PREEMPTIVE ATTACK: RETHINKING THE APPLICATION OF INTERNATIONAL LAW TO THE ISREAL-IRAN WAR OF 2025

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Abstract

The attack against the Iranian nuclear facilities first by Israel and later by the United States of America creates a sharp divide among scholars of international law and the public. The supporters of Israel and the United States justify the attack and argued that it is consistent with the rights of self-defence against the apparent Iranian threat to the State of Israel and the interest of the United States in the Middle East while those oppose to the military action argued that the military strike does not conform with the criteria for the legitimate exercise of the right of self-defence under international law and described the action as violation of the sovereignty of the Islamic Republic of Iran. This article examined the concept of sovereignty alongside the treaty and customary principles of self-defence under international law and find that the military action by the armed forces of Israel and the United States does not fall within the criteria and conditions set down for the legitimate exercise of the rights of self-defence and preemptive attack. The article recommended reformation of the United Nations system to make States more accountable for their action under international law.

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1.0. Introduction:

On the night of 13 June, 2025, the world was awaken by a glooming reality; an Israeli Defence Forces (IDF) military attack against Iranian nuclear facilities and other military targets within the territory of the Islamic Republic of Iran.[1] In retaliation, the Islamic Republic of Iran fired several ballistic missiles against cities and military targets in Israel and threatened to attack military bases of States sympathetic to Israel particularly the United States of America and British military bases in the Middle East.[2]

The conflict draws in other state and non-state actors within the Middle East, Europe and North America.[3] There were reported exchange of military firepower between the forces of the United States of America and its allies against the Houthis fighters of Yemen, IDF and Hezbollah and other armed groups in Lebanon, West Bank and Gaza.[4] Attacks were also reported against civilian ships at the strait of homuz where about 20% of the world global oil and other goods are transported. Iran threatened to closed the strait which threatened global world trade.

The conflict reached its climax with the direct involvement of the armed forces of [5]the United States of America against the Islamic Republic of Iran

[1] Phillip Loft, " Iran: Impact of June, 2025 Israel and US Strike and Outlook" *House of Commons Library, Research Briefing No: 10292 22, July, 2025*
[2] Israel-Iran Conflict, U.S. Strike Ceasefire, Congressional Research Service, retrieved from www.crs.congress.gov on the 28th day of October, 2025
[3] ibid
[4] David Albright et al, " Post-Attack Assessment of the First 12 days of the Israeli and U.S. Strikes on Iranian Nuclear Facilities" *Institute of Science and International Security, June 13 2025*
[5] Ibid

on the 22nd day of June, 2025 when the US carried out direct attack against two Iranian nuclear facilities at Natanz and Fordow.

The attack did not only shock the international community but spur debate on certain principles of international law principal among which are the question of preemptive attack and sovereignty of States in international law. at one end of the debate, some commentators justify the actions of Israel arguing that it was necessary to protect the Israeli State from imminent nuclear attack or danger of nuclear attack from the Islamic Republic of Iran and or its allies and proxies in the Middle East while others insist that the actions of Israel and the United States against Iran violates established principles of international law, the Charter of the United Nations and the sovereignty of Iran. This debate is at the heart of international law.

This paper examined the concept of preemptive attack within the prism of international law and assess its justification in the Israel and Iran armed conflict.

2.0 Sovereignty

The principle of sovereignty of States is one principle which is at the core of international law and diplomacy. The notion of sovereignty plays an important role in the operation of international law. In the first instance, sovereignty seeks to balance power between States in their relationship with one another while in the second instance; it provides the whole essence of Statehood. It serves as the fountain for which States exercise absolute powers to develop and implement policies affecting its internal affairs. It confers on a State the absolute right to decide for itself the policies it may prefer within its domestic spheres without interruption or interference from other States. The ability to exercise these rights is fundamental to the

existence of State and international law. In the *Island of Palmas case*,[6] the Permanent Court of Arbitration held that: *Sovereignty in relation to a portion of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State.*

The sovereignty confers on States the duty not to unnecessarily interfere with the exercise of the sovereign powers by a State unless same is justified by the requirement of international law. In the *Austro-German Custom Unions case*,[7] The Permanent Court of International Justice noted that other States who are by themselves signatory to the Treaty of Paris of Saint-German which recognizes the inalienability of the sovereign rights of Austria are bound not to participate in acts involving the alienation of the sovereign rights of Austria.

