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LEGALITY OF PRE-EMPTIVE STRIKES ON NUCLEAR FACILITIES: THE CASE OF IRAN'S NUCLEAR SITES

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ABSTRACT

Legality of anticipatory or pre-emptive attacks under international law is still one of the most debated issues in international relations today. This article critically analyses the legal status of such strikes with special reference to the possible targeting of Iran's nuclear facilities. Grounded in the United Nations Charter principles, in particular Articles 2(4) and 51, and in the foundational Caroline doctrine, the article probes whether the use of force may be justified when there is no actual armed attack. The study rests on milestone precedents, such as Israel's Operation Opera in 1981 against Iraq's Osirak reactor and the Syrian Al-Kibar facility airstrike in 2007, to examine state practice and international responses. It also assesses Iran's ongoing nuclear enrichment within the context of its commitment to the Nuclear Non-Proliferation Treaty (NPT) and recent discoveries by the International Atomic Energy Agency (IAEA). Using legal standards such as imminence, necessity, and proportionality, the article submits that although military intervention against Iran is tactically attractive to some countries, it encounters concrete legal hurdles under current standards of international law. The article ends by offering policy recommendations to strengthen diplomatic efforts, legality, and regional stability, as opposed to authorizing unilateral uses of force outside the strict boundaries of the UN Charter.

***Keywords**:* Nuclear Program, Caroline Test, Atomic Energy, Proportionality, Operation Opera

I. Introduction

Global concern has reached razor-sharp heights since the United States' own withdrawal from the Joint Comprehensive Plan of Action (JCPOA) in 2018 and Iran's subsequent return to uranium enrichment levels far beyond the treaty limit of 3.67 per cent. As of mid-2025, independent sources reported enrichment at close to 60–90 per cent uranium-235 well within weapons-grade range provoking double-speak from both Israel and the United States in terms of pre-emptive military action against Iranian nuclear plants.[1] Parallel diplomatic discussion, comprising intelligence leaks and white papers emanating from Western capitals, hints at the

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1 Suzanne Raine, "The Rights and Wrongs of Self-Defence" *Engelsberg Ideas*, 30 June 2025, *available at*: https://engelsbergideas.com/notebook/the-rights-and-wrongs-of-self-defence/ (last visited on July 18, 2025).

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possibility that these states might consider military pressure as the means to prevent Iran from achieving nuclear breakout capacity.[2]

Historical precedent highlights this debate. Israel conducted Operation Opera in June 1981, destroying Iraq's Osirak reactor. The Israeli government legitimized the attack as anticipatory self-defense, although the UN Security Council condemned the attack in a unanimous vote as illegal aggression.[3] Similarly, in September 2007, Israel conducted Operation Outside the Box (otherwise known as Operation Orchard), attacking a suspected nuclear facility in Syria. Israel reiterated necessity based on anticipatory self-defence, yet international legal opinion continued to be split.[4] These incidents are still cited in scholarly work evaluating the legality of pre-emptive strikes against nuclear sites.[5]

In this context, this article questions: is it permissible for a state to initiate a pre-emptive attack on another state's nuclear installations under international law? By a systematic examination, it considers: (i) the Charter framework of the UN Articles 2(4) and 51along with customary international law principles defined in the Caroline correspondence and reaffirmed in ICJ jurisprudence; (ii) the doctrine of anticipatory self-defence, demarcating legal pre-emptive action from illegal preventive strikes; (iii) the law implications of Operation Opera and Orchard; (iv) a case-specific examination of Iran's nuclear activities, including adherence to Nuclear Non-Proliferation Treaty (NPT) provisions and International Atomic Energy Agency (IAEA) safeguards; and (v) ending with normative policy recommendations in support of diplomatic and verification instruments over single-sided military action.

