
PRE-EMPTIVE SELF-DEFENCE: EXPANDING OR ERODING ARTICLE 51 OF THE UN CHARTER?

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ABSTRACT

The prohibition of the use of force under Article 2(4) of the UN Charter¹ is a *jus cogens* norm², and Article 51³ is the only exemption, in the shape of an inherent right of self-defence. The straight-forward reading of Article 51, however, which requires the presence of an “armed attack”, has been heavily tested in the post-9/11 era⁴. This Article attempts to critically discuss the conflict between the fixed legal stipulations of the Charter and the mobility of the contemporary threat, such as transnational terrorism, cyber warfare, and proliferation of weapons of mass destruction⁵. It is the thesis of the research that the new doctrine of pre-emptive self-defence regularly used by states in defence of a liberal understanding of the concept of imminence is an erosion of and not a valid extension of, international law⁶. State practice has been moving in the direction of unilateralism⁷ by confusedly equating defence with deterrence, by uncritically relying on subjective self-serving intelligence judgments about necessity and proportionate use of force. This article establishes a decisive regulatory vacuum as a result of the inability of the UN Security Council and the International Court of Justice to develop objective criteria of non-kinetic and latent threats. The article suggests a functional international framework to balance state security and the collective legal order. It suggests that, in place of the subjective test of imminence, we should have an objective test of verifiable preparation and irreversible commitment. Moreover, it recommends the creation of an independent body of experts to verify intelligence, sector-specific standards of cyber-attack, and an effective ex-post facto review to hold them accountable. In the absence of these institutional reforms, the pre-emption

¹ Charter of the United Nations, art.2(4).

² Mary Ellen O' Connell, “The Just War Tradition and International Law against War: The Myth of Discordant Doctrines” 35 *Journal of the Society of Christian Ethics* (2015).

³ Charter of the United Nations, art.51.

⁴ Eric A. Heinze, “The Evolution of International Law in light of the 'Global War on Terror' ” 37 *Review of International Studies* (2011).

⁵ Christian Marxsen, “Armed Attack” Oxford University Press (2023).

⁶ Sanjay Gupta, “The war against vague threats: The redefinitions of imminent threat and anticipatory use of force” 68 *The Indian Journal of Political Science* (2007).

⁷ Oona A. Hathaway, *Fighting the Last War: The United Nations Charter in the Age of the War on Terror* (Yale University Press, 2014).

doctrine threatens to tear down the collective security system of the United Nations.

Keywords: UN Charter, Article 51, Pre-emptive Self- Defence, UNSC, Use of Force.

I. Introduction

The Charter of the United Nations, being the founding document of the United Nations, is considered an instrument of international law, binding its members. It plays a substantial role in establishing the principle of the prohibition of the use of Force in international relations, achieved primarily through Article 2(4)⁸. However, the static nature that is inherent to this 1945 provision is confronted by the dynamic evolution of warfare. The interpretation of the statute is strained when trying to apply it to contemporary conflicts, which can be characterized as hybrid warfare and cyber-attacks. The international community is now grappling with how to apply the doctrine of prohibition of use of force to the new forms of aggression that do not always meet the standard requirement of ‘armed attack’ as in the charter⁹.

While Article 2(4) prohibits a state from using force, the Charter, at the same time, allows and regulates the use of force, in certain circumstances, providing exceptions to the general prohibition. Article 51 of the Charter¹⁰ comes in the form of sole exception that does not require the prior authorization of the Security Council. The derogation from Article 2(4) is severely restricted under Article 51, which is understood from a bare reading of the same. The problem arises from the Charter’s conditionality, as the right to self-defense by a state can be exercised only ‘if an armed attack occurs’, intentionally limiting a state from launching an “anticipatory” or “preventive” attack.

The emergence of transnational terror, cyber warfare, and the spread of weapons of mass destruction (WMDs) has caused several strong states to claim that the strict, post-facto criteria of Article 51 are unworkable¹¹. This perceived gap in operation has given rise to the creation of the pre-emptive self-defence doctrine, which attempts to rationalize a military response against a remote or developing threat. The fundamental issue, however, is not the inflexibility

⁸ Supra note 1.

