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The Right to Preventive Self-Defense: A Threat to Collective Security?

Issa Saidi

Dar Al Uloom University, KSA; isaidi@dau.edu.sa

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Abstract. The concept of preventive self-defense has emerged as a contentious issue in international law, challenging the traditional framework established by the United Nations Charter. While Article 51 of the Charter recognizes the inherent right of states to self-defense in the event of an armed attack, the extension of this right to include anticipatory or preventive action—before an actual attack occurs—raises profound legal and ethical concerns. This paper critically examines whether the legitimization of preventive self-defense undermines the collective security system enshrined in the UN Charter. Drawing upon doctrinal analysis, jurisprudence from the International Court of Justice (ICJ), and state practice, the study explores the legal ambiguity surrounding the concept, its potential misuse by powerful states, and its implications for international peace and security. Ultimately, it argues that the normalization of preventive self-defense threatens to erode the prohibition of the use of force, weaken multilateral mechanisms, and destabilize the international legal order.

1. INTRODUCTION

Contemporary public international law is founded on a cardinal principle: the prohibition of the use of force in inter-state relations, as enshrined in Article 2(4) of the 1945 United Nations Charter. This norm, recognized as a peremptory rule (*jus cogens*), aims to establish an international legal order based on peace, cooperation, and collective security. However, this prohibition admits limited exceptions, foremost among them the inherent right of self-defense, as articulated in Article 51 of the Charter, in the event of an “armed attack” against a state.

Historically, the concept of self-defense was already acknowledged in classical legal thought (Vattel, Grotius), but it was only after the Second World War that it was formally codified—precisely to prevent the kinds of abuse that had justified aggressive wars, such as those carried out by the Third Reich. The UN Charter thus introduced a restrictive vision of self-defense, tightly conditioned on the actual occurrence of armed aggression.

Since the terrorist attacks of September 11, 2001, however, a doctrinal and strategic shift has emerged. In its National Security Strategy (2002), the United States articulated a right of *preemptive* self-defense, asserting the authority to strike potential adversaries before they initiate an attack, once a significant threat has been identified. This logic has been invoked in several high-stakes geopolitical contexts, notably the 2003 invasion of Iraq and persistent tensions surrounding Iran’s nuclear program. Israel, similarly, has repeatedly expressed its willingness to undertake preemptive military action against Iranian nuclear facilities.

This development has sparked intense controversy within legal scholarships. On one side, proponents—often adopting a realist or security-driven perspective—regard preemptive self-defense as a necessary adaptation to modern asymmetric threats such as terrorism, nuclear proliferation, and cyberattacks. On the other side, a majority of international law scholars express deep concern over this evolution, warning that it threatens the very foundations of the collective security regime established by the UN Charter, by enabling unilateral uses of force that bypass the Security Council and contravene international law (Gray, 2018; Corten, 2010; Klabbers, 2020).

The study of preemptive self-defense has thus become a central issue in contemporary international legal discourse. It lies at the intersection of broader debates concerning legality and legitimacy, sovereignty and security, as well as the balance between legal norms and geopolitical realities. This topic also raises fundamental questions about the role of international institutions in the face of evolving state practices that risk undermining the post-1945 international legal order.

In this context, a fundamental question emerges: Can the resort to preemptive self-defense be legally justified as a modern evolution of the right to self-defense, or does it constitute a grave violation of the prohibition on the use of force, thereby posing a direct threat to the international system of peace and security?

2. METHODOLOGY

This research employs a qualitative legal methodology rooted in doctrinal analysis and supported by case study examination. Central to this approach is an in-depth analysis of primary sources of international law, particularly the United Nations Charter—most notably Articles 2(4) and 51—which delineate the legal boundaries of the use of force and the right to self-defense. The study also engages relevant international treaties, customary international law, and legal commentaries to explore the contested interpretations surrounding the notion of preventive self-defense. Jurisprudence from the International Court of Justice, including landmark cases such as *Nicaragua v. United States* (1986) and *Oil Platforms* (2003), is examined to elucidate the judicial criteria governing the legality of self-defense claims. Furthermore, the research incorporates a comparative analysis of state practice and opinio juris, drawing on prominent examples such as the 1981 Israeli airstrike on Iraq’s Osirak nuclear reactor and the preventive rationale outlined in the U.S. National Security Strategy of 2002. Through a normative and critical lens, the study evaluates whether the endorsement of preventive self-defense constitutes a permissible evolution of international law or a destabilizing challenge to the collective security framework. This comprehensive methodological approach allows for a nuanced and balanced assessment of the legal, political, and ethical implications of preventive self-defense within the contemporary international order.

