122] Operation Rising Lion was a fulfillment of Netanyahu's "red line" policy issued in 2012. It was a final warning followed by decisive military action. Operation Rising Lion apparently derives it name from the Bible, Numbers 23:24, "Behold, the people shall rise up as a great lion, an lift up himself as a young lion."

[123] Ibid, 107.

[124] Salon Newsletter, *Israel Launches "Preemptive strike" Against Iran*, (Salon Newsletter 2025), available at https://www.salon.com/2025/06/12/israel-launches-preemptive-strike-against-iran/, (accessed on 26/09/2025).

Republic severed those ties. Israel became “the Zionist enemy” and Tehran began framing its foreign policy around opposition to Western influence and the “wiping off from the map” the State of Israel. Over the decades, this ideological rivalry deepened. Iran positioned itself as the leader of the so-called “Resistance Axis,” arming and supporting proxy militias like Hezbollah in Lebanon, Hamas and Islamic Jihad in Gaza, Houthi in Yemen, and more recently militia groups in Syria and Iraq. They became extensions of Iran’s strategy to pressure and encircle Israel without direct confrontation. That pressure has only intensified over time, exacerbating tensions in the Middle East.

Israel on its part, aligned with Washington—militarily, technologically, and strategically. Israel’s US backing ultimately makes it easily the most powerful military in the region. That alignment further deepened the divide, especially as Iran’s nuclear program advanced. Iran being a signatory to the 1970 Non-Proliferation Treaty, NPT, it is bound by an international legal framework for nuclear oversight. However, its compliance has increasingly come under scrutiny. Despite not officially withdrawing from the 2015 Joint Comprehensive Plan of Action, JCPOA,[125] Iran has exceeded key enrichment thresholds, prompting threats from European states to refer the matter to the United Nations Security Council. It has also constructed fortified underground facilities at sites such as Natanz, designed to withstand conventional attacks and even US bunker-busting munitions. These installations have withstood repeated sabotage attempts, including Israeli cyber and kinetic operations, underscoring Iran’s resilience and strategic resolve. Consequently, the International Atomic Energy Agency, IAEA was tasked with monitoring Iran’s nuclear activities in late 2024 abd early 2025. The agency then reported uranium enrichment levels surpassing 60%, nearing weapon-grade thresholds, alongside restricted access to inspection sites. These developments have fueled suspicions that Iran is maintaining strategic ambiguity, deliberately obscuring the extent of its

[125] UNSC, *Resolution 2231 (2015) on Iran Nuclear Issue*, [2015], available at https://main.un.org/securitycouncil/en/content/2231/background, (accessed on 25/09/2025).

nuclear progress while avoiding overt violations that would trigger unified international condemnation.[126]

For Israel, a nuclear weapon in the hands of Iran is a "red line". The Iran nuclear threat, as perceived by the Israeli leaders, became one of the driving fears shaping Israel defense policy. Although, Iran has repeatedly maintained that its nuclear program is peaceful, many in the West—particularly in Israel and U.S.—have viewed those assertions with suspicion.

It is noteworthy, that Israel and Iran have engaged in years of shadow warfare. Cyberattacks, assassinations of top nuclear scientists, sabotage operations, and targeted strikes have all played out behind the scene. While these actions are rarely reported, they quietly gravitated both nations towards direct conflict as witnessed in June, 2025. Therefore, when the Israeli forces carried out their strike against Iran's nuclear facilities, it was not actually unprovoked—it was the culmination of decades of distrust, ideological opposition, and escalating tension and brinkmanship. This writer argues that this war was not so much started in 2025, but rather an escalation of the unresolved tensions of the past. The aforementioned is supported by the IDF statement reported in the its Press release, thus

The Iranian regime has proclaimed that its objective is to destroy the State of Israel. Senior officials in the Iranian regime have publicly declared their intent to destroy Israel, and are operating to achieve this together with their proxies in the Middle East. Today, Iran is closer than ever to obtaining a nuclear weapon. Weapons of mass destruction in the hands of the Iranian regime are an existential threat to the State of Israel and a significant threat to the wider world. The State of Israel will not allow a regime whose objective is to destroy the State of Israel to obtain weapons of mass destruction.[127]

