



NECESSITY WITHOUT IMMINENCE: OPERATION OPERA (1981), ANTICIPATORY SELF-DEFENCE AND THE LIMITS OF ARTICLE 51, FROM OSIRAK TO IRAN

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I. ABSTRACT :

On 7 June 1981 Israeli aircraft destroyed the Osirak reactor near Baghdad, a French-built research reactor that had not yet been loaded with fuel and was operating under International Atomic Energy Agency safeguards. Israel justified the attack as self-defence against a future nuclear threat, arguing that once the reactor became operational it could no longer be attacked without releasing radioactivity over Baghdad. Twelve days later the Security Council, including the United States, unanimously condemned the attack as a clear violation of the Charter of the United Nations. Operation Opera has since become the reference point for every debate about striking nuclear programmes before they produce weapons, and it returned to the centre of international legal argument after the Israeli and American strikes on Iranian nuclear facilities in June 2025. This article re-examines the operation through the lens of necessity. It argues that the debate has been confused by two different uses of that word: necessity as a condition of lawful self-defence under Article 51 of the Charter and customary law, and necessity as a circumstance precluding wrongfulness under Article 25 of the Articles on State Responsibility. Neither, properly understood, can justify the 1981 attack. Measured against the temporal requirement of imminence, the operation was preventive rather than anticipatory; measured against the requirement of necessity, it was undertaken while diplomatic and institutional alternatives remained available; and the plea of necessity under the law of State responsibility cannot excuse a use of force contrary to a peremptory norm. The article then traces the operation's legal afterlife, from the collective condemnation of 1981 through the preventive-force debates of 2002 to 2005 and the 2025 strikes on Iran, and argues that the durable lesson of Osirak is institutional rather than doctrinal: the question is not only when force may be used against a nuclear programme, but who is entitled to decide.

II. KEYWORDS : Anticipatory self-defence; necessity; imminence; Article 51 UN Charter; Operation Opera.

III. INTRODUCTION

In the late afternoon of Sunday, 7 June 1981, eight Israeli F-16 aircraft, escorted by F-15s, crossed Jordanian and Saudi airspace, reached the Tuwaitha nuclear research centre south-east of Baghdad and destroyed the reactor known to the French as Osiris and to the Iraqis as Tammuz 1. The strike lasted a matter of minutes. It was timed for a Sunday, Israel later explained, to minimise the presence of foreign technicians, and it was carried out before the reactor was loaded with fuel so that its destruction would not scatter radioactive material over the Iraqi capital.⁴ Israel's Government announced that the reactor had been designed to produce atomic bombs for use against Israel, and that it had acted because the reactor was about to become operational.

The international response was swift and nearly unanimous. On 19 June 1981 the Security Council adopted resolution 487 without a dissenting vote. It strongly condemned the attack as a clear violation of the Charter and the norms of international conduct, called on Israel to refrain from such acts in future, recognised Iraq's sovereign right to develop nuclear technology for peaceful purposes, considered that the attack threatened the entire safeguards regime of the International Atomic Energy Agency (IAEA), and held Iraq entitled to appropriate redress.⁵ The United States, Israel's closest ally, voted for the resolution.

And yet, over the following decades, the operation acquired a second reputation. Iraq's later clandestine weapons programme, revealed after the Gulf War of 1991, persuaded many commentators that Israel had been right about Iraqi intentions, and Osirak came to be cited as the model of a successful counter-

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⁴Amos Perlmutter, Michael Handel and Uri Bar-Joseph, *Two Minutes Over Baghdad* (2nd edn, Frank Cass 2003).

⁵UNSC Res 487 (19 June 1981) UN Doc S/RES/487.

proliferation strike. When the United States announced a doctrine of pre-emption in 2002, when Israel struck a suspected Syrian reactor in 2007, and when Israel and the United States struck Iranian nuclear facilities in June 2025, Osirak was invoked on both sides of the argument: as proof that such strikes work, and as proof that the international community has already declared them unlawful.⁶

This article re-examines the legal case for Operation Opera through the concept that its defenders place at the centre: necessity. It argues that much of the confusion about the operation arises from the use of that single word to describe two distinct legal ideas. In the law of self-defence, necessity is one of the conditions that any lawful defensive use of force must satisfy. In the law of State responsibility, necessity is an independent plea that may, in narrow circumstances, preclude the wrongfulness of conduct that would otherwise breach an international obligation. Arguments for the lawfulness of Osirak frequently slide between the two. Separating them shows that neither supports the attack, and it clarifies what a legal defence of preventive strikes would actually have to establish.

The choice of necessity as the organising idea is deliberate. Most accounts of Osirak begin and end with imminence, and treat the operation as a simple case of a strike that came too early. That account is correct as far as it goes, but it leaves the most persuasive part of Israel's case unanswered. Israel did not really claim that an Iraqi attack was about to happen. It claimed that it had no other choice, and that the choice had to be exercised before a fixed date. That is an argument from necessity, and it has to be met on its own terms. The verbatim records of the Security Council's debate in June 1981, which this article uses extensively, show that the States which condemned the attack understood this. Several of them rested their condemnation not on the absence of an armed attack alone, but on the existence of peaceful alternatives that Israel had chosen not to pursue.⁷

The article proceeds as follows. Part IV sets out the facts of the operation and the justification Israel advanced. Part V states the legal framework governing self-defence under the Charter and customary international law. Part VI distinguishes the two meanings of necessity. Part VII measures the operation against the requirements of imminence, necessity and proportionality. Part VIII examines the international response and its significance as evidence of State practice and *opinio juris*. Part IX considers whether the operation achieved its strategic aim, and why that question bears on its legality. Part X traces the operation's legal afterlife, from the preventive-force debates of the early 2000s to the Iranian strikes of 2025. Part XI addresses sovereignty and the non-proliferation regime. Part XII proposes a principled framework, and Part XIII concludes.

A. Research Objectives

This paper has four objectives. The first is to state accurately the legal framework governing anticipatory self-defence under the Charter of the United Nations and customary international law, including the jurisprudence of the International Court of Justice. The second is to distinguish necessity as a condition of self-defence from necessity as a circumstance precluding wrongfulness, and to assess Operation Opera under each. The third is to evaluate the international response to the operation as evidence of the content of the law, and to trace the operation's influence on subsequent State practice, including the strikes on Iranian nuclear facilities in 2025. The fourth is to propose a principled framework for assessing claims to use force against nuclear programmes that have not yet produced weapons.

B. Research Questions

The paper addresses the following research questions: first, whether Operation Opera satisfied the requirements of imminence, necessity and proportionality that govern anticipatory self-defence under Article 51 of the Charter and customary international law; secondly, whether the plea of necessity under Article 25 of the Articles on Responsibility of States for Internationally Wrongful Acts could preclude the wrongfulness of the attack; thirdly, what the unanimous condemnation of the attack in Security Council resolution 487 reveals about the content of the law, and how the operation has influenced later State practice and doctrine; and fourthly, what the operation suggests about the allocation of authority between individual States and collective institutions in responding to proliferation risks.