3. LITERATURE REVIEW

The concept of preventive self-defense has sparked significant scholarly debate, particularly in the aftermath of the 9/11 attacks and the U.S. intervention in Iraq. Traditionalist scholars, such as *Dinstein (2011)* and *Brownlie (1963)*, affirm the restrictive reading of Article 51 of the UN Charter, emphasizing that self-defense is lawful only in response to an actual armed attack. They argue that any expansion to include preventive or anticipatory action risks undermining the fundamental prohibition of the use of force under Article 2(4). Conversely, proponents of a more flexible interpretation—such as *Schmitt (2003)* and *Byers (2004)*—suggest that evolving threats, including terrorism and weapons of mass destruction, necessitate a re-examination of self-defense doctrines. This school of thought points to the increasing relevance of asymmetric threats and the limitations of a reactive legal framework in addressing them. Nevertheless, many scholars, including *Gray (2018)* and *Ruys (2010)*—warn that a permissive stance toward preventive force would erode the legitimacy of international law and encourage unilateralism, particularly by powerful states. The literature also reveals a growing concern over the lack of consistent state practice and the ambiguity surrounding what constitutes an "imminent threat," a notion central to justifying preventive action. Overall, the scholarly discourse reflects a deep tension between the imperatives of state security and the integrity of the collective security system enshrined in the UN Charter.

3.1. Self-Defense in International Law: A Strict Legal Framework

3.1.1. The Principle of Non-Use of Force

The prohibition on the use of force constitutes one of the foundational pillars of contemporary international law. Article 2(4) of the United Nations Charter clearly states:

"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."

This principle is universally recognized as a *jus cogens* norm—meaning a peremptory rule of international law whose violation is impermissible, even with the consent of the parties involved (Cassese, *International Law*, 2005, p. 370). It reflects the collective will of states, in the aftermath of the atrocities of the Second World War, to strictly regulate the use of force and limit its legitimacy to narrowly defined and controlled circumstances.

The International Court of Justice (ICJ) has repeatedly affirmed the fundamental importance of this principle. In the *Nicaragua* case (1986), the Court described the prohibition of the use of force as a "cornerstone" of the international legal system (*Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports 1986, §188). The same principle is enshrined in the 1970 *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States*, adopted by the UN General Assembly (Resolution 2625 (XXV)), which unequivocally rejects the legality of any war of aggression or territorial conquest.

Accordingly, any use of force that is not explicitly authorized by the Security Council (under Articles 39–42 of the Charter), or that does not fall within the scope of the inherent right of self-defense, is *prima facie* unlawful. Preemptive military strikes, interventions aimed at regime change, or armed reprisals are therefore considered violations of international law unless they meet the strict criteria established by the Charter.

3.1.2. Self-Defense Under Article 51: A Limited Exception

Article 51 of the United Nations Charter provides an exception to the general prohibition on the use of force:

"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 [...]".

This provision affirms the right of self-defense within a reactive framework, rather than a preventive one. In other words, the lawful exercise of self-defense is contingent upon the occurrence of an actual armed attack. For self-defense to be considered lawful under international law, several cumulative conditions must be met, as consistently affirmed by the International Court of Justice (ICJ) and supported by the prevailing legal doctrine.

3.1.3. The ICJ's Contribution to the Law of Self-Defense

In the *Nicaragua* case, the International Court of Justice (ICJ) clarified that an armed attack constitutes the minimum threshold required to trigger the right of self-defense (*ICJ Reports* 1986, §195). A hypothetical threat, suspected intent, or diplomatic tension cannot justify the unilateral use of force. This requirement was reaffirmed in the *Oil Platforms* case (*Iran v. United States*, 2003), in which the Court rejected the U.S. claim of self-defense, holding that no armed attack attributable to Iran had occurred (*ICJ Reports* 2003, §§72–78).

3.1.4. The Legal Standard of Imminent Threat in the Law of Self-Defense

According to the classic criteria established in the so-called *Caroline Doctrine* (1837), an imminent armed attack may justify self-defense only if "the necessity of self-defense is instant, overwhelming, leaving no choice of means, and no moment for deliberation" (quoted in Bowett, *Self-Defense in International Law*, 1958). This criterion of imminence has been widely accepted by legal scholars as a restrictive and essential condition for lawful self-defense.