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[126] Charlotte Soulé, *Prevention or Provocation? Pre-emptive Strikes and Nuclear Ambiguity in the 2025 Israel-Iran Confrontation*, (Rise To Peace 2025), available at https://www.risetopeace.org/2025/07/02/2025-israel-iran-confrontation/fellows/, (accessed on 26/09/2025).
[127] Ibid, 108.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The emergence of empires and kingdoms from the early human communities have given rise to the modern state. Conflicts have always been part of the ancient world, and these conflicts range from the ancient inter-communal disputes to battles of the ancient world.[128] The ancient communities had devised several methods of settling disputes—mediation, negotiation and reconciliation often led by the respected Council of Elders of the disputing communities; ritual and oath taking; compensation by the guilty parties; and covenant or treaty between or among the disputing parties.

However, ancient empires and kingdoms have had to resort to war ostensibly due to breakdown in any other means of settling their disputes. History records such wars as the *Battle of Gaugamela*,[129] the *Battle of Gaixia*,[130] the *Battle of Cannae*,[131] the *Battle of Zama*,[132] the *Battle of Kadesh*,[133] the *Battle of Carrhae*,[134] etc. Sadly, each of these wars had horrific consequences for the peoples of the ancient world.

The emergence of the state in this modern world has equally seen states engage in several wars, oftentimes very catastrophic. From the World War I to the World War II to the various Arab-Israeli Wars to the Gulf War to the Israeli-Iran War to the Russo-Ukrainian War,[135]

The horrific and catastrophic consequences of war have resulted in several attempts to denounce war as a means of settling disputes, except when it becomes the last resort owing to the states *inherent rights of self-defense* recognized under customary international law.

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[128] Connor Brighton, *Major Battles of the Ancient World*, (World Atlas 2023), available at https://www.worldatlas.com/ancient-world/major-battles-of-the-ancient-world.html, (accessed on 29/09/2025).
[129] 331 BC.
[130] 202 BC.
[131] 216 BC.
[132] 202 BC.
[133] 1274 BC.
[134] 53 BC.
[135] The Russo-Ukrainian conflict started with Russia's annexation of Crimea in March 2014. However, there was no full-blown war until Russia launched a full-scale invasion of Ukraine on 24 February, 2022.

The theory of *Just war*, was seen as a means of states regulating their resort to war, hence, war was only justified if it satisfies the requirements of a *Just war*.[136]

The *League of Nations Covenants*,[137] however its inadequacies was an attempt by the states to denounce war following the devastating effects of the World War I.

The *Treaty of Versailles*, because of its inadequacy to outlaw war necessitated the adoption and coming into force of the *Kellogg-Briand Pact*.[138] This pact was the first significant instrument that condemned and renounced recourse to war as "*an instrument of national policy in their relations with one another*." It further provided for the peaceful means of settling disputes—pacific settlement. The *Litvinov Protocol* was signed by the Soviet Union and its western neighbors including Romania providing an agreement to implement the *Kellogg-Briand Pact* without waiting for ratification by other western signatories.[139]

The failure of the *Kellog-Briand Pact* to effectively prohibit war, especially wars of self-defense, in addition to its failure to establish means of enforcement led to the adoption of the *United Nations Charter* in the immediate aftermath of the World War II.

The *United Nations Charter* is the very first instrument to explicitly prohibit war, as provided for in its ***Article 2(4)***. However, unlike ***Article 11 of the League of Nations Covenant*** which expressly used "war" or "threat of war", the aforementioned provision of the *UN Charter* only used "threat" or "use of force", yet the ***Preamble*** to the Charter explicitly used "war".[140]

The Charter despite expressly prohibiting "threat" or "use of force" against the "territorial integrity and political independence" of another State provides exceptions, one of which is the "inherent right of self-defense" when there is "armed attack".

There have been controversies arising from the interpretations of the provision of ***Article 51 of the Charter*** which created the exceptions. Consequently, member-States have either fallen into one of

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[136] Michael Smathers, W*hat is the Just War Theory*, (Historical Index 2024) available at https://www.historicalindex.org/what-is-the-just-war-theory.htm (accessed on 18/07/2025).
[137] Supra.
[138] General Treaty for the Renunciation of War (Kellogg-Briand Pact), [1928], available at https://www.iilj.org/wp-content/uploads/2016/08/General-Treaty-for-the-Renunciation-of-War-Kellogg-Briand-Pact.pdf (accessed on 23/07/25).
[139] Supra.
[140] Supra.

the three views— restrictive, intermediate and expansive. Interestingly, few have expressed views which are seen by some writers to be ambiguous, as their views are neither here nor there.