C. Research Methodology

The paper adopts a doctrinal methodology. It analyses the text of the Charter of the United Nations, the relevant resolutions of the Security Council, the General Assembly and the IAEA, the Articles on State Responsibility adopted by the International Law Commission, and the judgments and advisory opinions of the International Court of Justice. It draws on the leading scholarly treatments of anticipatory self-defence and on contemporaneous legal

⁶Contemporary Practice of the United States Relating to International Law: United States Bombs Iran's Nuclear Facilities' (2025) 119 *American Journal of International Law* (published online 14 November 2025), noting that the Security Council had unanimously condemned the 1981 bombing as a clear violation of the Charter.

⁷UNSC Verbatim Record (19 June 1981) UN Doc S/PV.2288, paras 30 and 157 (United States); UNSC Verbatim Record (15 June 1981) UN Doc S/PV.2282, para 95 (Japan).

commentary on the 1981 attack.

The paper also uses historical and strategic studies of the operation, including accounts of Iraq's nuclear programme after 1981, not as sources of law but because the factual questions they address, such as how close Iraq was to a weapon and whether the attack slowed or accelerated its programme, bear directly on the legal criteria of imminence and necessity. Contemporary commentary on the 2025 strikes on Iran is used to show the continuing relevance of the 1981 precedent. The paper does not purport to resolve the factual disputes about Iraqi intentions, and where the evidence is contested, it says so.

IV. THE OPERATION AND ITS JUSTIFICATION

Iraq acquired the Osirak reactor from France under an agreement concluded in the mid-1970s. It was a materials-testing research reactor of the Osiris type, fuelled with highly enriched uranium supplied by France. Iraq had been a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) since it entered into force in 1970, and its nuclear activities were subject to IAEA safeguards. The Security Council recorded in resolution 487 that the Agency had testified that those safeguards had been satisfactorily applied to date.⁸ Israel was not, and is not, a party to the NPT.

Israel's concerns about the reactor were not new. They rested on several claims: that a research reactor of that size had no plausible civilian justification for a country with Iraq's oil reserves; that it could be used to irradiate natural uranium to produce plutonium; that the highly enriched fuel could itself be diverted; and that the Iraqi Government under Saddam Hussein was hostile to Israel's existence. Israel had pursued diplomatic efforts to persuade France and Italy to withdraw their cooperation, without success. It had also, according to later accounts, conducted covert operations to delay the project, including the sabotage of reactor components in France in 1979.⁹

Israel's formal justification, set out in its communications to the Security Council and in the Council's debates, rested on the claim that the reactor was on the verge of becoming operational. Once loaded with fuel and brought to criticality, Israel argued, the reactor could not be attacked without releasing radioactive material over Baghdad, so that the window for a strike that would not cause mass civilian harm was about to close. Israel described the operation as an exercise of its inherent right of self-defence, and characterised the threat as existential: a nuclear-armed Iraq, it argued, would be able to destroy Israel.¹⁰

The attack destroyed the reactor core. It reportedly killed ten Iraqi soldiers and one French civilian technician. France and Iraq disputed Israel's technical claims. French officials maintained that the reactor, operated under safeguards and with French technicians present, could not have produced a meaningful quantity of weapons-grade plutonium without detection, and that France had taken steps to limit the fuel's usefulness for weapons. The factual question of how close Iraq was to a weapon in 1981, and whether it would have been able to produce one using Osirak without detection, remains contested among historians and nuclear specialists, as Part IX discusses.¹¹

The technical dispute was aired in detail before the Security Council. The Director General of the IAEA, Sigvard Eklund, told the Council on 19 June 1981 that the Agency had last inspected the Tuwaitha site in January of that year and that all nuclear material, including the first consignment of French fuel, had been accounted for. He identified two ways in which a reactor of the Osiris type could in theory be misused. The first was the removal of fuel elements in order to extract the highly enriched uranium, which the Agency considered would be easily detected because the elements were counted and identified at each inspection. The second was the undeclared production of plutonium by surrounding the core with a blanket of natural or depleted uranium. Eklund accepted that this route might yield something of the order of one significant quantity of plutonium a year, but he maintained that a blanket of the necessary size could not be hidden from ordinary visual inspection.¹² He ended with an observation that has been quoted ever since: as a matter of principle, it was the Agency's safeguards system that had also been attacked.¹³

Israel's reply, delivered at the same meeting by its Permanent Representative, Yehuda Blum, did not contest that inspections had taken place. It attacked their value. Blum asked why a State with Iraq's oil reserves needed a reactor of that size, why it had insisted on weapons-grade fuel when a low-enriched alternative had been offered, and why it had acquired plutonium separation technology and stockpiled natural uranium. He relied on a memorandum prepared by three French scientists to argue that the safeguards system depended on advance notice, on the inspected State's approval of individual

⁸UNSC Res 487 (n 5) preambular paras.

⁹Shlomo Nakdimon, *First Strike: The Israeli Response to Nuclear Threats* (Summit Books 1987).

¹⁰WT Mallison and SV Mallison, 'The Israeli Aerial Attack of June 7, 1981, upon the Iraqi Nuclear Reactor: Aggression or Self-Defense?' (1982) 15 *Vanderbilt Journal of Transnational Law* 417.

¹¹Shai Feldman, 'The Bombing of Osiraq: Revisited' (1982) 7(2) *International Security* 114.

¹²UN Doc S/PV.2288 (n 7) paras 10, 13-14 and 16.

¹³UN Doc S/PV.2288 (n 7) para 19.

inspectors and on its continuing good faith, and that inspections had been interrupted for a period after the outbreak of the war between Iraq and Iran in 1980.¹⁴ He added a legal argument of a different kind. Iraq regarded itself as being in a state of war with Israel and had never signed an armistice agreement, so that Israel was entitled to act against the nuclear threat in the exercise of its inherent right of self-defence.¹⁵ The significance of the exchange for present purposes is that both sides were arguing about risk over a period of years. Neither suggested that Iraq had a weapon, or that it was on the point of using one.

V. THE LEGAL FRAMEWORK: ARTICLE 2(4), ARTICLE 51 AND CUSTOMARY LAW

The starting point is Article 2(4) of the Charter, which requires all Members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.¹⁶ The prohibition is regarded as a rule of customary international law and is widely described as a peremptory norm. The Charter recognises two exceptions: enforcement action authorised by the Security Council under Chapter VII, and self-defence under Article 51. Operation Opera was not authorised by the Council, so its lawfulness depends entirely on the second exception.