Christine Gray (2018) emphasizes that "international law does not authorize self-defense based on speculative threats or strategic anticipations" (*International Law and the Use of Force*, 4th ed., Oxford University Press, p. 150). Self-defense must therefore occur *ex post*—in response to an actual or imminent attack—or *in extremis*, but never *ex ante*, in anticipation of a future or hypothetical threat.

3.1.5. Proportionality and Necessity

In addition to imminence, the use of force in self-defense must comply with the principles of necessity and proportionality. The principle of necessity requires that no viable peaceful alternative exists, while proportionality demands that the defensive response must not exceed the scale and intensity of the initial attack.

In the *Oil Platforms* case, the ICJ ruled that even if an armed attack had been established, the U.S. military response failed to meet the tests of necessity and proportionality (*ICJ Reports* 2003, §§77–78).

3.1.6. Immediate Information of the Security Council

According to Article 51, the state exercising self-defense must immediately inform the Security Council. This mechanism ensures a certain transparency and collective control over unilateral actions. However, as Olivier Corten (2010) notes, this obligation is often ignored or rendered meaningless in contemporary practices (Pedone, p. 255).

3.2. The Controversial Doctrine of Preemptive Self-Defense

3.2.1. A Post-9/11 Doctrinal Evolution: Towards Anticipatory Self-Defense

The concept of preemptive self-defense gained prominence in strategic discourse following the terrorist attacks of September 11, 2001. The United States argued that contemporary threats—particularly those posed by non-state terrorist organizations and states suspected of developing weapons of mass destruction—necessitated an adaptation of traditional international legal frameworks. In its 2002 *National Security Strategy*, the U.S. government declared:

"We can no longer wait for threats to fully materialize. We must be prepared to act against them before they emerge."

(*National Security Strategy of the United States of America*, 2002)

3.2.2. An Approach Widely Rejected by Mainstream Legal Doctrine

Despite these strategic developments, mainstream legal doctrine rejects the legitimacy of the use of force in the absence of an actual or imminent attack.

- The Distorted Notion of Imminence

Olivier Corten strongly criticizes the logic of preventive self-defense, which he characterizes as a "political reconstruction disguised as legal legitimacy" (*Le droit contre la guerre*, 2010, p. 230). According to him, accepting such an interpretation of Article 51 effectively erodes the authority of the Security Council, granting individual states the discretionary power to determine the legitimacy of a military strike on their own.

Other authors, such as Christine Gray, also warn against the risks of excessively subjectivizing the law of self-defense. She emphasizes that the criterion of imminence cannot be reduced to a mere strategic or psychological assessment, as this would undermine the stability and predictability of the international legal system (*International Law and the Use of Force*, 2018, p. 155).

- The Consistent Position of the International Court of Justice

The International Court of Justice (ICJ) has never recognized preemptive self-defense in its jurisprudence. In the *Oil Platforms* case (*ICJ Reports*, 2003), the Court rejected the U.S. argument that certain alleged attacks attributed to Iran justified a military response. It held that the threshold of an armed attack had not been met and further concluded that the reprisals in question were neither necessary nor proportionate (§§74–78).

Likewise, in its *Advisory Opinion on the Legality of the Threat or Use of nuclear weapons* (1996), the ICJ adopted a cautious approach. While it refrained from explicitly ruling out all uses of force involving nuclear weapons, it did not endorse preemptive self-defense and reaffirmed the central role of the Security Council in maintaining international peace and security (§§41–44).

- Lack of Consensus within the International Community

At the multilateral level, the United Nations General Assembly and many member states have expressed clear opposition to the concept of preemptive self-defense. Resolution 3314 (XXIX) of 1974, which defines the notion of aggression, considers any armed attack that falls outside the two established exceptions—namely, self-defense under Article 51 or action authorized under Chapter VII—as an act of aggression (Article 3).

Thus, even in the face of serious but non-imminent threats—such as nuclear proliferation, the international community tends to prioritize legal and diplomatic mechanisms over unilateral military action. This is illustrated by the International Atomic Energy Agency's (IAEA) role in supervising Iran's nuclear activities, and by the negotiation and implementation of the Joint Comprehensive Plan of Action (JCPOA), which represents a multilateral approach to conflict prevention and non-proliferation.