The Middle East crises, especially the *Arab-Israeli Wars*,[141] *Israel-Iran War*,[142] also the *9/11*, *Russo-Ukrainian War*, and the rise of *non-State actors* launching "armed attack" against a State from the territory of another State have provided real-life tests to the **prohibition of war** in ***Article 2(4)*** on one hand and the interpretation of **self-defense** in ***Article 51*** on the other hand.

The requirements of proportionality, necessity and immediacy as suggested in the *Caroline case* have been relied upon for the justification of **anticipatory self-defense**. However, States that have suffered "armed attack", especially from non-State actors—Israel and the United States have argued for the justification of "**preemptive attacks**" in the exercise of a State's "inherent right" of self-defense, while majority of States, understandably those which from all indications have not suffered terrorists' attacks as catastrophic as the ones suffered by the aforementioned States have vehemently opposed the justification.

5.2 Recommendations

This work recommends as follows,

1. ***A review of the UN Charter*** with a view to give a definitive interpretation of what constitutes "threat", "use of force" and "armed attack" as used in both Articles 2(4) and 51 to avoid the ambiguity which has resulted in different interpretations depending on the interpreting State or authority. Articles 2(4) and 51 have long been and are still the twin scourges of Public International Law. The prohibition on the "threat" or "use of force" and the right to self-defense are both subjects of fundamental disagreement.[143] The disagreement has been debated time and again on countless number of occasions, ranging from proceedings that take place before the International Court of Justice, the highest of all judicial organs, to moots in which law students

[141] History Guy: War and Conflict News, *Timeline of the Arab-Israeli Wars and the Gaza Wars*, (History Guy 2023), available at https://historyguy.com/arab_israeli_wars.html, (accessed on 25/09/2025).
[142] Supra.
[143] The disagreements have given rise to the restrictive, intermediate and expansive interpretations. At the same time, it has divided the member-states into pro-West global North with a narrow interpretation, and the third world global South with an expansive interpretation.

are engaged. In his commentary on the UN Charter, Simma identified the cause of the disagreement over the interpretation of Article 2(4), thus: "The prohibition of the [threat or] use of force in contemporary international law is burdened with uncertainties resulting from the, undoubtedly ambiguous, wordings of the relevant provisions of the UN Charter, as well as from their unclear relations to one another."[144] Consequent upon the aforementioned ambiguity, a review of the UN Charter will be worthwhile.

2. ***The use of Operation Rising Lion, and Operation Enduring Freedom*** as case studies to analyze the real-life requirements and application of preemptive self-defense. The legality or otherwise of preemptive military actions in self-defense has been subject of debates. However, states that condemn such preemptive military actions sometimes appear insensitive to the real-life experiences, vis-a-vis terrorists attacks against those defending preemptive self-defense. In real-life, one would seem to right argue that no responsible government leader would sit back and wait until his territory is attacked, before he defends his country and citizens, especially when such a leader has credible intelligence. Although, what constitutes credible intelligence necessary for preemptive action is subjective. Flowing therefore, the United Nations should rely on the aforementioned preemptive military operations conducted by the State of Israel and the United States as case studies to analyze what possible preventive measures are available for a state in real-life situations, where having been previously attacked by terrorists, it receives "credible intelligence" of an imminent or actual threat to its national security by terrorists. The fundamental questions to consider in the analysis include: aside preemptive attack, is there a preventive measure available to help the threatened state to neutralize the threat [actual or imminent] before it materializes, considering its previous experience with terrorist's attack? Lastly, what constitutes "credible intelligence"?