The General Assembly's Definition of Aggression, adopted in 1974, gives the prohibition more concrete content. It treats the first use of armed force by a State in contravention of the Charter as *prima facie* evidence of an act of aggression, lists bombardment by the armed forces of a State against the territory of another State among the acts that qualify, and provides that no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.¹⁷ The Definition is a recommendation addressed to the Security Council and not a treaty, but it was adopted without a vote, and several delegations relied on it in the Osirak debate.¹⁸

Article 51 provides that nothing in the Charter shall impair the inherent right of individual or collective self-defence "if an armed attack occurs" against a Member, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken in self-defence must be immediately reported to the Council. Two readings of the provision have competed since 1945. On the restrictive reading, the words "if an armed attack occurs" confine the right to situations in which an armed attack has actually begun; anticipatory action of any kind falls outside Article 51 and is prohibited by Article 2(4). This reading was advanced influentially by Ian Brownlie and is associated with a large number of States, particularly in the developing world.¹⁹ On the broader reading, the reference to the "inherent" right preserves the customary right of self-defence as it existed before 1945, which included a right to act against an imminent attack; Article 51 describes the paradigm case without abolishing the customary right. This reading has been advanced by Derek Bowett and, in a qualified form, by a number of Western States.²⁰

State practice in the first decades of the Charter did little to settle the matter, largely because States that might have invoked a right of anticipatory self-defence chose not to. During the Cuban missile crisis of 1962 the United States faced the installation of Soviet nuclear missiles within range of its territory, a situation that some commentators regarded as a compelling case for anticipatory action.²¹ The legal advisers to the Kennedy administration nevertheless decided against relying on Article 51 and rested the quarantine of Cuba on a resolution of the Organization of American States, in part because they did not wish to establish a precedent under which a State may use force whenever it judges another State's deployment of weapons to be threatening.²² In June 1967 Israel struck Egyptian airfields at a time when Egyptian forces had massed in Sinai and the Straits of Tiran had been closed, but its initial case before the Security Council was that Egypt had attacked first, and the episode is for that reason an uncertain precedent for anticipatory self-defence.²³ When Israel came before the Council in June 1981, therefore, it could point to respected academic opinion but to very little practice in which States had openly claimed, and other States had accepted, a right to strike first.

On the broader reading, the classic statement of the customary standard is drawn from the *Caroline* incident of 1837, in which British forces crossed into United States territory and destroyed a vessel being used to supply insurgents in Upper Canada. In the diplomatic correspondence that followed, the United States Secretary of State, Daniel Webster, stated that a claim of self-defence required the British Government to show "a necessity of self-defence,

¹⁴UN Doc S/PV.2288 (n 7) paras 44 and 62-72.

¹⁵UN Doc S/PV.2288 (n 7) paras 78-79.

¹⁶Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, arts 2(4) and 51.

¹⁷UNGA Res 3314 (XXIX) (14 December 1974) UN Doc A/RES/3314(XXIX), annex, arts 2, 3(b) and 5(1).

¹⁸UN Doc S/PV.2282 (n 7) para 23 (Uganda); UN Doc S/PV.2288 (n 7) para 112 (Mexico).

¹⁹Ian Brownlie, *International Law and the Use of Force by States* (OUP 1963).

²⁰Derek Bowett, *Self-Defence in International Law* (Manchester University Press 1958).

²¹Myres S McDougal, 'The Soviet-Cuban Quarantine and Self-Defense' (1963) 57 *American Journal of International Law* 597.

²²Abram Chayes, *The Cuban Missile Crisis: International Crises and the Role of Law* (OUP 1974).

²³Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018).

instant, overwhelming, leaving no choice of means, and no moment for deliberation", and that the action taken must involve nothing unreasonable or excessive.²⁴ The British Government accepted the formulation, disputing only its application. The *Caroline* formula has since been treated as the canonical statement of the conditions of anticipatory self-defence: necessity, imminence and proportionality. Its demands are severe. The threat must be so immediate that there is no time for deliberation, and so pressing that no alternative means are available.

Israel's legal argument in 1981 drew directly on the broader reading. Blum cited Sir Humphrey Waldock for the proposition that it would be a travesty of the purposes of the Charter to compel a defending State to allow its assailant to deliver the first and perhaps fatal blow, and he cited Stephen Schwebel and Myres McDougal for the view that a reading of Article 51 which excludes all anticipatory action does not fit an age of missiles and nuclear weapons.²⁵ He then went a step further and argued that the *Caroline* formula, devised more than a century before Hiroshima, could not sensibly be applied to a State facing the threat of nuclear destruction.²⁶ The Iraqi delegation answered by reading the whole of the passage from Waldock into the record. In its full form the passage makes the right to strike first conditional on two things: that the threatened State has first invoked the jurisdiction of the United Nations, and that the armed attack has become imminent within the strict doctrine of the *Caroline*.²⁷ The exchange is revealing. The authorities on which Israel relied supported anticipatory self-defence against an imminent attack. None of them supported the removal of the imminence requirement, which is what Israel's case required.

The International Court of Justice has consistently declined to resolve the question of anticipatory self-defence. In *Military and Paramilitary Activities in and against Nicaragua*, it held that the conditions of necessity and proportionality are part of customary international law, but noted expressly that the parties had relied only on the right of self-defence in the case of an armed attack that had already occurred, and that the lawfulness of a response to the imminent threat of armed attack had not been raised; it therefore expressed no view on that issue.²⁸ It took the same course in *Armed Activities on the Territory of the Congo*.²⁹ In *Oil Platforms* it emphasised that the requirement of necessity is strict and objective, leaving no room for any measure of discretion on the part of the State claiming self-defence.³⁰ And in its advisory opinion on *Legality of the Threat or Use of Nuclear Weapons*, it confirmed that any use of force in self-defence is subject to necessity and proportionality, while acknowledging the fundamental right of every State to survival.³¹

The state of the law may therefore be summarised as follows. The requirement of an armed attack, and the conditions of necessity and proportionality, are settled. Whether self-defence may be exercised against an imminent but not yet actual attack is contested, but a substantial body of State practice and scholarly opinion now accepts that it may, provided the *Caroline* conditions, or something close to them, are met. What is not accepted by the great majority of States, and has not been accepted by the Court, is a right of preventive self-defence against threats that are not imminent, in the sense of a right to use force against a capability that might in the future be used to mount an attack. The distinction between anticipatory self-defence against an imminent attack and preventive force against a remote threat is the central distinction in the analysis that follows.³²

Developments since 1981 have sharpened that distinction without removing it. The Attorney General of the United Kingdom told the House of Lords in 2004 that international law permits the use of force in self-defence against an imminent attack but does not authorise a pre-emptive strike against a threat that is more remote.³³ A set of principles published by Sir Daniel Bethlehem in 2012, and later endorsed in substance by the Attorney General of the United Kingdom and the Legal Adviser to the United States Department of State, proposed that imminence be assessed by reference to a range of factors. These include the nature and immediacy of the threat, the probability of an attack, whether the anticipated attack is part of a concerted pattern of continuing armed activity, the likely scale of the harm, and the likelihood that there will be other opportunities to undertake effective action in self-defence that would cause less serious collateral injury.³⁴ The last of these factors is a version of the window-of-opportunity argument, and the principles have been

²⁴Letter from Daniel Webster to Henry Fox (24 April 1841), reproduced in RY Jennings, 'The Caroline and McLeod Cases' (1938) 32 *American Journal of International Law* 82, 89.