In the traditional sense of the word, sovereignty connotes the independence of States to take actions and be responsible for same without undue interference from other States. The idea of independence of States connotes the right of a State as a sovereign entity to exercise powers and jurisdiction over its internal affairs, and the right to protect the State against external aggression.[8] It also connotes the right not subjected to the control and domination of another State.[9]

As indicated earlier, sovereignty of States also connotes equality of States. Crowford argued that the existence of international law is hinged in the acceptance by the international community not just of the existence of

[6] 2 Reports of the International Arbitration Award, pp 829
[7] PCIJ, Series, A/B/NO.41, 1931
[8] Malcolm N. Shaw, *International Law*, 6th Ed. Cambridge University Press, Cambridge
[9] See the *Corfu Channels Case, ICJ Reports, 1949,*

States but the equality and independence of every State to act as equal to each other within the sphere of international law.[10]

The notion of sovereignty of States is expressed in the United Nations Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States which was adopted in 1970 which emphasized at Article 3 that "No State or group of States has the right to intervene, directly or indirectly for any reason whatsoever, in the internal or external affairs of any other State." Similarly, the Equality of States is expressed in Article 18 (1) of the United Nations Charter of 1945 which allocates to every State the right to one vote on any matter to be considered by the United Nations General Assembly.

It should be noted that the mere fact that a State depends on another economically or militarily will not vitiate the presumption of sovereignty in favour of the State concern. Sovereignty as a legal concept does not restrict third party influence. A State is entitled to enter into agreement with another State to limit its freedom of action in certain respect.

3.0 Preemptive Attack Under International Law

The concept of preemptive recently acquired notoriety in the realm of international law. The notion is largely associated with United States of America military strategies from 1940s, 1960s, 1990s 2000s. several attempts had been made to define the concept within the framework of international law and international diplomacy. According to Kregger the motivation for preemptive attack is to secured military advantage by

[10] J.R. Crowford, *Brownlie's Principle of International Law,* Oxford University Press, Oxford, 2012

striking first with the aim of degrading the adversary's capacity to wage war.[11] He further to note that the mere believes or apprehension that the adversary is about to attack will not justify an attack against the adversary. [12] He posited that the notion of preemptive strike supports the spiral conflict theory.

Rockefeller argued from the perspective of customary international law and posited that preemptive attack is an established principle of customary international law which vest on states the prerogatives to initial preemptive attack when it is faced with an *imminent* danger. He argued that a state is allowed under international law to exercise a right of preemptive attack if there is a threat of "imminent" attack against the State. [13]

One thing is settled as what constitute preemptive attack. It is an attack carried out by another state against the other or against non-state actors in the territory of another state with the view to prevent or thwart an attack against the attacking state. States like the United States, Israel and UK and other States often justify their action on the basis of self-defense under international law.

The concept of self-defense is as long as the history of international law. under the principle of self-defense, a State is lawfully allowed to use force to counter an attack against by other states or non-states actors acting from the territory of another state. Self-defense is rooted in customary

[11] Joel Kregger, *Preemptive and Preventive war, In Oxford Company to International Relations*, Oxford University Press, 2014
[12] Ibid p
[13] Mark L. Rockefeller, " The Imminent Threat Requirement of the Use of Preemptive Military Force: Is it Time for a Non-Temporal Standard" *Denver Journal of International Law & Policy, Vol. 33 No.1 2004*

international law and alongside other core principle such as sovereignty and territory forms the basis of international law.

Under the principle of self-defense as encapsulated under Article 51 United Nations which provides that nothing in the UN Charter shall prevent the rights of individual or collective self-defense when an attack occurs against a State. Within the framework of the United Nations arrangement, the right of self-defense cannot only be justified it will appear only in cases where an attack actually took place in the territory of a State. This is rightly recognized as an exception to the prohibition against the use of force in line with the provision of Article 2 and 33 of the UN Charter. [14]

In the Oil Platform Case,[15] the United States carried out direct military attack on Iranian oil platforms in retaliation against attacks by Iranian militants on ships around the Persian Gulf. The ICJ noted that the United States cannot rely on the right of self-defense to justify their actions arguing that the exercise of right of self-defense is only available to States that suffered armed attack.