⁹ Robbie Sabel, "The Legality of an Attack against Iranian Nuclear Facilities" Institute for National Security Studies (2012).

¹⁰ Supra note 3.

¹¹ Supra note 6.

of the Charter, but the subjective and unilateral nature of how states, especially the United States and Israel have reformulated important legal criteria. By removing the strict temporal demand of imminence, states have substituted objective legal measures with self-serving, strategic definitions of necessity and proportionality, establishing a great deal of legal uncertainty¹². This practice weakens the collective security mechanism and threatens to make Article 51 outdated as a substantial control over the employment of force¹³.

This article argues that pre-emptive self-defence, as it is subjectively employed now, constitutes a radical erosion and not a lawful expansion of Article 51, thus weakening the collective security structure of the UN Charter. Furthermore, the article argues that the doctrine is only compatible with international law by the creation of a coherent and functional international framework founded on objective standards, institutional accountability, and improved reporting accountability of states.

This Article is organised to examine the tension between the traditional legal framework and the contemporary state practice, culminating in proposing an essential institutional reform:

Part II demonstrates the rigid *lex lata* (the law as it is) by examining the restrictions imposed by Article 51, the “scale and effect” requirement observed by the ICJ, and the strict conditions of the Webster formula. In Part III, the Challenge to Article 51 in the Post 9/11 era is explored, explaining how the reinterpretation of the right to self-defence caused by the Bush Doctrine led to a shift from imminent threats to speculative threats. Part IV cites few of very controversial, contemporary instances in which nations have interpreted Article 51 to justify unilateral military strikes. Part V breaks down the problem of Subjectivity and the Erosion of Legal Certainty, contending that the inability of the UN organs to establish Necessity and Proportionality has led to uncontrolled unilateralism. Part VI suggests a functional international framework for regulation, promoting changes in the Security Council reporting mechanism, introducing a standard of verifiable preparation, and creating independent intelligence assessment agencies. Part VII wraps up the article by summarizing the finding that unchecked pre-emptive attacks are a structural challenge to the core objective of the Charter of preserving international peace.

¹² W. Michael Reisman and Andrea Armstrong, "The Past and Future of the Claim of Pre-emptive Self-Defence" 100 *The American Journal of International Law* (2006).

¹³ Kinga Tibori Szabo, "Self-Defence and the United States Policy on Drone Strikes" 20 *Journal of Conflict & Security Law* (2015).

II. The Normative Framework: Prohibition and the Scope of Self-Defence.

The primary goal of the United Nations, which was created in the aftermath of the Second World War, is the preservation of international peace and security. To achieve this, the UN Charter requires collective security system, which discourages unilateral military actions in favour of collective efforts¹⁴. The core of this legal order is the ban on the threat or use of force, enumerated in Article 2(4) of the UN Charter¹⁵. This prohibition is not a mere treaty obligation but is a customary international law, and it constitutes a jus cogens norm, a peremptory norm out of which no derogation is permitted¹⁶.

The only legal exception to this blanket prohibition is the inherent right of self-defence of individuals or groups of states¹⁷. This right, though it existed even before the codification of the Charter, was legally formulated under Article 51¹⁸ of the Charter. A literal reading of Article 51 provides that this right is conditional and may be invoked only upon the “occurrence of an armed attack”¹⁹. Moreover, this right is not absolute in nature; it ceases to exist once the Security Council takes the necessary measures to maintain international peace and security²⁰. This framework supports the first- mover action of collective Security Council action over unilateral state responses.

Although the term ‘armed attack’ is at the heart of right under Article 51, there is no specific definition provided in the Charter²¹. Nevertheless, the International Court of Justice (ICJ) has given some very important advice, especially in the Nicaragua case (1986)²² and the Oil Platforms case (2003)²³. The Court observed that for a use of force to constitute an armed attack to entitle to self-defence, it must be of the “gravest form”²⁴. The Court pointed out to the “scale

¹⁴ Miriam Sapiro, "Iraq: The Shifting Sands of Pre-emptive Self-Defence" 97 *The American Journal of International Law* (2003).