3.3. Case Studies: Towards a Politicized and Unstable Practice of Law

Several prominent cases exemplify both the invocation and potential abuse of the right to self-defense under international law, particularly in its preventive or anticipatory form. In 1981, Israel's airstrike on Iraq's Osirak nuclear reactor marked one of the earliest and most controversial instances of preventive self-defense. Although Israel argued that it acted to neutralize a looming existential threat, the United Nations Security Council, in Resolution 487, unanimously condemned the attack as a violation of international law, and no international body accepted Israel's justification. According to Article 51 of the UN Charter, states exercising the right to self-defense must immediately report their actions to the Security Council—a procedural safeguard that is frequently disregarded or rendered ineffective, as *Corten* (2010, p. 255) observes in his analysis of unilateral uses of force (Pedone).

A similar justification was advanced in the 2003 U.S. invasion of Iraq, where the United States relied on a combination of preventive self-defense, alleged links to terrorism, and concerns over weapons of mass destruction. However, no clear evidence of an imminent armed attack was presented, and the operation lacked Security Council authorization. The intervention was widely regarded as unlawful by legal scholars, including *Franck* (2003), who argued that such preventive logic risks dismantling the Charter's prohibition on the use of force, and *Corten* (2010), who underscored the absence of legal basis under Article 51.

In the case of Turkey's cross-border operations in Syria and Iraq, Ankara has regularly invoked Article 51 to justify military strikes against non-state actors, particularly Kurdish groups such as the PKK and YPG. Although Turkey cites repeated security threats, the legal foundation of these operations remains contested, especially since the host states (Syria and Iraq) have not consented to foreign military presence. *Ruys* (2010) emphasizes the difficulties in justifying the use of force against non-state actors on foreign territory, noting the risk of undermining the principle of state sovereignty when such actions are taken without clear attribution or collective oversight (*'Armed Attack' and Article 51 of the UN Charter*, Cambridge University Press).

The ongoing tensions between Israel and Iran provide another significant illustration of preventive self-defense claims. Israel

has frequently signaled its willingness to conduct preemptive strikes to thwart Iran's nuclear ambitions, viewing them as existential threats. This stance echoes Israel's earlier Osirak strike but remains legally contentious since Iran has not launched any armed attack against Israel. The absence of an imminent threat calls into question the legality of any preventive use of force. Scholars such as *Gray* (2018) and *Ruys* (2010) caution that such preventive rationale risks eroding the strict interpretation of Article 51 and could set dangerous precedents for unilateral military action absent Security Council approval.

Most recently, the 2022 Russian invasion of Ukraine offers a striking example of the abuse of self-defense rhetoric. Russia claimed it was acting under Article 51 to protect Russian-speaking populations in the Donbas and to engage in collective self-defense of the self-proclaimed Donetsk and Luhansk republics. However, these justifications were swiftly rejected by the UN General Assembly in Resolution ES-11/1 (2022), which declared the invasion a breach of Article 2(4). Furthermore, the International Court of Justice, in its Order of 16 March 2022, held that Russia had failed to demonstrate any legitimate necessity or imminence of an armed attack (*ICJ, Allegations of Genocide*, 2022). Scholars such as *Gray* (2018) and *Ruys* (2021) have argued that Russia's rationale exemplifies a dangerous instrumentalization of self-defense doctrine, undermining the normative stability of the collective security system and setting a precedent for unlawful unilateral interventions.

Taken together, these cases illustrate the tension between state security interests and the legal constraints on the use of force and underscore the importance of reinforcing clear legal boundaries to prevent the erosion of the Charter-based order.

3.4. Collective Security at Risk: Systemic Effects of Preventive Self-Defense

3.4.1. The Crisis of Security Council Primacy in Global Governance

A cornerstone of the collective security system established by the UN Charter is the Security Council's exclusive authority to authorize the use of force, except in cases of self-defense following an armed attack (Articles 39 to 42). However, implicit acceptance of a right to preventive self-defense circumvents this multilateral mechanism by enabling unilateral military actions justified by anticipated threats.

Ian Brownlie warns that such practice "tends to marginalize the Security Council and to reintroduce, in a disguised form, the right to discretionary war (jus ad bellum)" (International Law and the Use of Force by States, 1963, p. 275). Should the doctrine of preventive self-defense become widespread, it would undermine the UN's role as a guarantor of peace, leading to fragmentation of the international order.