²⁵UN Doc S/PV.2288 (n 7) paras 81-84, citing CHM Waldock, 'The Regulation of the Use of Force by Individual States in International Law' (1952) 81 *Recueil des Cours* 451, 498; Stephen M Schwebel, 'Aggression, Intervention and Self-Defence in Modern International Law' (1972) 136 *Recueil des Cours* 411, 481; McDougal (n 21).

²⁶UN Doc S/PV.2288 (n 7) para 80.

²⁷UN Doc S/PV.2288 (n 7) paras 199-201.

²⁸*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14, paras 176 and 194.

²⁹*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgment) [2005] ICJ Rep 168, para 143.

³⁰*Oil Platforms (Islamic Republic of Iran v United States of America)* (Judgment) [2003] ICJ Rep 161, paras 73-77.

³¹*Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, paras 41 and 96.

³²Yoram Dinstein, *War, Aggression and Self-Defence* (6th edn, CUP 2017); Gray (n 23).

³³HL Deb 21 April 2004, vol 660, col 370.

³⁴Daniel Bethlehem, 'Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors' (2012) 106 *American Journal of International Law* 770, principle 8; Brian Egan, 'International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations' (2016) 92 *International Law Studies* 235; Jeremy Wright, 'The Modern Law of Self-Defence' (speech at the International Institute for Strategic Studies, London, 11 January 2017).

criticised on the ground that they dilute the temporal element of imminence.³⁵ Two points should be noted. The principles were framed for attacks by non-State armed groups, where the difficulty is that an attack may be certain although its time and place are unknown. And even on their own terms they presuppose that an armed attack is anticipated. They do not treat the possession or pursuit of a capability as sufficient.

VI. TWO MEANINGS OF NECESSITY

A. Necessity as a Condition of Self-Defence

In the law of self-defence, necessity is a limiting condition. It asks whether force was needed at all, or whether the defending State could have achieved its legitimate defensive aim by non-forcible means. It is closely tied to imminence: where an attack is not imminent, there is by definition time to pursue alternatives, so that force is not yet necessary. In *Oil Platforms*, the Court treated necessity as an objective requirement, to be established by evidence and not by the defending State's own assessment.³⁶ Necessity in this sense does not expand the right of self-defence. It is one of the conditions that confine it.

Two features of necessity in this first sense deserve emphasis. The first is that it is measured against the defensive purpose alone. Force is necessary only to the extent required to halt or repel an attack, and the requirement gives no warrant for force aimed at removing a general source of danger or at altering the balance of power between the States concerned.³⁷ The second is that the requirement is continuous with the general scheme of the Charter. Article 2(3) obliges Members to settle their disputes by peaceful means, and Article 33 lists those means. Self-defence is the point at which that obligation gives way, and necessity marks the point: it is satisfied when peaceful means are unavailable or have failed, and not before. In *Nicaragua* the Court found that measures taken several months after the offensive they were said to answer had been repulsed could not be regarded as necessary.³⁸ The Court was there concerned with force used too late. The same reasoning applies to force used too early.

B. Necessity as a Circumstance Precluding Wrongfulness

The law of State responsibility knows a quite different concept. Article 25 of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission in 2001, provides that necessity may be invoked to preclude the wrongfulness of an act not in conformity with an international obligation only if the act is the only way for the State to safeguard an essential interest against a grave and imminent peril, and does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.³⁹ Necessity may not be invoked if the obligation in question excludes it, or if the State has contributed to the situation of necessity. The International Court of Justice accepted in *Gabčíkovo-Nagymaros Project* that this plea reflects customary international law, and emphasised that it can be accepted only on an exceptional basis and that the State concerned is not the sole judge of whether the conditions are met.⁴⁰

This is the doctrine of necessity in the technical sense, and it is sometimes invoked in defence of preventive strikes: even if Osirak was not lawful self-defence, it is argued, the gravity of the nuclear peril made it necessary in the sense of Article 25. The argument fails for two structural reasons. First, the Articles treat self-defence separately, in Article 21, which precludes wrongfulness only where the act constitutes a lawful measure of self-defence taken in conformity with the Charter. The Commission's commentary makes clear that the plea of necessity is not intended to cover the use of force, which is governed by the primary rules of the Charter; necessity under Article 25 cannot be used to enlarge the right of self-defence beyond the limits the Charter sets. Secondly, Article 26 provides that nothing in the chapter on circumstances precluding wrongfulness precludes the wrongfulness of an act not in conformity with an obligation arising under a peremptory norm.⁴¹ If the prohibition of the use of force is a peremptory norm, as is widely accepted, the plea of necessity is simply unavailable to justify an armed attack on another State's territory.

The Commission's commentary puts the first point directly. It states that the plea of necessity is not intended to cover conduct which is in principle regulated by the primary obligations, and that this has particular importance in relation to the rules on the use of force and to the question of military

³⁵Dapo Akande and Thomas Liefländer, 'Clarifying Necessity, Imminence, and Proportionality in the Law of Self-Defense' (2013) 107 *American Journal of International Law* 563; Noam Lubell, 'The Problem of Imminence in an Uncertain World' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 697.

³⁶*Oil Platforms* (n 30) paras 73-77.

³⁷Judith Gardam, *Necessity, Proportionality and the Use of Force by States* (CUP 2004).

³⁸*Nicaragua* (n 28) para 237.

³⁹International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10, arts 21, 25 and 26, and commentary to art 25.

⁴⁰*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7, paras 51-52.

⁴¹ILC Articles (n 39) arts 21 and 26.

necessity.⁴² The International Court of Justice took a comparably strict line in its advisory opinion on the *Wall*, where it left open whether a state of necessity could be invoked at all in respect of the measures in question, and held in any event that it was not convinced that the course chosen was the only means of safeguarding the interests invoked.⁴³

Even if those structural objections are put aside, the plea would fail on its own conditions. The act must be the only way to safeguard the essential interest, and in June 1981 it was not, for the reasons given in Part VII. The peril must be imminent, and the Court in *Gabčíkovo-Nagymaros* explained that a peril appearing in the long term may be treated as imminent only where it is established that its realisation, however far off, is certain and inevitable.⁴⁴ An Iraqi nuclear weapon was neither. The act must not seriously impair an essential interest of the State towards which the obligation exists, and the bombing of a State's territory and the destruction of its principal scientific installation plainly does so. The plea of necessity therefore adds nothing to the argument from self-defence. It asks the same questions about alternatives and imminence, and it asks them more strictly.