¹⁵ *Supra* note 1.

¹⁶ *Supra* note 2.

¹⁷ Patrick M. Butchard, “Back to San Francisco: Explaining the Inherent Contradictions of Article 2(4) of the UN Charter” 23 *Journal of Conflict & Security Law* (2018).

¹⁸ *Supra* note 3.

¹⁹ *Supra* note 3.

²⁰ Irene Couzigou, "The Fight against the "Islamic State" in Syria: Towards the modification of the right to self-defence?" 9 *Geopolitics, History, and International Relations* (2017).

²¹ International Law Association, “Final Report on the Meaning of Armed Conflict in International Law” 8 (2010).

²² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Judgement)* [1986] ICJ Rep. 193.

²³ *Oil Platforms (Islamic Republic of Iran v. United States of America) (Judgement)* [2003] ICJ Rep. 51.

²⁴ *Supra* note 22 at 191.

and effects” criteria, making a distinction between mere border disputes and major military provocations²⁵. Such a high threshold means that Article 51 cannot be triggered upon minor provocations, so the possibilities of invoking self-defence are restricted.

In addition to textual condition of armed attack, states are heavily dependent upon the principles of necessity and proportionality to defend the use of their force²⁶. Although based on the Just war traditions, the modern interpretation of these principles is based largely on the Webster formula, which was developed after the Caroline incident of 1837²⁷. According to this standard, the state has the burden of proof to establish that it acted in self-defence and thereby demonstrate that the act was necessary and kept within the limits of that necessity²⁸.

The use of the Webster Formula in the contemporary era remains highly controversial²⁹. One side opines that this formula has successfully transformed self-defence from a mere political excuse into a sound law³⁰. Conversely, there is distrust of its application to the modern, post-Charter setting, in light of the development of warfare. However, the impact of the Webster formula on the principles of jus ad bellum is undeniable.

Despite the greater level of reliance on necessity and proportionality by states in their justification of the use of force, the international institutions like the Security Council, the General Assembly, and the ICJ have not offered a specific, codified interpretation of these standards. These principles remain fluid and context-dependent, and it is hard to formulate a general and objective rule. This ambiguity contributes to the legal tension surrounding preemptive actions today.

III. The Post 9/11 Era of the Challenge to Article 51: Redefining the Threat.

The strict limitations of the Charter period have been growingly out of step with the dynamic realities of modern warfare. As the former U.S National Security Advisor Condoleezza Rice

²⁵ Supra note 22 at 195.

²⁶ Chris O’Meara, “Necessity and Proportionality and the Right of Self-Defence in International Law, Oxford University Press (2021).

²⁷ Muhammad Nasrullah Mirza and Adil Sajid, "Use of Force in Self-Defence for Global Peace: A Conceptual Framework " 39 Strategic Studies (2019).

²⁸ Dapo Akande and Thomas Lieflander, "Clarifying necessity, imminence and proportionality in the law of self-defence" 107 The American Journal of International Law (2013).

²⁹ John Dever and James Dever, "Cyber warfare: Attribution, Preemptive, and National Self Defense" 2 Journal of Law & Cyber Warfare (2013)

³⁰ Supra note 26 at 9.

infamously said, “new technology needs to think new when a threat actually becomes imminent”³¹. This statement defines the changing attitude of the states that promote a more liberal interpretation of Article 51. The main thesis is that during the age of the weapons of mass destruction and non-kinetic cyber threats, states cannot be reasonably expected to wait before availing themselves of their natural right of self-defence.

The international legal fraternity and even the ICJ had not completely rejected the suggestion of allowing a restricted anticipatory self-defence³². There is a certain increase in the understanding that the threat which is really imminent and specific of necessity, demands the strict time condition of armed attack can be modified to avoid devastating damage. However, a critical legal fracture arises in situations where states seek to extend this scope past the defined Caroline principle to authorize action against threats that have not yet been created. This expansion threatens to undermine the customary prohibition on the use of force by letting states act on the grounds of fear, not by fact³³.