The legality of anticipatory self-defence is still very controversial. Article 2(4) of the United Nations Charter forbids "the threat or use of force against the territorial integrity or political independence of any state."[6] Article 51 makes an exception, permitting the use of force in self-defence "if an armed attack occurs."[7] The phrasing, especially the requirement of a real armed attack, has given rise to controversy on whether a state is legally entitled to respond to a threatened but unconsummated attack. The earlier historical formulation of the doctrine of

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2 Jackson Nyamuya Maogoto, "Rushing To Break The Law? The "Bush Doctrine" of Pre-Emptive Strikes and the UN Charter on the Use of Force", 7(1) *University of Western Sydney Law Review* 1 (2003).

3 Andrew Garwood-Gowers, "Pre-Emptive Self-Defence: A Necessary Development or the Road to International Anarchy?" 23 *Australian Year Book of International Law* 51 (2004), 60; See further ICJ *Nicaragua* v. *United States* (Merits) [1986] ICJ Rep 14.

4 *Supra* note 1.

5 *Supra* note 2. *Ibid.*

6 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), art. 2(4).

7 *Id*., art. 51.

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anticipatory self-defence originates in the 1837 Caroline case, under which the principle was settled that in order for force to be legitimate, it has to be necessary, immediate, and proportionate terms now regarded as elements of customary international law.[8] These conditions are reiterated in International Court of Justice (ICJ) jurisprudence, such as Military and Paramilitary Activities in and against Nicaragua, where the Court took a stringent approach to self-defence limited to actual attacks.[9]

Nonetheless, state practice especially by Israel and the United States has occasionally diverged from this strict interpretation. The United States' 2002 National Security Strategy enunciated a more extensive doctrine of pre-emption, implying a legal entitlement to employ force pre-emptively in the context of increasing asymmetric threats.[10] Yoram Dinstein and Michael Schmitt and other scholars have contended that anticipatory action can be legitimate in some exceptional situations if the threat is overwhelming and does not leave any moment for contemplation.[11] But other scholars are of the opinion that expanding Article 51's scope erodes the Charter system and poses a perilous risk of undermining international legal restraints on the use of force.[12]

This article goes on the basis that the legality of anticipatory pre-emptive strikes cannot be separated from their strategic and factual context. On this basis, the subsequent sections will initially discuss the legal and doctrinal underpinnings of anticipatory self-defence. Analysis of state practice by way of case studies of Israel's 1981 and 2007 operations follows. Subsequently, the article assesses the enforcement of these standards in the current context in Iran, looking at enrichment work, IAEA safeguards, and the architecture of the NPT. The article concludes with normative recommendations for maintaining the ban on force without betraying the legitimate non-proliferation interest, disputing that pre-emptive attacks on Iran's nuclear facilities are of questionable legality under extant international law.

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8 Thomas Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* 97 (Cambridge University Press 2002).

9 Military and Paramilitary Activities in and against Nicaragua (*Nicaragua* v *United States of America*) (Merits) [1986] ICJ Rep 14, para 194.

10 US National Security Strategy, September 2002, *available at*: https://georgewbush-whitehouse.archives.gov/nsc/nss/2002 (last visited on July 18, 2025.

11 Yoram Dinstein, *War, Aggression and Self-Defence* 217–18 (6th edn, CUP 2017); Michael N Schmitt, "Preemptive Strategies in International Law", 24(2) *Michigan Journal of International Law* 513 (2003).

12 Christine Gray, *International Law and the Use of Force* 143–45 (4th edn, OUP 2018).

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II. International Legal Framework

UN Charter: Primary Source

Article 2(4) establishes the foundational prohibition on force: "All Members shall refrain in their international relations from the threat or use of force…".[13] This provision creates a general rule against unilateral force and underscores the importance of collective security under Chapter VII. However, Article 51 preserves an inherent right of self defence, stating: "Nothing in this Charter shall impair the inherent right of individual or collective self defence if an armed attack occurs…".[14]

A central legal debate arises: Does Article 51 permit preemptive force, or is it limited to responding to actual armed attacks? One viewpoint argues that Article 51 codifies only a right post attack.[15] Here, Article 51 must be read narrowly, with preemptive force absent an "armed attack" falling foul of Article 2(4). Critics urge strict adherence to the literal reading, emphasising the Charter's objective to curtail the destructive unilateral use of force.