3. ***The strengthening of the UN Security Council*** in order for it to adequately play its role of instant response to attacks, especially from non-State actors. There is no doubt the powerful

[144] Bruno Simma, *The Charter of the United Nations: A Commentary*, (2nd edn., Oxford University Press 2002), 135.

military capabilities of the five permanent members of the UN Security Council, however, it is clear that geopolitical interests have weakened their capability to collectively respond to terrorists' attacks, considering that they are the organ of the United Nations primarily tasked with the responsibility of protecting world peace. As observed over the years, responding to terrorists' attacks have been left to individual attacked states with support from their allies. The above scenario has allowed the states to determine what they interpret as threat to their national security, thereby, determining whether or not to resort to anticipatory or preemptive attacks. The strengthening of the UN Security Council will help ensure that when states receive "credible intelligence" of actual or imminent threats against their national security, such intelligence is shared with the UN Security Council for preventive measures to be implemented to protect the threatened states. Consequently, states will not have to resort to unilateral preemptive military actions.

4. ***Evolve the interpretation of "imminence"*** in the context of modern attacks by terrorists and militia groups. The requirement of "imminence" was derived from the 19th century *Caroline Case*. Sadly, in this 21st century, the interpretation has rigidly remained the same, despite the contemporary threats to world peace — cyber and terrorists attacks. The planning of contemporary attacks are so secretly conducted that it is very difficult for targeted states to determine how imminent the "threat" or "use of force" is, especially with the conservative interpretation given in the aforementioned case. Therefore, it is imperative to evolve the meaning of "imminence" to accord with contemporary realities.

5. ***Evaluate how evolving threats*** such as nuclear weapons, missile, drone attacks, and cyber warfare challenge traditional definitions of "armed attack". Armed conflicts have evolve from the time of the World War II. In today's warfare, warring states and non-state actors in their technological sophistication, do not necessarily need to deploy troops in "guns-a-blazing" fashion,[145] however, with the deployments of sophisticated technology, they have the capabilities

[145] Politico, *Trump Threatens to Deploy the Military 'guns-a-blazing' to Nigeria*, (Politico 2025), available at https://www.politico.com/news/2025/11/01/trump-us-military-nigeria-00632716, (accessed on 05/11/2025).

of causing mass destruction to their target states without traditionally engaging in "armed attack". Therefore, contemporary realities make it imperative not to restrict the definition of what constitutes "armed attack" to the traditional interpretation. It should be broadened to encompass the contemporary warfare.

6. ***Establish well thought-out recommendations on developing clear and unambiguous laws to address preemptive self-defense***, balancing national security interests and international peace and security. There is no gainsaying the fact that there is little or no well thought-out legal framework to address resort to preemptive self-defense beyond a handful of the UN Security Council Resolutions. The handful UN Security Council Resolutions are not "too clear and unambiguous", leaving states with no rules guiding their resort to preemptive self-defense, other than their national security interests. The continued reliance on the authority of the *Caroline doctrine* is to say the least undesirable, considering the sociopolitical milieu in relation to the contemporary time. It is about time the rules of individual self-defense vis-a-vis anticipatory/preemptive self-defense moved away from the rules developed in the 19th century *Caroline Case*.
7. ***The International Court of Justice Advisory Opinions on the controversial interpretations of Article 51***. The restrictive interpretation of *Article 51* creates so much difficulty for an attacked state in the face of contemporary terrorists' attacks in which enemy states often sponsor proxy militias, as the case with Iran sponsoring Hamas, Hezbollah, Houthi militias and other guerrilla non-state actors to attack Israel. By restricting the right to individual self-defense to situations when the attack involves states would seem to amounts to preventing a state from defending itself from terrorists and other non-state actors. No state should be prevented from defending its territory and citizens from attacks either by enemy state or non-state actors.
8. ***The UN Security Council should midwife the signing of a peace pact*** between the State of Israel, Iran and the Arab States, with strict penalties for its violation. The need for peace to return to the Middle East cannot be overemphasized, therefore, it is incumbent on the UN Security Council or any of its powerful permanent members of initiate steps to restore peace between

Israel and Palestine on one hand, and Israel and Iran including its proxies on another hand. However, it should not just end with talks of ceasefire and exchange of prisoners, as it is insufficient to end the war. There should be an enforceable pact between them — one that will compel the parties thereto to obey its provisions. There is no doubt that several peace pacts have been signed in the past, however, none of those pacts had strict and enforceable penalties for violations. Consequently, the parties should be made to sign a more detailed and enforceable pact. I dare say that, if the Egypt-Israel Peace Treaty,[146] signed in Washington DC, United States, on 26 March, 1979, following the 1978 Camp David Accords could be respected by both parties, then a well thought-out peace pact can be signed and implemented, as a panacea for peace.