The point of the contemporary dilemma is the muddling of the notions of defence and deterrence. Legitimate self-defence is purposive, as it is geared towards halting, repelling, or preventing a specific, ongoing act of aggression³⁴. The new doctrine of pre-emptive self-defence is often used in the latter sense, based upon speculation and distant anxieties, instead of the certainty of attack. Powerful States, especially the United States and Israel, have tried to justify this practice by creating an elastic criterion that allows military response to vaguely perceived threats, in effect abolishing the hard temporal element demanded by Article 51³⁵.

This redefinition of “imminence” has caused considerable tension between state practice and the Charter’s text. This disengagement is seen in the past, as in the case of Israel’s airstrike on the Osirak nuclear reactor in Iraq in 1981 and the US-led invasion of Iraq in 2003. In both examples, the acting states used a pre-emptive doctrine to counteract perceived latent threats, an immature nuclear program, and so-called WMD stocks, despite the absence of a prior armed dispute.

³¹ Supra note 5.

³² Supra note 23.

³³ Vasja Badalic, "The war against vague threats: The redefinitions of imminent threat and anticipatory use of force" 52 *Security Dialogue* (2021)

³⁴ Supra note 26 at 21.

³⁵ Rajeesh Kumar, "Iraq War 2003 and the issue of Pre-emptive and Preventive Self-defence: Implications for the United Nations" 70 *India Quarterly* (2014).

More importantly, the Security Council denounced the 1981 strike in its resolution, but it was ineffective in creating a clear legal standard concerning the pre-emptive action³⁶. This regulatory silence has enabled states to keep taking advantage of the vagueness of Article 51, to make wars of choice under the guise of necessary defence.

IV. Modern State Practice: The Elasticity of Article 51 and the Normalisation of Unilateralism

The current state of international law is disconcerting, a change in the collective security of 1945 into a subjective, individual right to self-defence. Although the 2004 UN Panel on Threats, Challenges and Change³⁷ realized the seriousness of the contemporary challenges, such as terrorism, it was categorical that such challenges could only be addressed using a multilateral structure³⁸. Nonetheless, some of these strong states have gone around the Security Council, citing the principle of the inherent right of self-defence to undertake exercises that put the limits of what is legally permissible.

1. The American Global War on Terror and the Destruction of Temporal Borders

Since the 9/11 attacks, Article 51 has been used by the United States as a license that it can operate under whenever it chooses Pakistan, Yemen, and Somalia³⁹. The most notable one is the CIA drone attack in November 2013 which killed the leader of the Pakistani Taliban. The U.S is still associating such activities with the 2001 attacks, a temporal distance that renders the word imminence almost invisible. Moreover, the 2013 operation in Somalia against the Al-Shabaab also poses major legal concerns, as the victims were not US- citizens, and the attack was committed in a third-party state; the justification of self-defence cannot be clearly independent of a direct armed assault on the United States.

2. Turkey in Syria, the “Safe Zone” as a Veil of Aggression.

The two military operations in Syria conducted by Turkey, namely Operation Olive Branch

³⁶ UN Security Council, Summary Record of the 2288th Meeting, SCOR, 36th Year, U.N. Doc S/PV. 2288 (June 19, 1981).

³⁷ UN General Assembly, A More Secure World: Our Shared Responsibility – Report of the High-Level Panel on Threats, Challenges and Change, U.N. Doc A/59/565 (December 2, 2004).

³⁸ Anders Henriksen, “Jus ad bellum and American Targeted Use of Force to Fight Terrorism Around the World” 19 *Journal of Conflict & Security Law* (2014).

³⁹ *Ibid.*

and Operation Peace Spring, indicate that the jus ad bellum has been subverted. Although Turkey presented these as counter-terrorism against the Kurdish fighters, they do not show an armed attack of the scope needed by the UN Charter. These actions seemed to be a ban on anticipatory self-defence, to create a 30-kilometre safe zone where refugees may resettle rather than in response to an actual strike, a political or humanitarian goal that cannot be established by unilateral use of force under Article 51⁴⁰.