C. Why the Distinction Matters

The distinction matters because the phrase "doctrine of necessity" carries, in ordinary usage, a permissive connotation. It suggests that extraordinary circumstances may justify extraordinary measures. In the law of self-defence, necessity has the opposite function: it restricts the use of force to cases in which nothing else will do. An argument that Operation Opera was justified by necessity must therefore be precise about which concept it invokes. If it invokes necessity as a condition of self-defence, it must show that force was the only available means of averting an imminent attack. If it invokes the plea under Article 25, it runs into the exclusion of the use of force and the bar in Article 26. The following Part examines the first argument, which is the only one capable in principle of succeeding.

VII. MEASURING OPERATION OPERA AGAINST IMMINENCE, NECESSITY AND PROPORTIONALITY

A. Imminence: Anticipatory or Preventive?

Imminence is the requirement on which the case for Operation Opera is weakest. On Israel's own account, Iraq did not possess a nuclear weapon in June 1981, did not possess the fissile material for one, and was not preparing to attack Israel with any weapon, nuclear or conventional. The threat Israel identified was not an attack but a capability: the possibility that the reactor, once operational, might be used over a period of years to produce plutonium for a weapon that might one day be used against Israel. Even on the most pessimistic assessments then available, a weapon was years away. The *Caroline* standard asks whether an attack is so immediate that there is no moment for deliberation. Israel had deliberated for years, and it had pursued diplomatic efforts throughout that time.

Israel's answer was that the relevant moment was not the moment of attack but the moment of last opportunity. Once the reactor went critical, it could no longer be destroyed without catastrophic radiological consequences, so that the last point at which Israel could safely act was imminent even if the threat itself was not. This "last window of opportunity" argument has since been developed in the scholarly literature and in some State practice, and it is not without force as a matter of strategy.⁴⁵ As a legal argument, however, it substitutes the imminence of the defender's opportunity for the imminence of the attacker's attack. It would permit force whenever a State concludes that a future threat will become harder to address later, which describes almost every capability another State may acquire. That is the definition of preventive, not anticipatory, force.

There is a further difficulty. The radiological argument was contested on its facts. France and the IAEA disputed that the reactor could have been used to produce significant quantities of weapons-grade material under safeguards and in the presence of French technicians without detection. If detection was likely, the international community would have had warning of any diversion long before a weapon could be produced, and the window of opportunity would not have closed in June 1981. The imminence argument thus depended not only on a contested legal proposition but on a contested factual one, and the State advancing it was the sole judge of both.

Israel's most ambitious submission was that nuclear weapons had changed the law: a small State that could be destroyed by a single strike cannot be required to wait until that strike is imminent. The International Court of Justice came close to this question fifteen years later, in the *Nuclear Weapons* advisory opinion. It was unable to conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence in which the very survival of a State would be at stake.⁴⁶ That passage is sometimes read as recognising a special regime for

⁴²ILC Articles (n 39) commentary to art 25, para 21.

⁴³*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 140.

⁴⁴*Gabčíkovo-Nagymaros* (n 40) para 54.

⁴⁵Joshua Kirschenbaum, 'Operation Opera: An Ambiguous Success' (2010) 3(4) *Journal of Strategic Security* 49.

⁴⁶*Nuclear Weapons* (n 31) paras 97 and 105(2)(E).

existential threats. It does not bear that reading. The Court's hesitation concerned the weapon that a State might use once the right of self-defence had arisen. It did not concern the conditions on which that right arises, and the Court stated in the same opinion that the submission of the exercise of self-defence to the conditions of necessity and proportionality is a rule of customary international law which applies whatever the means of force employed.⁴⁷ The gravity of what a State fears may properly inform how it assesses evidence that an attack is being prepared. It does not create a right to use force where no attack is being prepared at all.

B. Necessity: Were There Alternatives?

The requirement of necessity asks whether force was the only means available. In June 1981 several alternatives had not been exhausted. The reactor was subject to IAEA safeguards, which could have been strengthened or supplemented. France, the supplier, had reportedly taken steps to limit the military usefulness of the fuel and could have been pressed further. Israel could have brought its concerns formally before the Security Council, which has the primary responsibility for international peace and security and the power under Chapter VII to take measures against threats to the peace, not only actual breaches. Israel's view was that none of these alternatives would work, because France was unwilling to withdraw, the safeguards were inadequate, and the Council would not act. That view may have been reasonable as a prediction. But necessity in the sense applied in *Oil Platforms* is objective, and a State's own prediction that alternatives will fail is not the same as their actual failure.⁴⁸

The debate in the Security Council shows that this was the ground on which the attack was most widely criticised, including by States that were not hostile to Israel. Japan observed that if Israel suspected Iraq of intending to produce nuclear weapons despite the Agency's assurances, it should have sought to settle the matter by peaceful means, for example by submitting it to the IAEA.⁴⁹ Mexico said that effective multilateral and bilateral recourses had been available.⁵⁰ France pointed out that it had only recently reviewed its arrangements with Iraq to make sure that no measure was neglected in guaranteeing the exclusively peaceful use of the supplies, which suggests that the supplier remained open to pressure of exactly the kind Israel had been applying.⁵¹ Most strikingly, the United States stated that "diplomatic means available to Israel had not been exhausted", and explained after the vote that its judgment that Israel had violated the Charter was based on the conviction that Israel had failed to exhaust peaceful means for the resolution of the dispute.⁵² The closest ally of the attacking State thus located the illegality precisely in the absence of necessity.

There is also an internal tension in Israel's position. A State that has spent several years on diplomatic representations, and has planned and rehearsed a military operation over many months, as Israel's own leaders said they had, is not a State with no moment for deliberation.⁵³ The care with which the operation was prepared is evidence of its military quality. It is also evidence that the situation was not one of necessity in the *Caroline* sense.

The point is reinforced by the relationship between necessity and imminence. Because no attack was imminent, there was, by definition, time to pursue alternatives. The two requirements are not independent tests to be satisfied separately; the absence of imminence is itself strong evidence that force was not yet necessary.

C. Proportionality

The operation's defenders have their strongest ground on proportionality. The strike was confined to a single military target, carried out with considerable precision, timed to minimise casualties, and executed before the reactor was loaded with fuel so as to avoid radiological harm. Compared with the scale of the threat Israel perceived, the harm caused was limited. If the operation had been a lawful exercise of self-defence, its conduct would have been difficult to criticise as disproportionate.