5.3 Conclusion

The justification of preemptive attacks accords with the jurisprudential realists' thinking. According to Oliver Wendell Holmes Jr., "*The life of the law has not been logic; it has been* ***experience***." It is no surprise that the two States that have resorted to preemptive attacks and have defended same, have "**experienced**" first hand horrific attacks ever recorded in modern history—the State of Israel during the Holocaust and most recently on 7 October, 2023 Hamas attack, and the U.S. in the twin-bomb al Qaeda terrorists attacks of 11 September, 2001. Interestingly, the issue raised by Lord Ashburton in his correspondence with Secretary Webster in the wake of the *Caroline case* is worthwhile, thus:

Supposing a man is standing on ground where you have no legal right to follow him has a weapon long enough to reach you, and is striking you down and endangering your life. How long are you bound to wait for the assistance of the authority having the legal power to relieve you? Or, to bring the facts more immediately home to the case, if cannon are moving and setting up in a battery which can reach you and are actually destroying life and property by their fire; if you have remonstrated for some time without effect and see no prospect of relief, when begins your right to

[146] Israel-Egypt Peace Treaty, 1979, available at https://treaties.un.org/doc/Publication/UNTS/Volume 1138/volume-1138-I-17855-English.pdf, (accessed 05/11/2025).

defend yourself, should you have no other means of doing so than by seizing your assailant on the verge of a neutral territory?[147]

The issue aforesaid brings to bear the need for a pragmatic approach by a State faced with "threat" or "use of force" from enemies in another State. In reality, no State which had previously '**experienced**' "armed attack", and receiving subsequent intelligence reports of the same assailants preparing for yet another attack, howbeit in future not "imminent"— as a customary international law rule developed in the *Caroline case*, and then the State will wait until such future "armed attack" is imminent, before it resorts to *anticipatory self-defense* or executed before it exercises its "*inherent right of self-defense*".

According to President Bush, "*In the face of today's new threat, the only way to pursue peace is to pursue those who threatens it.*"[148] To "threaten" World peace and security, this study argues, is itself a breach of the whole United Nations Charter, and every step needed to "pursue those who threaten it" and remove the "threat" is justified, as allowing the "threat" to morph into actual "armed attack" before measures are taken in line with the provisions of *Article 51* and the *Chapter VII* of the Charter may prove belated, ineffective and catastrophic.

Further, Bush in his government's National Security Strategy, as quoted by Record, argued that "*deterrence based only on the threat of retaliation is less likely to work against leaders of rogue states… Traditional concepts of deterrence will not work against a terrorist enemy*." Also, "*Deterrence, the promise of massive retaliation against nations, means nothing against shadowy terrorist networks with no nation or citizens to defend*." "*Containment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies*." "*We will not wait for the authors of mass murder to gain weapon of mass destruction*." "*time is not on our side. I will not wait until on events, while dangers*

[147] 30 BFSP 195, at 197.
[148] George W. Bush, Presidential Address to the Nations, [2001], available at https://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011007-8.html, (accessed on 01/10/2025).

gather. I will not stand by, as peril draws closer and closer." "*If we wait for threats to materialize, we will have waited too long." "We cannot let our enemies strike first*."[149]

There is no gainsaying the fact that in reality, no leader of a State which has "**experienced**" previous "armed attack" will sit back having received credible intelligence reports of another possible attack or simply "threat" to its State's national security, whether futuristic or immediate, such acquiescence and docility may prove catastrophic, and there may be no time to recover and exercise its "inherent right" of self-defense. Therefore, every leader of a previously attacked State usually adopts pragmatic approach to preempt any threat to its national security.

From the foregoing, an examination of the State of Israel's preemptive attacks against the backdrop of Israelis' **Holocaust experience**, in addition to the hostile relationship of its Arab neighbors, since 1948, and since the 1979 coming to power of the Ayatollah regime in the Islamic Republic of Iran, which like the Arabs has vowed to wipe Israel off the map.[150]

The State of Israel's preemptive attacks dates back to the 1967 *Six Day War*,[151] following the Egyptian President Nasser's "threat" to annihilate Israel, thus,

"*Our aim is the full restoration of the rights of the Palestinian people. In other words, we aim at the* ***destruction of the State of Israel****. The immediate aim: perfection of Arab military might. The national aim: the eradication of Israel.*

"Brothers, it is our duty to prepare for the final battle in Palestine."