3. Russia and the Existential Threat discourse

The invasion of Ukraine in 2022 might be the most radical deviation of legal certitude. The justification of President Putin was based on three pillars, namely the expansion of NATO as an existential threat, the denial of Ukrainian statehood, and the argument of Western interference in Serbia and Iraq⁴¹. Any of these grievances, no matter how valid they may seem, do not legally make an armed attack on the Russian Federation. Russia has sought to substitute legal standards with geopolitical pan psychosis by using Article 51 as a pretext to invade wholesale, using the perceived future dangers and historic grievances.

4. Israel and Iran Pre-emptive Doctrine

The example of the June 2025 Israeli attacks on the Iranian nuclear facilities also reveal the abuse of the doctrine of self-defence. When given as an attempt to deter a future nuclear capability, the attack does not pass the Caroline Test of necessity and imminence. The use of force was not a last resort because there was no indication that Iran was making an irrevocable commitment to make a nuclear attack, and even Iran did not have such a weapon at the time. Since Israel was not able to substantially prove that it would be subjected to an imminent attack from Iran, its attack is unlawful and violative of Article 2(4) of the Charter⁴².

V. Subjectivity and the Subversion of Legal Certainty.

The key issue faced by modern international law is whether the doctrine of preventive self-

⁴⁰ Saeed Bagheri, "Turkey's Extraterritorial Use of Force against Armed Non-State Actors" Cambridge University Press (2023) [cambridge.org/core/journals/israel-law-review/article/turkeys-extraterritorial-use-of-force-against-armed-nonstate-actors/3AEC815AB2A13540390DEB4BD03364CC](https://www.cambridge.org/core/journals/israel-law-review/article/turkeys-extraterritorial-use-of-force-against-armed-nonstate-actors/3AEC815AB2A13540390DEB4BD03364CC)

⁴¹ Nicholas Rostow, "Ukraine, Nuclear Weapons, and the Future of International Law" 76 U.S. Naval War College Press (2023).

⁴² Marko Milanovic, "Is Israel's Use of Force Against Iran Justified by Self-Defence?", EJIL: Talk! June 13, 2025 <https://www.ejiltalk.org/is-israels-use-of-force-against-iran-justified-by-self-defence/>

defence is compatible with the norms of the UN Charter. The answer is, perhaps, in the affirmative, with a critical caveat – such a reconciliation is only possible if an objective test is determined or the organs of the UN publish authoritative guidance. The prevailing opinion that the UN Charter is obsolete or not appropriate to the contemporary world⁴³ is essentially flawed. The Charter is a living document, designed to evolve with the shifting world order⁴⁴. However, this evolution is under the conditions of the Preamble, and the fundamental framework of the Charter, the main object of which is “to maintain international peace and security, and to that end: to take effective collective measures for the preventive and removal of threats to the peace... and to bring about by peaceful means, and in conformity with the principles of justice and international law...”⁴⁵

The evolving nature of security threats is generally accepted by legal scholars and academicians, especially the non-standard ones, like cyber warfare and transnational terrorism⁴⁶. They do not criticize pre-emptive self-defence based on refusal to accept these threats, but as follows in the deeply subjective way states are now using Article 51. In the lack of an agreed standard, states serve as judges, jury and executioners upon their own security assessments. There is a palpable lack of legal certainty, as both the International Court of Justice and the Security Council have not been able to devise common ground or procedural requirements that a state must meet and then be able to use force to neutralize a developing threat⁴⁷.

This vacuum in regulation is a major failure of the international legal architecture. The UN organs, with the help of experts, need to agree on how to use the high standards of Necessity and Proportionality in pre-emption. At this time, these principles are used in a vacuum, without any reference to a general rule. The intelligence assessments used to justify preemptive attacks, like the one witnessed in the lead-up to the 2003 Iraq war, are of serious concern. These assessments are subjective by its very nature⁴⁸, usually political, and most importantly, it does

⁴³ Supra note 4.