Furthermore, General Assembly Resolution 2625 (1970) on the Principles of International Law stresses that only the Security Council is competent to determine the existence of a threat to peace or an act of aggression, rendering any unilateral decision based on subjective threat assessments illegitimate.

3.4.2. The Impact of Legal Ambiguity on Global Security

One of the main dangers of recognizing preventive self-defense is the extreme subjectivation of the law of war. If every State defines what constitutes an imminent threat according to its own criteria, the law risks becoming an instrument of political convenience, eroding the objective foundations of jus ad bellum.

Olivier Corten cautions that "opening this Pandora's box would lead to an increase in conflicts, each claiming to be a defensive aggressor". This risk has already materialized, for instance, in the justifications Russia put forward for its interventions in Ukraine in 2014 and 2022, partly based on alleged threats and the preventive protection of Russian-speaking populations—arguments widely rejected by the international community.

Such erosion of objective criteria—armed attack, imminence, necessity, proportionality—undermines legal certainty in international relations, making conflicts more unpredictable and weakening mechanisms for peaceful prevention.

3.4.3. The Problem of Inconsistent Norms in International Law

The tacit or political acceptance of certain so-called "preventive" strikes—such as Israeli operations in Syria or targeted U.S. strikes in gray zones—contrasts sharply with the condemnation of other unilateral uses of force. This asymmetry in the application of international law fosters a perception of systemic injustice, particularly among states in the Global South.

As Antonio Cassese denounced in the 1990s, the selective use of international law "feeds cynicism and undermines the moral authority of universal institutions" (The International Community's 'Legal' Response to Terrorism, 2001, EJIL, p. 998). Such inconsistency exacerbates North-South tensions, deepens distrust in the Security Council, and erodes the legal consensus on the legitimate use of force.

3.4.4. From Cooperation to Conflict: The Reemergence of the Hobbesian Paradigm

The acceptance of a preventive right to war reflects a Hobbesian logic of mistrust and anarchy, in which states, relying solely on their own threat assessments, prioritize force over law. This resurgence of a pre-modern vision of international relations represents a significant regression from the normative progress embodied by the United Nations Charter. Jan Klabbers warns against this regression:

"The reintroduction of preventive war, even under a legal guise, constitutes a frontal attack on the normative consensus of 1945." (International Law, 2020, p. 94).

Collective security depends on trust in multilateral mechanisms—not on the proliferation of unilateral justifications, however sophisticated.

4. CONCLUSION

The use of force in international relations remains one of the most sensitive and contentious issues in contemporary international law. Strictly regulated by Article 2(4) of the United Nations Charter and its exception under Article 51, the right to self-defense is conceived as a defensive and reactive mechanism intended to respond to an actual armed attack, while respecting the principles of necessity, proportionality, and imminence. However, the emergence of asymmetric threats—such as transnational terrorism and the proliferation of weapons of mass destruction—has prompted attempts to broaden the interpretation of the right to self-defense, particularly through the concept of so-called "preventive" self-defense. This development, advocated

notably by the United States and Israel, asserts that a State may resort to force against a future or latent threat, even in the absence of an armed attack. Nonetheless, this strategic reinterpretation of international law has not received legal recognition—either in the jurisprudence of the International Court of Justice, nor in customary international law, nor in the predominant views of academic doctrine. As demonstrated by the Nicaragua v. United States and Oil Platforms cases, the ICJ emphasizes the necessity of an actual and attributable attack to justify the lawful use of force. The Iranian case, often cited to justify anticipated use of force, illustrates the limits of this preventive logic. The absence of imminent or proven aggression, the existence of international oversight mechanisms (such as the IAEA, the NPT, and the JCPOA), and the multilateral nature of the issue all demonstrate that any unilateral strike against Iran would constitute a violation of international law, even if politically rationalized on national security grounds. Moreover, acceptance of the principle of preventive self-defense would trigger a range of harmful systemic consequences: marginalization of the Security Council, increased legal uncertainty globally, normative asymmetry favoring powerful States, and a regression to a paradigm of pre-emptive warfare. Ultimately, it poses a direct threat to the collective security system established in 1945 and risks normalizing discretionary warfare. Therefore, while international law must remain adaptable to evolving strategic realities, it cannot be subordinated to unilateral political agendas. Any reform or evolution in the law governing the use of force must be pursued through multilateral and codified processes rather than through de facto derogatory practices. Upholding international legality requires resisting the temptation to adopt a law of force and rigorously reaffirming the foundational principles of jus contra bellum.

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