Our ***basic objective will be the destruction of Israel****. The Arab people want to fight… The mining of Sharm el Sheikh is a confrontation with Israel. Adopting this measure obligates us to be ready to* ***embark on a general war with Israel****."*

"We will not accept any… coexistence with Israel… Today the issue is not the establishment of peace between the Arab states and Israel… The war with Israel is in effect ***since 1948****."*

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[149] Jeffrey Record, *The Bush Doctrine and War with Iraq*, (The US Army War College Quarterly: Parameters 2003), vol. 33, available at https://press.armywarcollege.edu/cgi/viewcontent.cgi?article=2135&context=parameters, (accessed on 01/10/2025).

[150] Bradford Betz, *Iran's Top General Says Wiping Israel off Map is an 'Achievable Goal'*, (Fox News 2019), available at https://www.foxnews.com/world/irans-top-general-says-wiping-israel-off-map-is-an-achievable-goal, (accessed on 01/10/2025).

[151] Supra.

"The armies of Egypt, Jordan, Syria and Lebanon are poised on the borders of Israel… to face the challenge, while standing behind us are the armies of Iraq, Algeria, Kuwait, Sudan and the whole Arab nation. This act will astound the world. Today they will know that the Arabs are arranged for battle, the critical hour has arrived."

We are now ready to confront Israel…"[152]

Equally, the El Akhbar newspaper, Cairo on 31 May, 1967 reported, inter alia:

"Under terms of military agreement signed with Jordan, Jordanian artillery co-ordinated with the forces of Egypt and Syria is in a position to cut Israel in two at Kalkilya, where Israeli territory between the Jordan armistice line and the Mediterranean Sea is only twelve kilometers wide…"

On 19 May, 1967, Cairo Radio reported thus, "*This is our chance Arabs, to deal Israel a mortal blow of **annihilation**, to **blot out** its presence in our holy land."*

On 30 May, 1967, King Hussein of Jordan, after signing the pact with Egypt said,

"All of Arab armies now surround Israel. The UAR, Iraq, Syria, Jordan, Yemen, Lebanon, Algeria, Sudan, and Kuwait…. There is no difference between one Arab people and another, no difference between one Arab army and another."[153]

President Abdel Rahman Aref of Iraq on 31 May, 1967 said,

*"The existence of Israel is an error which must be rectified. This is our opportunity to **wipe out** the ignominy which has been with us since 1948. Our goal is clear – to **wipe Israel off the map**. We shall God willing, meet in Tel Aviv and Haifa."*[154]

Ahmed Shukairy, Chairman of the Palestinian Liberation Organization, on 27 May, 1967, said,

"D-Day is approaching. The Arabs have waited 19 years for this and will not flinch from war of liberation."

On 1 June, 1967, Shukairy equally said,

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[152] Camera, *Arab Threats Against Israel*, (Camera 2025), available at https://www.sixdaywar.org/precursors-to-war/arab-threats-against-israel/, (accessed on 01/10/2025).
[153] Ibid.
[154] Ibid.

*"This is a fight for the homeland – it is either us or the Israelis. There is no middle road. The Jews of Palestine will have to leave. We will facilitate their departure to their former homes. Any of the old Palestine Jewish population who survive may stay, but it is my impression that **none of them will survive**."*

*"We shall **destroy** Israel and its **inhabitants** and as for the survivors – if there are any – the boats are ready to deport them."*[155]

The Syrian Defense Minister Hafez Assad on 20 May, 1967, said,

*Syria's forces are "ready not only to repulse the aggression, but to initiate the act of liberation of itself, and to explode the Zionist presence in the Arab homeland. The Syrian army, with its finger on the trigger, is united…. I as military man, believe that the time has come to enter into a battle of **annihilation**."*

Equally, Foreign Minister Makhous on his return from Cairo, said,

"Our two brotherly countries have turned into one mobilized force. The withdrawal of the UN forces… means 'make way, our forces are on their way to battle."[156]

The Algerian Prime Minister Houari Boumedienne said,

*The freedom of the homeland will be completed by the **destruction** of the Zionist entity and the expulsion of the Americans and the British from the region."*[157]