⁴⁴ Allen S. Weiner, "The Use of Force and Contemporary Security Threats: Old Medicine for New Ills?" 59 *Stanford Law Review* (2006)

⁴⁵ Charter of the United Nations, art.1.

⁴⁶ Alan L. Schuller, "Inimical inceptions of imminece: A new approach to anticipatory selfdefense under the law of armed conflict" 18 *UCLA Journal of International Law and Foreign Affairs* (2014)

⁴⁷ UN Security Council, SC Res 1441, SCOR, UN Doc S/Res/1441(Nov 8, 2002)

⁴⁸ Albert E. Dojas, "Legality of a Use of Force and the Practice of States. What can be expected in the next two decades?" 48 *Estudios Internacionales* (2016).

not have an international body to authenticate or test the intelligence allegations presented by states prior to the use of force.

The vagueness and an apparent casual approach of the UN organs to the process of establishing a standard guidance is a significant cause of concern. It provides a permissive atmosphere that permits strong states to unilaterally interpret international law and construe the meaning of Article 51 to align their strategic interests. This uncontrolled unilateralism is a direct subversion of the collective security system⁴⁹, which has an impact on the stability of the region and undermines the rule of law. Without a shift to objective, internationally tested standards, the doctrine of pre-emption threatens to turn into a weapon of violence instead of an inevitable development of defence.

VI. Towards a functional international Framework of regulation.

As one of the main institutions of the United Nations, the Security Council carries the major responsibility of ensuring that peace and security are maintained internationally⁵⁰. Its decisions are binding on the member states, which include various measures such as the authorization of the use of force. Under Article 51, though states have an inherent right to self-defence until the Council takes necessary actions, they are explicitly mandated to report these measures to the Security Council immediately⁵¹. This is the critical requirement of reporting that binds the unilateral action to the collective security system. However, the practical use of this protection has been more dysfunctional⁵².

Article 51 does not dictate a particular format in which the reporting should be done⁵³; therefore, state practice has been the presentation of a pro forma letter to the President of the Council, which in turn becomes a public document. While the states must report to maintain transparency and enable experts and the international community to evaluate, the practice is substantially inconsistent. States often do not report all of their actions, or even if they do, the contents of the report vary significantly, and do not always go far enough to allow the assertion

⁴⁹ Rebecca Barber, "Uniting for Peace Not Aggression" 24 *Journal of Conflict & Security Law* (2019)

⁵⁰ David Bosco, "Assessing the UN Security Council: A Concert Perspective" 20 *Global Governance* (2014).

⁵¹ *Supra* note 5.

⁵² Nick van der Steenhoven, "Conduct and subsequent practice by states in the application of the requirement to report under UN Charter Article 51" 6 *Journal on the Use of Force and International Law* (2019).

⁵³ D.W. Greig, "Self-Defence and the Security Council: What does Article 51 require?" 40 *The International and Comparative Law Quarterly* (1991).

of self-defence⁵⁴.

To make this problem worse, there is the inconsistent reaction of the Security Council. Reports are rarely put to formal, open scrutiny; rather, they tend to be informally discussed by the legal advisers to the Council members⁵⁵. Such procedural laxity begs two basic questions: Firstly, there is the fact that informal discussions do not serve the goal of the Charter of being publicly viewed; and secondly, no one can be sure that these discussions will result in decisive Council action. This black box method enables states to consider the reporting requirement as a mere formality instead of a legal necessity.

The international community must leave the dangerously subjective standard of ‘imminence’ behind to achieve legal certainty⁵⁶. This Article proposes replacing it with a concrete test focused on preparation and irreversible commitment that can be verified. Under this standard, the state must not only demonstrate a fear of attack, but also objective proof that an adversary is actively preparing for an attack and the point is crossed from which there is no return⁵⁷. Additionally, in areas of unconventional war, sector-specific thresholds are needed, thus eliminating the vagueness that now begs unilateral actions.