In the Nicaragua's case,[16] Nicaragua argued that the mining by the United States of the harbours around Nicaragua, inter alia, violated international law with respect to the unauthorised use of force against Nicaragua. The United States accused Nicaragua of supporting cross-border military attacks on Costa Rica and Honduras, and of providing military aid to rebel factions in El Salvador. The United States maintained that Nicaragua's

[14] Brownlie
[15] (2003) ICJ Reports, 161
[16] (1986) ICJ Reports, No 14

actions in providing weapons and other support to rebels seeking to overthrow the Salvadorian government constituted an "armed attack." The United States argued, therefore, that by supporting the Nicaraguan "contras" and mining the surrounding harbours, it was acting under Article 51, which permitted the right to "collective self-defence."

While Article 51 of the UN Charter placed strict requirement of an armed attack against the State before the rights of self-defense could be triggered, some States have argued that there exist a right of preemptive self-defence in customary international law. The present notion of preemptive attack is linked to the concept of preemptive self-defense.

Although no treaty exist to support the right of States to take preemptive attack or exercise the rights of preemptive self-defense as some may prefer to call it, there are historical situation which support the existence of such rights under international law.

In the *Caroline case of 1837 (also known as the Caroline incidence)*, in his correspondence to the British Envoy, Lord Ashburton, the United States Secretary of Daniel Websters argued that the action of the British against the Caroline in the territory of the United States of America is not justify under international law and supported by the principle of customary international law in the use of force. In response to Websters on behalf of the British Government, Lord Ashburton argued that the case of the Caroline creates an exception to the general principle of law applicable to the exercise of self-defence. He posited that the situation leading to the destruction of the Caroline leaves the British government with a situation overwhelming leaving no choice of means and moment of deliberation hence the action was justified acts of self-defence.

In 1904-05 the Japanese launched a preemptive strike against Russia in order to prevent Russia from building military strength in the Far East through the Russian occupied Manchuria.[17]During the First World War, the Germans launched a preemptive strike against the France through Belgium[18] and the German justify their invasion of Poland on the grounds that it was necessary to prevent the invasion of Germany by Polish saboteurs already preparing to attack Germany. During the Second World War, the Japanese in 1941 attacked the United States fleet at Peal Habor and other military assets of the Allied forces at Philippines with the aim of weakening the United States and preventing it from joining the War.[19]

In 1967, in the course of the Israeli-Arab Six-Days war, when Egypt was readying itself to engage itself in the War, the Israeli Defence forces attacked the Egyptian armed forces on the morning of June, 5, 1967 and destroyed about 400 aircrafts of the Egyptian Airforce.[20] On October, 1973, the Arab coalition forces carried out a surprise attack against the Isreali forces in their frontiers and took the intervention of the United States and Russia to prevent Israeli defeat during the attack.[21]

[17] Tosh Minohara, " The Russo-Japanese War and the Transformation of US-Japan Relations: Examining the Geopolitical Ramifications" *The Japanese Journal of American Studies,* No.27, 2006
[18] See J. Kregger, *Preemptive and Preventive war,* Fn 11
[19] Douglas S. Killey, " Japanese Strategy and Operational Art at Pearl Habour" *Naval War College Report, Newport R.I.*
[20] Ersun N. Kurtulus, "The Notion of a " Preemptive War" the Six Day War Revisited", *Middle East Journal, Vol.61, 2007*
[21] John B. Quigley, " Legality of Military Action by Egypt and Syria In October, 1973" *Ohio State Legal Research Papers No.751*

Following the terrorist attack against the United States on 11 September, 2001, by Al-Qaida, the United States declared war on Afghanistan and Iraq countries perceived to be sympathetic to the group. The United States declared that the wars were necessary to prevent future attack against the United States of America and its allies.[22] Recently, the Israeli Defence Forces carried out attacks Hezbollah using the pager communication devices and direct military airstrikes.