Conversely, an alternative interpretation posits that Article 51 preserves customary international law, which includes a narrow right to anticipatory self defence under the Caroline doctrine.[16] According to this doctrine, if the necessity is "instant, overwhelming… no choice of means, and no moment for deliberation" and under conditions of proportionality, anticipatory self defence may be lawful.[17]The doctrine is part of customary law reaffirmed by tribunals and scholars alike.

Customary International Law & the Caroline Doctrine

The Caroline incident (1837), involving a preemptive strike by British forces on US territory, resulted in the formulation of a test requiring necessity, immediacy, and proportionality. These conditions have been widely recognised as customary law. Despite its origins in the 19th century, Caroline remains a reference point in modern discussions and is frequently invoked in commentary on preemptive strikes.[18]

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13 UN Charter, art. 2(4).
14 UN Charter, art. 51.
15 Elgawari ZA, "Preemptive Self Defense in Public International Law", 8 *AJEE* 1 (2025).
16 *Ibid.*
17 Maria B Occelli, ""Sinking" the Caroline: Why the Caroline Doctrine's Restrictions on Self-Defense Should Not Be Regarded as Customary International Law", 4(1) *San Diego International Law Journal* 467 (2003).
18 *Ibid.*

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ICJ Jurisprudence

The ICJ's 1986 judgement in *Nicaragua v United States* confined lawful self defence to actual armed attacks, signalling reluctance to endorse broad anticipatory rights.[19] Similarly, in Oil Platforms (Iran v USA) (2003), the Court reaffirmed the necessity and proportionality criteria.[20] The 1996 Legality of the Threat or Use of nuclear weapons advisory opinion further underscored that states must adhere to customary principles of necessity and proportionality in self-defence.[21]

These decisions illustrate the ICJ's cautious approach: self-defence may include anticipatory strikes but only if they align with both the Caroline standards and the requirements of Article 51. Importantly, the Court has not explicitly forbidden anticipatory self defence, but it has limited its scope to narrow and well-defined scenarios.[22]

III. Anticipatory Self-Defence: Conceptual Clarifications

Terminology Distinctions

Anticipatory self-defence, also termed pre-emptive self-defence, permits a state to use force in response to an imminent armed attack even before it occurs based on customary international law principles embodied in the Caroline doctrine.[23] The Caroline case (1837) formulated a strict standard under which force may be lawful only when a threat is "instant, overwhelming, leaving no choice of means, and no moment for deliberation."[24]

The terms "anticipatory" and "pre-emptive" are frequently used interchangeably, though some legal commentators distinguish "anticipatory" as justified under Caroline imminence, while "pre-emptive" may suggest broader, less certain threats.[3] Preventive self-defence, by contrast, targets speculative future threats and is largely rejected by both Article 2(4) of the Charter and customary law.[4] The legal divide hinges on timing and certainty: anticipatory action responds to a near-term threat; preventive action addresses hypothetical, distant threats.[5]

Important Legal Tests: The Caroline Criteria

19 Military and Paramilitary Activities (*Nicaragua* v. *USA*) [1986] ICJ Rep 14.
20 Oil Platforms (*Iran* v. *USA)* [2003] ICJ Rep 161.
21 Legality of the Threat or Use of Nuclear Weapons [1996] Advisory Opinion.
22 *Supra* note 14.
23 Andrew Garwood-Gowers, "Pre-Emptive Self-Defence: A Necessary Development or the Road to International Anarchy?", 23 *Australian Year Book of International Law* 51 (2004).
24 *Supra* note 17.

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The Caroline doctrine defines two non-negotiable criteria for lawful anticipatory self-defence:

Necessity: Force must be the only available means to avert the threat, which must be imminent and overwhelming.

Proportionality: Any use of force must be strictly limited to eliminating the specific threat and should not exceed what is necessary.