Lastly, pre-emptive action is credible based on the quality of the intelligence employed to justify it. At this point, the assessments conducted by the states are completely self-serving. To overcome this, a specialised intelligence assessment body comprising independent experts is to be set up for examining state allegations before or right after a pre-emptive action is undertaken. Active oversight of both the Security Council and the ICJ is required to operationalize this suggested oversight. This structure will require a more stringent and transparent reporting requirement that demands presentation of verifiable intelligence as opposed to mere assertions. Furthermore, an ex-post facto audit procedure by the Security Council should be established to judge the lawfulness of strikes post facto, to ensure the accountability of states for any breach of doctrine⁵⁸.

⁵⁴ Security Council Report, Monthly Forecast: October 2025 (2025), available at [securitycouncilreport.org](https://www.securitycouncilreport.org) (Last visited on 12.12.2025).

⁵⁵ Ibid

⁵⁶ Chris O’Meara, “Reconceptualising the right of self-defence against ‘imminent’ armed attacks” 9 *Journal on the Use of Force and International Law* (2022).

⁵⁷ Jan Wouters and Tom Ruys, "The Legality of Anticipatory Military Action after 9/11: the Slippery Slope of Selfdefense" 59 *THE FOREIGN AND SECURITY POLICY OF THE EUROPEAN UNION* (2006)

⁵⁸ Supra note 52.

VII. Conclusion

This Article is a critical evaluation of the argument that the contemporary doctrine of pre-emptive self-defence is a lawful development or complete undermining of Article 51 in the UN Charter. As it will be seen below, although the Charter is actually a living instrument that can be adjusted to meet the contemporary security challenges, its present trend of pre-emptive self-defence, particularly by powerful states, goes beyond the legal adjustment and actually endangers the ban on the use of force that is at the core of Article 2(4).

Classical legal regime, Caroline standard of immediacy and overwhelming imminence and the heaviest form of threshold of force used by the ICJ, established a high, objective standard of the resort to force. In comparison, the advent of transnational terrorism and the non-kinetic threat matrix has been replaced with a subjective redefinition of the concept of imminence in which political and strategic necessity replaces legal facts. Historical cases, including the Osirak strike of 1981 and the Iraq invasion of 2003, have shown that such a loose test has been used as a pretext of preventative war based on remote speculation instead of verifiable necessity.

One of the major failures in this case is the absence of institutional and objective governance. The Security Council and the ICJ have not managed to come up with clear guidelines, which have been codified on Necessity and Proportionality and therefore, the interpretation of Article 51 has remained more discretionary at the level of the individual states. The situation is further aggravated by a vague and disjointed system of reporting, and by the lack of any international system of verification of subjective intelligence estimates on the basis of which unilateral strikes are based. This gap in the structure creates and maintains an enabling atmosphere of free-wheeling unilateralism.

The trend is dangerous because it is likely to bring the international system back to the time when the recourse to force is dictated by national power and not the international legal norms. The article is of the view that such erosion can only be prevented by establishing a clear and internationally sanctioned framework that is established immediately. It must substitute the subjective criterion of imminence with objective conditions of verifiable preparation and commitment that is irreversible. Additionally, it mandates:

Mandatory Disclosure by Enhancing and increasing transparency on reporting to the Security

Council, including the submission of verifiable intelligence, Independent Expert Authority by the creation of an expert, independent intelligence evaluation organization and Accountability by the institution of a review mechanism of ex post facto review by an UN-related legal organization to determine the legality of all pre-emptive strikes.

The doctrine of pre-emptive self-defence will keep discrediting the fundamental assumption of the UN Charter, unless such objective, functional and institutionally supported criteria are embraced, and transform Article 51 into a blanket authorization to go on the offensive. Due to this, it would be priceless to subsequent scholarship to expound on model proposals of legislation that would govern the proposed ex post facto review mechanism and in extreme detail in the legal protocols that would be employed in defining the armed attack in the context of cyber and hybrid warfare.