But proportionality in the law of self-defence is measured against the defensive need, not against the perceived magnitude of a hypothetical future harm. Where there is no armed attack, actual or imminent, there is no defensive need against which the response can be measured. A strike that is perfectly measured in its execution cannot be proportionate in the relevant legal sense if the right of self-defence has not arisen. The precision of Operation Opera is relevant to whether it complied with the law of armed conflict, and it may bear on the moral assessment of the operation. It cannot cure the absence of

⁴⁷*Nuclear Weapons* (n 31) para 41.

⁴⁸*Oil Platforms* (n 30) paras 73-77.

⁴⁹UN Doc S/PV.2282 (n 7) para 95.

⁵⁰UN Doc S/PV.2288 (n 7) para 114.

⁵¹UN Doc S/PV.2282 (n 7) para 54.

⁵²UN Doc S/PV.2288 (n 7) paras 30 and 157.

⁵³UN Doc S/PV.2282 (n 7) para 16.

the threshold condition.⁵⁴

D. An Assessment

On the prevailing understanding of the law, Operation Opera did not satisfy the requirements of lawful self-defence. The threat it addressed was not imminent in any temporal sense the law recognises; alternatives to force had not been exhausted; and proportionality could not be assessed because the right to use force had not arisen. The strongest version of the case for the operation does not claim that it met the *Caroline* test. It claims instead that the *Caroline* test is inappropriate for nuclear threats, because the magnitude of the potential harm and the impossibility of defending against a nuclear attack once launched require a different standard of imminence. That is an argument for changing the law, not a demonstration that the operation complied with the law as it stood. It is also an argument that the international community considered in 1981 and rejected, as the next Part shows.

This conclusion does not depend on the view that Israel's fears were unfounded. Anthony D'Amato, writing shortly after the attack, argued that it could be defended as a contribution to international order by preventing the spread of nuclear weapons.⁵⁵ W.T. and S.V. Mallison, writing in the same period, concluded that it was an act of aggression.⁵⁶ The disagreement between them is instructive. D'Amato's defence rests on a claim about the purposes the law should serve, and the Mallisons' criticism rests on the text and structure of the Charter. The Security Council's response, which follows, shows which view States accepted.

VIII. THE INTERNATIONAL RESPONSE AS EVIDENCE OF THE LAW

The response to Operation Opera was unusually clear. Resolution 487 was adopted unanimously by a Council that included all five permanent members and ten elected members representing every region. It did not merely express concern; it condemned the attack as a clear violation of the Charter and the norms of international conduct, and it held Iraq entitled to redress for the destruction it had suffered, responsibility for which, the resolution recorded, had been acknowledged by Israel.⁵⁷ The IAEA Board of Governors had condemned the attack on 12 June 1981, and the Agency's General Conference later adopted a resolution condemning it and considering measures against Israel.⁵⁸ The General Assembly also condemned the attack in resolution 36/27.⁵⁹

The reasoning of the Council's members is as instructive as the result. The debate ran over nine meetings and heard more than fifty speakers.⁶⁰ Two lines of legal argument can be distinguished. A large group of States, most of them from the Non-Aligned Movement, took the restrictive view of Article 51. Uganda argued that self-defence is permissible only in response to an armed attack and that the Council had never accepted the plea in the absence of one.⁶¹ Spain said that the Charter does not allow any right to preventive action by which a State sets itself up as judge, party and policeman in respect of another.⁶² Mexico considered that the concept of preventive war had been definitively abolished by the Charter.⁶³ A second and smaller group did not exclude anticipatory action in principle but found its conditions unmet. The representative of the United Kingdom, Sir Anthony Parsons, said that there had been no instant or overwhelming necessity for self-defence, language taken directly from the *Caroline* correspondence, and that the attack could not be justified "as a forcible measure of self-protection".⁶⁴ The United States, as noted above, relied on the failure to exhaust peaceful means.

The two groups disagreed about the scope of Article 51 and agreed about Osirak. That is what gives the episode its weight as evidence of the law. A use of force that is unlawful on the restrictive reading and also unlawful on the broader reading is unlawful on any reading that States were then prepared to defend. France added a consideration that anticipates the institutional argument of this article. It asked where matters would end if a State were to proclaim itself judge of the intentions of another State that was complying with the rules of the international community in the nuclear field.⁶⁵ China made the

⁵⁴Anthony D'Amato, 'Israel's Air Strike upon the Iraqi Nuclear Reactor' (1983) 77 *American Journal of International Law* 584.

⁵⁵D'Amato (n 54).

⁵⁶Mallison and Mallison (n 10).

⁵⁷UNSC Res 487 (n 5) paras 1 and 6.

⁵⁸IAEA General Conference, 'Military Attack on Iraqi Nuclear Research Centre and its Implications for the Agency' (1981) GC(XXV)/RES/381.

⁵⁹UNGA Res 36/27 (13 November 1981) UN Doc A/RES/36/27.

⁶⁰UN Doc S/PV.2288 (n 7) para 109.

⁶¹UN Doc S/PV.2282 (n 7) para 19.

⁶²UN Doc S/PV.2282 (n 7) para 78.

⁶³UN Doc S/PV.2288 (n 7) para 115.

⁶⁴UN Doc S/PV.2282 (n 7) para 106.

⁶⁵UN Doc S/PV.2282 (n 7) para 56.

same point more bluntly.⁶⁶

The limits of the consensus should also be recorded. The resolution did not describe the attack as an act of aggression and did not impose sanctions under Chapter VII, although many delegations had called for both, and Iraq attributed the omission to the veto power of the United States.⁶⁷ When the General Assembly took up the matter in November 1981 and adopted a text that did describe the attack as an act of aggression and called for an end to the supply of arms to Israel, the vote was 109 in favour and 2 against, with 34 abstentions, and the United States was one of the two.⁶⁸ Israel, for its part, rejected resolution 487 at the moment of its adoption.⁶⁹ The collective judgment that the attack was unlawful was therefore unanimous, while the willingness to attach consequences to that judgment was not. This gap between condemnation and enforcement is part of the reason why the precedent has proved easier to ignore than its terms would suggest.

The position of the United States is particularly significant, because it has since been among the States most receptive to anticipatory self-defence. In 1981 the United States did not rest its vote on a rejection of anticipatory self-defence as such. It rested on the absence of any evidence that Iraq had launched or was planning to launch an attack that could justify Israel's use of force.⁷⁰ That reasoning is consistent with the distinction drawn in Part V. It accepts, at least implicitly, that anticipatory self-defence against an imminent attack may be lawful, while rejecting the claim that a future capability is enough.

In the law of the use of force, where there are few judicial decisions and the practice of States is often ambiguous, a unanimous condemnation by the Security Council is weighty evidence of how States understand the law. It is not conclusive. Resolutions are political acts, and States vote for reasons other than legal conviction. But when every permanent member, including the attacking State's closest ally, characterises an act as a clear violation of the Charter, it is difficult to treat the act as a precedent establishing a new rule. If anything, the response to Osirak confirmed the rule that preventive force against a non-imminent threat is unlawful. The later tendency to treat Osirak as a legal precedent for such strikes misreads the record. It treats as precedent an act that the international community expressly refused to accept.