4.0 Legal Threshold for Legitimate Exercise of the Rights of Preemptive Attack Under International Law

One fact that seems to be acceptable among scholars of international law is the recognition by States that given certain circumstance, a state is inherently entitled to use force against another state to prevent harm to itself[23] subject to the existence of certain condition.

In the *Caroline Affairs*[24] both the United States and the British governments agreed that the occurrence of certain events is capable of triggering the right of preemptive self-defense. The commonly accepted facts which States recognize as legitimizing as noted by the United States Secretary of State there should be a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberations." These conditions were accepted by the British government as representing the correct position of the law and is now generally accepted forming part of customary international law.[25]

[22] The Correspondence Between Mr Webster and Lord Ashburton: 1. On Mc Leod Case, 2. On the Creole Case, 3. On the Subject of Imprisonment, Library of Congress
[23] Robert M. Cassidy, *War, Wills and Warlords: Counterinsurgency in Afghanistan and Pakistan, 2001-2011* Marine Corp University Press, Virginia, 2012
[24] See Correspondence Between Mr Webster and Lord Ashburton Fn 22
[25] See Shaw, *International Law,*

While a State may be justified to preemptively use force against another State if the conditions set-out by in the Caroline case exist, the force must be limited to the elimination of the existing threat and must not be excessive.[26] Necessity and proportionality are the bedrock for the exercise of the rights of self-defence in international law and apply to pre-emptive use of force.

5.0 Legality of the Israeli, US attack against the Islamic Republic of Iran

Both the United States and the Government attempted to justify their actions referring to existential threat of a nuclear Iran. The Israeli Prime Minister when addressing the citizens of Israel in the morning of the attack against Iran stated that Israel needed to act swiftly as the nation cannot afford to "… leave these threats for the next generation."[27]

Donald Trump in his defence of the United States joining the strike action against the Republic of Iran in his address to the people of America maintained that "for 40 years, Iran has been saying 'death to America, Death to Israel' they have been killing our people, blowing their arms blowing their legs with roadside bombs- that was their specialty."

The *Caroline limit* propounded by the United States of America during the Caroline case and accepted as reflecting customary international law on the rights of self-defence demands the existence of the evidence of an imminent

[26]See *The Legality of the Use of Nuclear Weapons case*

[27] The New York Times "Netanyahu Says Israel Will Fight Iran as Long as Necessary," published on June 12, 2025 retrieved at< www.nytimes.com-netanyahu -iran-israel-strikes> on the 23rd day of October, 2025

attack leaving no choice of means and no moment of deliberations. These conditions if applied to the Israeli attack against Iran will demand that Israel and the United States provide evidence of an imminent attack against their respective territories by Iran and that such planned attack leaves no room for other actions or diplomacy at averting it.

The Caroline limits required objective analysis of given situation before an act of preemptive attack can be justify. A state cannot rely on a previous threat by another State to justify its present action nor is a State allow under international law to hide under the guise of a future or anticipatory attack to carryout preemptive attack against another State. The facts of the Israel and United States attack against the nuclear facilities in Iran sets a dangerous new trend in international law and constitute a violation of the sovereignty of the Islamic Republic of Iran. Attack against Iran and the reasons proffered in support thereof by the US and Israel has no place under the United Nations Charter and does not fall within the threshold recognized by customary international law and may be regarded as an act of aggression against the sovereignty of Iran.

6.0 Conclusion

The Israeli-Iranian armed conflict really shocked the world and threatens international peace at the time of its execution. While Israel and the United States considered their actions to be justified under international law, Iran and most of the world view the actions of Israel and the United States as a violation of the sovereignty of the Iranian State. While opinion on the legal consequence of the action remains divided, treaty and customary rules of international humanitarian law sets the criteria and threshold for the exercise of the rights of self-defence and adherence to these rules by State will strengthened international peace and eliminate future occurrence.

7.0 Recommendation

i. The UN Charter on the right of self-defence should be reviewed to clearly include the limits set down in the Caroline Test in the exercising of preemptive attack.
ii. Article 51 of the UN Charter should be reviewed to include in the definition of attack, the activities of non-state actors
iii. The reformation of the United Nations system to make States accountable for obvious violations of the rules of international law in order to protect the principles of sovereignty of States.