These principles are deeply embedded in international legal thinking. In Nicaragua v United States (1986), the ICJ affirmed that self-defence can be lawful only against actual armed attacks.[25] In Oil Platforms (Iran v USA) (2003), the Court emphasised the dual requirement of necessity and proportionality.[26] The Legality of the Threat or Use of Nuclear Weapons advisory opinion (1996) similarly reaffirmed necessity and proportionality as customary law applicable to Article 51 responses.[27]

Current Legal Position

There is no uniform state practice or academic consensus on whether Article 51 permits anticipatory self-defence. The restrictive interpretation holds that Article 51 applies only upon the occurrence of an actual armed attack, as it explicitly states: "if an armed attack occurs." In contrast, some scholars and states argue that Article 51 preserves the inherent customary right of anticipatory action, provided Caroline conditions are satisfied. Notably, Lindsey Green remarks that the Charter did not extinguish pre-1945 customary prerogatives, suggesting a narrow, context-based retention of anticipatory rights.

State practice remains divided. The United States and United Kingdom formally invoked anticipatory self-defence in their 2003 invasion of Iraq, citing perceived imminent threats from weapons of mass destruction (WMDs). These justifications drew widespread criticism for failing to meet the necessity and imminence standards, and for relying on speculative intelligence. In contrast, the majority of Global South states, including India and China, maintain that without an armed attack or UN Security Council authorization, anticipatory strikes remain unlawful.

25 *Supra* note 19.
26 *Supra* note 20.
27 *Supra n*ote 21.

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No definitive ruling has come from the ICJ affirming or denying anticipatory self-defence under Article 51. However, the case law favors a strict interpretation aligned with necessity and proportionality, and reserved use only under tightly constrained circumstances.

IV. Case Studies: Precedent & Practice

Operation Opera (Israel–Iraq, 1981)

On 7 June 1981, Israel carried out a surprise attack on Iraq's Osirak nuclear reactor, justifying an imminent threat to its national security. Israel presented the move as anticipatory self-defence, asserting that Iraq was about to gain nuclear arms, whose existence would jeopardize its survival. Although the attack did successfully demolish the reactor, it became a point of global condemnation. The UN Security Council, by a unanimous vote, passed Resolution 487, which condemned the action as an infringement of Iraqi sovereignty without calling upon sanctions.

Neither international court considered the act illegal, and Israel never applied for judicial review to the ICJ. Scholars are sharply divided. It is contended by some that the strike met the Caroline doctrine requirements of proportionality and necessity, citing sound intelligence regarding the threat.[28] Others denounce the attack as a preventive not pre-emptive use of force contrary to Article 2(4) of the UN Charter that outlaws the use of force against another state except in the context of self-defence against an actual armed attack.

Significance: Operation Opera remains a landmark case in the debate over anticipatory self-defence. Although it arguably set a precedent in state practice, its legal standing remains ambiguous due to the absence of judicial scrutiny or formal legal justification by Israel.

Operation Outside the Box (Israel–Syria, 2007)

Israeli aircraft on 6 September 2007 destroyed a secret Syrian nuclear reactor at Al-Kibar. While initially refusing public admission, Israel subsequently justified the attack as necessary to prevent Syria's suspected nuclear aspirations. Later investigations by the IAEA affirmed the site had the features of a reactor undeclared under Syria's obligations.[29]

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[28] Maria B Occelli, ""Sinking" the Caroline: Why the Caroline Doctrine's Restrictions on Self-Defense Should Not Be Regarded as Customary International Law", 4(1) *San Diego International Law Journal* 467 (2003).

[29] Andrew Garwood-Gowers, "Israel's Airstrike on Syria's Al-Kibar Facility: A Test Case for the Doctrine of Pre-emptive Self-Defence?", 16(2) *Journal of Conflict and Security Law* 263 (2011).