Yemen Foreign Minister Salam, said,

"We want war. War is the only way to settle the problem of Israel. The Arabs are ready."[158]

The evolution of the Arab-Israeli Wars which have seen two Islamic archenemies—the Shiites and the Sunnis united in a proxy war against Israel, with Iran (Shiite) as the chief financier of Hezbollah (Shiite), Hamas (Sunni), the Houthis and other terrorist groups in Lebanon, Iraq, Syria, and Yemen. The 7 October, 2023 Hamas terrorist attack against Israel escalated the tension, whereby, Israel intensified their wars on all seven fronts against the Iranian regime's proxies.

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[155] Ibid.
[156] Ibid.
[157] Ibid.
[158] Ibid.

However, on 13 June, 2025, Israel began attacking Iran in what it called "preemptive" strikes on nuclear facilities, military sites and infrastructure, citing an imminent threat posed by Iran's advancing uranium enrichment program and the potential weaponization of nuclear material.[159] It equally assassinated top Iranian scientists and military commanders. Israel perceives that any Iranian nuclear capability is an existential threat to it national security. This perception has raised serious concerns necessitating the Israeli Prime Minister Netanyahu to urge the U.S. President Trump to 'finish the job' in early February 2025, although the request was declined at the time. However, the U.S. joined Israel soon after the Israelis' preemptive strikes in Iran.

From the foregoing war rhetorics of the Arab States prior to Israel's preemptive attacks resulting in the 1967 *Six Day War*; Iran's financing of proxy militia groups that have been attacking Israel; and the fact that nuclear weapon in the hands of Iran is as good as in the hands of its proxy militias who will not hesitate to launch same against Israel. Therefore, Israel's pragmatic strategy of preempting its enemies is well justified, as there is an actual "threat" of "**annihilation**" and "**wiping Israel off the map**", especially as they have **experienced** several hostilities since 1948.

Therefore, considering their previous war **experiences** against the same alliance of Arab enemies, **preemptive attack** was the most **pragmatic** strategy to survive the "imminent" armed attack of the allied Islamic forces. Anything short of preemptive attack, most probably would have left the Israelis vanquished and "wiped off the map" as threatened. According to Professor Silverstone cited by Sullivan, no State is obligated to suffer an imminent attack from an enemy, so preempting it with an attack of its own is justifiable.[160] In addition to the aforesaid, the opening of the provision of *Article 51* is clear, as it states, "***Nothing** in the present Charter **shall** impair the **inherent right**….*", therefore, the customary international law requirements of necessity, proportionality and imminence

[159] Ibid, 118.

[160] Patrick Sullivan, *Operation Opera Redux? Iran's Nuclear Program and the Preventive War Paradox*, (Modern War Institute 2025), available at https://mwi.westpoint.edu/operation-opera-redux-irans-nuclear-program-and-the-preventive-war-paradox/, (accessed on 01/10/2025).

as justification for self-defense are to say the least 'impairments' to the State of Israel's "inherent right" of self-defense, however preemptive.[161]

Lastly, any violation of the provision of *Article 2(4)* justifies any measure taken for self-defense provided in *Article 51*. Against that backdrop, the Arab States' and Iran's "**threat**" to "**wipe Israel off the map**" is a clear violation of *Article 2(4)*, as it is "…**inconsistent with the Purposes of the United Nations**". Therefore, the State of Israel's use of preemptive measure is justified, as *Article 2(4)* prohibits "…**threat**…**against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.**"

Also, just as one is justified for taking any measure to defend his right to life when threatened, so States such as the State of Israel is justified for taking preemptive measure to defend its inherent right to existence in the face of threat to "**wipe Israel off the map**" which has become the goal of the Ayatollah regime and its proxies.

The requirement of the occurrence of "armed attack" before exercising the "inherent right of self-defense" is restrictive, and it impairs the right of self-defense which customary international law and the UN Charter recognize as "inherent".

As Beres argued, "Israel… will only last as long as it's leaders remain aptly attentive to Cicero's primal warning about national safety.", "Today, in an age of uniquely destructive weaponry, international law does not require Israel or any other state to expose its citizens to atomic destruction''.[162]

[161] Ibid.

[162] Ibid, 13.

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