IX. DID OSIRAK WORK? STRATEGIC OUTCOMES AND LEGAL NECESSITY

For many years after 1981, the prevailing strategic view was that the operation had succeeded. The discovery after the Gulf War of 1991 that Iraq had pursued an extensive clandestine nuclear weapons programme persuaded many observers that Israel had correctly identified Iraqi intentions and had delayed Iraq's acquisition of a weapon by a decade.

More recent research has challenged that view. Dan Reiter concluded that the attack at most marginally delayed Iraq's nuclear programme, and that its central lesson for potential proliferators was to conceal and disperse their facilities.⁷¹ Målfrid Braut-Hegghammer, drawing on Iraqi records that became available after 2003, argued that before 1981 Iraq's nuclear programme lacked a clear weapons orientation, and that the attack triggered Saddam Hussein's decision to pursue a covert, dedicated weapons programme outside the safeguards system.⁷² On this account, the attack converted a programme that was ambiguous and inspected into one that was clandestine and weapons-focused.

These strategic arguments are not strictly legal, but they bear on the legal analysis in two ways. First, they illustrate the epistemic difficulty at the heart of preventive force. The State deciding whether to strike must predict the adversary's intentions, the time needed to produce a weapon, and the effect of the strike on both. Each prediction may be wrong, and in the case of Osirak there are serious grounds to think that at least one was. The *Caroline* requirement of imminence exists partly to limit the use of force to situations in which such predictions are unnecessary, because the attack is already visible. Secondly, if a strike is likely to accelerate rather than prevent the danger, it cannot be necessary in the legal sense, because it does not achieve the defensive purpose. The strategic record of Osirak thus reinforces the conclusion that the operation did not meet the requirement of necessity.

The later history of Iraq's programme points in the same direction. The clandestine programme that was built after 1981 was not ended by a further preventive strike. It was uncovered and dismantled after the Gulf War under Security Council resolution 687, which required Iraq to accept the destruction,

⁶⁶UN Doc S/PV.2282 (n 7) para 89.

⁶⁷UN Doc S/PV.2288 (n 7) paras 143 (Uganda), 167 (Union of Soviet Socialist Republics) and 183 (Iraq).

⁶⁸UNGA Res 36/27 (n 59) paras 1 and 3; UNGA Verbatim Record (13 November 1981) UN Doc A/36/PV.56.

⁶⁹UN Doc S/PV.2288 (n 7) paras 188 and 195.

⁷⁰'Assessing the U.S. Article 51 Letter for the Attack on Iran' (*Just Security*, 3 July 2025) <<https://www.justsecurity.org/116153/article-51-united-states-letter-iran-nuclear/>> accessed 29 September 2026.

⁷¹Dan Reiter, 'Preventive Attacks against Nuclear Programs and the "Success" at Osirak' (2005) 12(2) *Nonproliferation Review* 355.

⁷²Målfrid Braut-Hegghammer, 'Revisiting Osirak: Preventive Attacks and Nuclear Proliferation Risks' (2011) 36(1) *International Security* 101.

removal or rendering harmless of its nuclear-weapons-usable material and related facilities under the supervision of the IAEA, assisted by a Special Commission of the Council.⁷³ The Agency's failure to detect that programme before 1991 was a serious one, and it bears out part of what Israel had said in 1981 about the limits of inspections confined to declared sites. The response of States, however, was to repair the instrument. The Model Additional Protocol approved in 1997 gave the Agency wider rights of access to information and to locations, including undeclared ones.⁷⁴ The sequence matters for the argument about necessity. It shows that the weakness Israel identified was real, that it was capable of institutional remedy, and that the only measures which in the event removed Iraq's nuclear capability were collective ones taken with the authority of the Council.

X. THE LEGAL AFTERLIFE: FROM PRE-EMPTION TO IRAN

A. *The Pre-emption Debate, 2002 to 2005*

The legal debate over preventive force revived after 2001. The United States National Security Strategy of September 2002 announced that the United States would, if necessary, act pre-emptively against emerging threats from rogue States and terrorists armed with weapons of mass destruction, and argued that the concept of imminent threat must be adapted to the capabilities and objectives of such adversaries.⁷⁵ The doctrine went beyond anticipatory self-defence as traditionally understood and embraced, in substance, a right of preventive force.

The response of the United Nations system was to reaffirm the distinction drawn in Part V. The Secretary-General's High-level Panel on Threats, Challenges and Change concluded in 2004 that a threatened State may take military action as long as the threatened attack is imminent, no other means would deflect it and the action is proportionate; but that where the threat is not imminent, the proper course is to bring the matter to the Security Council, which can authorise preventive action if it considers it justified.⁷⁶ The Secretary-General endorsed that position in 2005.⁷⁷ A group of international lawyers convened by Chatham House reached a similar conclusion, accepting that force may be used against an imminent attack while insisting that imminence retains a temporal element and cannot be satisfied by a mere capability.⁷⁸

The High-level Panel's formulation deserves emphasis because it offers a principled answer to the Osirak problem. It does not deny that non-imminent threats may justify force. It allocates the decision. Where the threat is imminent, the individual State may act, because there is no time for collective deliberation. Where it is not, there is time, and the decision belongs to the Council. On that framework, Operation Opera was not unlawful because Israel's fears were necessarily unfounded, but because Israel decided alone a question that the Charter allocates to collective decision when time permits.

The academic case for a wider right has been put most carefully by Abraham Sofaer, who argued that the necessity of pre-emptive action should be judged by reference to the nature and magnitude of the threat, the likelihood that it will be realised unless pre-emptive action is taken, the availability and exhaustion of alternatives to force, and the consistency of the action with the terms and purposes of the Charter.⁷⁹ On this view imminence is one indicator of necessity among several and has no independent status. The approach has the merit of candour, and it identifies the considerations that a responsible government would in fact weigh. Its difficulty is that every one of its factors calls for a judgment of probability or degree, and that it leaves that judgment to the State which proposes to use force. Michael Reisman and Andrea Armstrong, surveying the practice a few years later, found that several States had begun to assert some form of the claim, while noting that this fell well short of general acceptance, and they drew attention to the consequences of a rule that, once available to one State, would be available to all.⁸⁰ It is worth observing that Osirak fails even Sofaer's test, since his third factor is the exhaustion of alternatives.

B. *Al Kibar and Iran*

In September 2007 Israel destroyed a facility at Al Kibar in Syria, which the IAEA later assessed was very likely a nuclear reactor under construction.

⁷³UNSC Res 687 (3 April 1991) UN Doc S/RES/687, paras 12-13.

⁷⁴IAEA, 'Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards' (September 1997) INFCIRC/540 (Corrected).