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The attack was roundly condemned worldwide, especially for contravening Syrian sovereignty in accordance with Article 2(4) of the Charter. Israel made no formal legal argument, contrary to what happened in 1981. The incident therefore contributed nothing to opinio juris since the mere repeated conduct without express legal assertions undermines their potential to develop into customary international law.[30]

Effect: Though the operation reflects an ongoing trend in Israel's strategic doctrine, its inability to establish legal bases narrowed its normative effect. Silence of states cannot be interpreted as legal acceptance, reiterating that state practice without opinio juris is not normative.[31]

Other Historical Example: Six-Day War (1967)

In June 1967, Israel struck Egypt with a massive pre-emptive attack, citing Egypt's troop mobilization and the closure of the Straits of Tiran as warlike acts. Israel claimed that the circumstances constituted an immediate threat justifying pre-emptive self-defence. Critics would counter, though, that Egypt had not yet attacked, so the Israeli response was more preventive than defensive.[32]

The dispute has never been tried by an international court, but lawyers apply the Caroline test to it. There are doubts whether the attack was "instant, overwhelming, leaving no choice of means", particularly since Israel had time for diplomacy. The Six-Day War demonstrates the legal and ethical uncertainty between pre-emptive and preventive force, reaffirming the UN Charter's preference for peaceful settlement of disputes and reactive self-defence.

V. Legal Analysis in the Iran Case

Iran's Nuclear Programme Post-JCPOA

Since the U.S. withdrawal in May 2018, Iran has stepped back from the constraints of the JCPOA.[33]

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30 Elena Chachko, "The Al-Kibar Strike: What a Difference 26 Years Make" Lawfare, April 2, 2018, *available at*: https://www.lawfaremedia.org/article/al-kibar-strike-what-difference-26-years-make (last visited on July 18, 2025).

31 Case Concerning Military and Paramilitary Activities (*Nicaragua* v *USA*) [1986] ICJ Rep 14, para 207 – ICJ emphasises that state conduct must be accompanied by opinio juris to impact customary international law.

32 Moshe Gat, "Nasser and the Six Day War, 5 June 1967: A Premeditated Strategy or An Inexorable Drift to War?", 11(4) *Israel Affairs* 608 (2005).

33 UK Parliament, "What is the status of Iran's nuclear programme and the JCPOA?", *available at:* https://commonslibrary.parliament.uk/research-briefings/cbp-9870 (last visited on July 18, 2025).

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Specifically:

Enrichment Capacity: Iran boosted centrifuge operations at Natanz and Fordow, installing advanced models (IR-2m, IR-4, IR-6), including nearly 1,000 IR-4/6 units at the Natanz PFEP.

Enrichment Level: Enrichment levels increased to 60 %nearly weapons-gradewell above the 3.67 % threshold. Current stocks contain more than 400 kg of 60 % uranium, enough for some nuclear bombs if enriched further.[34]

Inspection Reduction: Iran limited its application of the Additional Protocol in early 2021; by 2025, it dismissed standard IAEA monitoring, allowing case-by-case approval of inspections and temporarily barring unqualified inspectors from entering.

These actions have drastically reduced Iran's break-out time minutes to daysto make weapon-grade uranium, although specialists say weaponization is months to a year out. The IAEA verifiably established there is no proof of ongoing weapons development, but stated Iran is in breach of NPT commitments regarding undeclared activities and material.[35]

The central legal issue: do these actions constitute an impending threat warranting anticipatory self-defence under Article 51 and customary international law?

Evaluating the Caroline Test[36]

Immediacy

According to the Caroline standards, force is only legitimate against immediate and irresistible threats, allowing no choice of means and no time for deliberation.

Estimates indicate Iran's capability of generating weapons-grade uranium in days, but weaponization in the form of design, assembly, delivery systems could take from months to a year. The immediacy factor is therefore not yet fulfilled. Analystssuch as Kelsey Davenportemphasize that without weaponization, Iran is a threshold and not an imminent threat.

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34 Politics Stack Exchange, "IAEA report on Iran, including 400 kg of 60% uranium", *available* at: https://politics.stackexchange.com/questions/92866/what-exactly-did-the-iaea-say-iran-has-violated (last visited on July 18, 2025).

35 International Atomic Energy Agency, Update on Developments in Iran, June 2025, *available at*: https://www.iaea.org/newscenter/pressreleases/update-on-developments-in-iran (last visited on July 18, 2025).

36 *Supra* note 40.

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Necessity

Can non-military options be enough? Historical examples and the mechanisms of monitoring by the IAEA give states time to move diplomatically or institutionally. Iran's temporary delay in allowing inspections is indeed worrisome, but nothing rules out renewed inspection or intervention through diplomatic or UN Security Council avenues.

Therefore, it would seem force is not the sole option, especially if inspections and sanctions are utilized satisfactorily.

Proportionality

Even if Iranian preparations were close at hand, any pre-emptive attack on its nuclear facilities would most probably aim at enrichment plants, centrifuges, or deposits. But such targets are generally embedded in civilian facilities (Natanz, Fordow). To comply with proportionality, any military intervention should be restrained, targeted, and avoid collateral damage to civilians. Due to the dual-use character of nuclear installations, proportionality is a severe legal obstacle.

Precedent vs Scholarly Views

Precedent: No global court has upheld anticipatory force in comparable situations. State practice like Operation Opera was not ruled upon legal merits.[37]

Scholarly Opinions

i. Most experts contend that nuclear breakout instant threat in the absence of weaponization. For example, Crisis Group's Ali Vaez states: "actual weaponization process … likely would have taken months… there was no imminent threat of a nuclear bomb."[38]

ii. Ehud Barak asserts breakout can be days awaya perspective that has been criticized as overestimating the immediacy by experts and the IAEA.[39]

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37 Reuters, "Araqchi says inspections subject to approval" July 4, 2025, *available at*: https://www.reuters.com/world/middle-east/fm-araqchi-says-iran-work-with-iaea-inspections-may-be-risky-2025-07-12/ (last visited on July 25, 2025).

38 Ariadne UML / Arms Control Association, "Limits of Breakout Estimates", August 2020, *available at*: https://www.armscontrol.org/act/2020-08/features/limits-breakout-estimates (last visited on July 18, 2025.

39 IAEA, GOV/2025/24, "Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015), May 31, 2025, *available* at: https://www.iaea.org/sites/default/files/25/06/gov2025-24.pdf (last visited on July 18, 2025).

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iii. The Washington Institute analysts note that Iran might weaponize if threatened, but not now.

iv. Breakout projections are evolving though weaponization is the real trigger. Overall, existing scholarly agreement is that Iran's behaviour fails to meet Caroline imminence standards.

Regional Security Environment

The risk matrix stretches wider than Iran.

Retaliation: Any attack would elicit Iranian retaliation through proxies or missile attacks, threatening regional escalation of conflict.[40]

Proliferation Cascade: Iran could invoke Article IV of the NPT to assert peaceful enrichment and push others (Saudi Arabia, Turkey, Egypt) to do the same, possibly leading to a regional arms race.

Article 51 anticipation must also take into account second-order effects; if these entail wide instability, even a "limited" strike could breach proportionality, sabotaging legal justification.

V. Iran's View & NPT Commitments

Civilian vs Military Use according to the NPT

Iran's role in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) system has always revolved around the rights provided under Article IV, which recognizes the "inalienable right" of all members to develop, research, produce, and use nuclear energy for peaceful purposes. Iran has taken recourse to this provision all along to justify its activities related to uranium enrichment, claiming that it is working on nuclear technology for energy, medical, and scientific purposes.[41]

Article IV is nonetheless subject to the satisfaction of Articles I and II, which ban nuclear arms development or acquisition.[42]The question of law, thus, is whether Iran's enrichment program,

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40 Arms Control Association, "Limits of Breakout Estimates" August 2020 *available at*: https://www.armscontrol.org/act/2020-08/features/limits-breakout-estimates (last visited on July 18, 2025).

41 Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161 (NPT), art. IV.

42 Islamic Republic of Iran, Letter to IAEA Director General on Peaceful Use of Nuclear Energy, INFCIRC/839 (2014) *available at*: https://www.iaea.org/sites/default/files/publications/documents/infcircs/2012/infcirc839.pdf (last visited on July 18, 2025).

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which has now surpassed the limits initially set under the JCPOA (Joint Comprehensive Plan of Action), can be considered peaceful in nature.[43]

The International Atomic Energy Agency (IAEA), NPT's verification agency, has complained of a lack of transparency by Iran. Since 2021, Iran has restricted access to several facilities and cameras by the IAEA.[44] While Iran continues to allow some safeguards under its Comprehensive Safeguards Agreement (CSA), it suspended implementing the Additional Protocol, which gave wider inspection rights.[45] While there is no conclusive evidence Iran is using enriched uranium for weapons purposes, the IAEA has reported grave concerns about the presence of unexplained nuclear material and activities at undeclared locations.[46]

Notwithstanding all these issues, Iran insists that it is still within its rights under the NPT and that any departure was due to the U.S. unilateral withdrawal from the JCPOA in 2018.[47] Iran claims that European powers also failed to live up to their obligations under the agreement, with Iran having no option but to scale down its compliance accordingly.

Iran's Legal Position on Use of Force and Self-Defence

In the eyes of Iran's law, a unilateral military attack on its nuclear installations will be an act of aggression under Article 2(4) of the UN Charter, as it prohibits the "threat or use of force against the territorial integrity or political independence of any state."[48] Iran contends that its nuclear installations are under the supervision of the IAEA and, therefore, do not represent an immediate threat to international peace. Thus, any strike would be unlawful except as authorized by the UN Security Council under Chapter VII or otherwise unmistakably justified under Article 51 (self-defence after an armed attack).

In addition, Iran makes its inherent right to self-defence, stating that it would be legally justified in responding to any illegal aggression. This could take the form of asymmetric countermeasures such as retaliatory strikes within the region, economic sanctions, or alignment with regional players such as Syria or Iraq.[49] In diplomatic circles, Iran has also presented such

43 NPT (n 1) arts. I and II.

44 Joint Comprehensive Plan of Action (Vienna, 14 July 2015), Preamble and General Provisions, *available at*: https://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf (last visited on July 18, 2025).

45 IAEA, GOV/2023/24, "Verification and Monitoring in the Islamic Republic of Iran in Light of UN Security Council Resolution 2231 (2015), June 2023, *available at*: https://www.iaea.org/sites/default/files/documents/gov2023-24.pdf (last visited on July 18, 2025).

46 IAEA, Iran's Suspension of the Additional Protocol, GOV/INF/2021/10.

47 IAEA, NPT Safeguards Agreement with Iran, GOV/2023/46 (2023).

48 Islamic Republic of Iran, Statement to the UN General Assembly (September 2022).

49 UN Charter, art. 2(4).

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an attack as a violation of international law, which could destabilise the whole Gulf region and undermine the integrity of the NPT system.[50]

So, Iran positions its actions as being in accordance with, and any outside military action as illegitimate, not justified under international law. This is a viewpoint shared by a good number of Global South nations, which also consider civilian nuclear progress as a matter of sovereignty and oppose anticipatory attacks pre-emptively based on hypothetical threats.

VII. Policy Implications, Recommendations and Conclusion

Policy Implications & Recommendations

Strengthen IAEA Verification and Transparency

Resuming and reinforcing robust monitoring mechanisms is crucial. Iran's 2025 law mandates that IAEA inspections must now pass the Supreme National Security Council, per Foreign Minister Araqchi, reflecting decreased transparency and undermining verification efforts.[51] A policy priority should be restoring unrestricted IAEA access, including full Additional Protocol implementation, to ensure real-time surveillance of enrichment facilities (e.g. Natanz, Fordow). Additionally, remote monitoring systems and environmental sampling must be reactivated under the JCPOA framework. Historical analysis underscores that transparency reduces misperception of nuclear ambitions.[52]

Re-engage Through a JCPOA-II with Sunset Clauses

Diplomatic re-engagement must aim at a JCPOA-II featuring stricter ceilings on centrifuge numbers and enrichment levels, backed by clear sunset clauses aligned with breakout risk projections. The new agreement should retain progress made in arms control and allow snap-back provisions to trigger sanctions swiftly if Iran resumes suspicious activity. Regional partnersparticularly the US, EU, China, and Russiashould offer credible, legally binding economic and nuclear cooperation benefits to incentivize compliance.[53]

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50 Permanent Mission of Iran to the UN, Legal Framework of Iran's Right to Self-Defence, UN Doc A/76/349 (2021).

51 Reuters, "Iran Says Will Work with IAEA but Inspections May Be Risky", 4 July 2025, *available at*: https://www.reuters.com/world/middle-east/fm-araqchi-says-iran-work-with-iaea-inspections-may-be-risky-2025-07-12/ (last visited on July 18, 2025).

52 Kelsey Davenport, "Breakout Estimates and the Politics of Nuclear Ambiguity", Arms Control Association, 2024, *available at*: https://www.armscontrol.org (last visited on July 18, 2025).

53 Seyed Hossein Mousavian, "The Rise and Fall of the JCPOA", *Journal of Indo-Pacific Affairs* 32 (2023).

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Develop Regional Security Frameworks and Nuclear-Weapon-Free Zones

A regional architecture is essential for durable non-proliferation. Drawing lessons from UNIDIR's proposals for a Middle East WMDFZ, stakeholder states should initiate confidence-building, merging nuclear safeguards with security guarantees.[54] This could include phased sequencing: Iran suspends enrichment; in turn, regional adversaries commit to non-proliferation, promoting mutual transparency. Such frameworks help decouple nuclear issues from broader geopolitical disputes and lessen the perceived need for unilateral strikes.

Legal Messaging for States Considering Pre-emptive Strikes

To avert misuse of pre-emption, states claiming anticipatory self-defence must meticulously document compliance with the Caroline criteria: verifying imminence, exhaustively analyzing alternative peaceful means (necessity), and ensuring any force is limited and proportional.[55] Transparent legal memosshared confidentially with the IAEA or UN Security Councilcan provide retrospective justification and scrutiny. Absence of such documentation severely weakens legality under jus ad bellum.

Coordinate Legal Action via UN Bodies

Although Article 51 allows self-defence, lawfulness and legitimacy are best achieved through:

UN Security Council resolutions recognizing imminent threatmirroring R1696 (2006)or IAEA Board endorsement of non-compliance, creating a formal path for collective enforcement rather than unilateral responses.[56]

This preserves the rules-based order and avoids precedent fragmentation.

Conclusion

This analysis confirms that pre-emptive strikes against Iran's nuclear infrastructure are severely constrained under current international law. While Iran's capacity nearing weapons-grade

54 United Nations Institute for Disarmament Research (UNIDIR), "Lessons from the JCPOA for WMDFZ in the Middle East", May 2023 *available at*: https://unidir.org/files/2021-06/UNIDIR - Lessons from the JCPOA for the ME WMDFZ essay series.pdf (last visited on July 18, 2025).

55 Daniel Webster, Letter on the Caroline Affair (1837), reproduced in BFSP vol 29, 1137.

56 UN Security Council Resolution 1696 (31 July 2006) UN Doc S/RES/1696, *available at:* https://main.un.org/securitycouncil/en/s/res/1696-(2006) (last visited on July 18, 2025).

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levels heightens security concerns, without clear weaponization or overt hostilities, such strikes fail to satisfy the Caroline test's threshold of "instant, overwhelming" threats.[57]

Recommendation Summary

i. Reinstate IAEA oversight, including Additional Protocol mechanisms, to restore verification confidence.

ii. Pursue a renewed agreement (JCPOA-II) with enforceable and transparent deadlines to curb enrichment.

iii. Introduce regional security frameworks or WMDFZ proposals to reduce motivations for unilateral preventive measures.

iv. Install procedural safeguards: states must document imminence, necessity, proportionality when claiming anticipatory self-defence and ideally align such actions with UN mechanisms.

Absent such steps, state resort to force remains legally precarious and politically destabilizing risks include Iran's retaliation through proxies, missile strikes, or even accelerated proliferation by other regional actors.

Ultimately, reinforcing non-proliferation norms and embedding Iranian nuclear activities within verified peaceful use regimes advances strategic stability more sustainably than normalizing pre-emptive operations. It is only through coordinated legal and diplomatic engagement not unilateral military action that the international community can uphold the NPT regime, the UN Charter, and regional peace.

[57] Brian Finucane, "The Caroline Test Revisited: Imminence in International Law", 17(1) *San Diego Journal of International Law* 89 (2015).