⁷⁵The White House, *The National Security Strategy of the United States of America* (September 2002).

⁷⁶'A More Secure World: Our Shared Responsibility' Report of the Secretary-General's High-level Panel on Threats, Challenges and Change (2 December 2004) UN Doc A/59/565, paras 188-192.

⁷⁷'In Larger Freedom: Towards Development, Security and Human Rights for All' Report of the Secretary-General (21 March 2005) UN Doc A/59/2005, para 124.

⁷⁸Elizabeth Wilmshurst, 'The Chatham House Principles of International Law on the Use of Force in Self-Defence' (2006) 55 *International and Comparative Law Quarterly* 963.

⁷⁹Abraham D Sofaer, 'On the Necessity of Pre-emption' (2003) 14 *European Journal of International Law* 209, 220.

⁸⁰W Michael Reisman and Andrea Armstrong, 'The Past and Future of the Claim of Preemptive Self-Defense' (2006) 100 *American Journal of International Law* 525.

The international response was strikingly muted: Israel did not formally claim the attack or advance a legal justification, and Syria did not press for condemnation. Some commentators have read this silence as evidence of growing tolerance for strikes against clandestine nuclear facilities. The better view is that silence of this kind, in circumstances where neither party invoked the law, is weak evidence of any change in legal opinion.

The Al Kibar episode nevertheless contains a lesson that is usually overlooked. Unlike Osirak, the Syrian facility had not been declared to the IAEA. In 2011 the Agency concluded that the destroyed building was very likely a nuclear reactor that should have been declared, and its Board of Governors found Syria in non-compliance with its safeguards agreement and reported the matter to the Security Council.⁸¹ The institutional machinery thus reached, four years after the event and on the basis of what could be learned from a bombed and cleared site, the conclusion that could have founded collective action had it been sought before the strike. Israel acknowledged responsibility for the operation only in 2018. An unacknowledged strike, justified by no legal claim and reported to no organ, contributes nothing to the formation of a permissive rule. If anything, the decision not to invoke Article 51 suggests little confidence that the invocation would have been accepted.

The Iranian strikes of 2025 brought the Osirak precedent directly back into legal argument. On 13 June 2025 Israel launched large-scale strikes against Iranian nuclear facilities, scientists and military targets, and on 22 June the United States struck facilities at Fordow, Natanz and Isfahan. Israel referred to the threat of imminent Iranian attacks and to the last window of opportunity to prevent Iran from acquiring nuclear weapons, language closely echoing its 1981 justification, and it also relied on the existence of an ongoing armed conflict with Iran following the exchanges of 2024.⁸² The United States notified the Security Council that its strikes were an exercise of collective self-defence of Israel.⁸³ Much of the legal commentary concluded that the claim of anticipatory self-defence could not succeed on the traditional criteria, while some commentators argued that the imminence requirement should be applied more flexibly in the nuclear context, or that the strikes were better analysed as part of an existing armed conflict.⁸⁴ The renewed military operations against Iran from 28 February 2026 have intensified that debate, and commentary has again questioned whether any actual or imminent armed attack existed.⁸⁵

Two differences between 1981 and 2025 should be stated plainly, because they cut in opposite directions. The first favours the attacking States. Iraq in 1981 had been found by the IAEA to be in compliance with its safeguards agreement. Iran in 2025 had not: on 12 June 2025, the day before the Israeli strikes began, the Board of Governors adopted a resolution finding that Iran had failed to meet its safeguards obligations.⁸⁶ The factual premise of the debate on resolution 487, that the target State was a party in good standing, was therefore absent. The second difference favours the opposite conclusion. A finding of non-compliance is not a licence to use force. Under the Agency's Statute, non-compliance is to be reported to the Security Council and the General Assembly, and it is for the Council to decide what follows.⁸⁷ The Council had used that route in respect of Iran before, imposing measures under Chapter VII from 2006 and endorsing a negotiated settlement in resolution 2231 in 2015.⁸⁸ The Board's resolution of June 2025 itself expressed support for a diplomatic solution, and the Director General responded to the strikes by recalling the General Conference's position that armed attacks on nuclear facilities devoted to peaceful purposes violate the Charter, and by repeating that such facilities "must never be attacked".⁸⁹ A finding of non-compliance strengthens the case for collective action. It does not transfer the decision from the Council to the States most concerned.

The justification offered for the operations of 2026 shows how far the concept of imminence can be stretched once its temporal core is abandoned. In its letter to the Security Council of 10 March 2026 the United States is reported to have argued that the imminence of the Iranian threat had to be assessed in the light of decades of Iranian conduct, reaching back to 1979.⁹⁰ Whatever the merits of that submission on the facts, its structure is the reverse of the

⁸¹IAEA Board of Governors, 'Implementation of the NPT Safeguards Agreement in the Syrian Arab Republic' (24 May 2011) GOV/2011/30; IAEA Board of Governors, Resolution (9 June 2011) GOV/2011/41.

⁸²'United States Bombs Iran's Nuclear Facilities' (n 6).

⁸³'Assessing the U.S. Article 51 Letter for the Attack on Iran' (n 70).

⁸⁴'A New War or a New Stage in an Ongoing War: Observations on June 13 Israeli Attack against Iran' (*Just Security*, 15 June 2025) <<https://www.justsecurity.org/114641/israel-iran-un-charter-jus-ad-bellum/>> accessed 29 September 2026; Faisal Kutty, 'Rebutting the Case for Israel's June 2025 Strikes as Lawful Self-Defense' (*Lawfare*, 26 August 2025).

⁸⁵'The International Community at a Crossroads Over Iran' (*Just Security*, 26 June 2026) <<https://www.justsecurity.org/133292/international-law-crossroads/>> accessed 29 September 2026.

⁸⁶UN Secretary-General Urges Israel and Iran to Exercise Restraint and Avoid Deeper Conflict' (*JURIST*, 13 June 2025)

<<https://www.jurist.org/news/2025/06/un-secretary-general-urges-israel-and-iran-to-exercise-restraint-and-avoid-deeper-conflict/>> accessed 6 October 2026.

⁸⁷Statute of the International Atomic Energy Agency (adopted 23 October 1956, entered into force 29 July 1957) 276 UNTS 3, art XII.C.

⁸⁸UNSC Res 1737 (23 December 2006) UN Doc S/RES/1737; UNSC Res 2231 (20 July 2015) UN Doc S/RES/2231.

⁸⁹IAEA, 'Statement on the Situation in Iran' (13 June 2025) <<https://www.iaea.org/node/220527>> accessed 6 October 2026.

⁹⁰Brian Finucane, 'An Unserious Justification for an Unnecessary War: Assessing the U.S. "Article 51" Letter to U.N. on Iran War' (*Just Security*, 18 March 2026) <<https://www.justsecurity.org/134290/us-article-51-letter-united-nations/>> accessed 6 October 2026.

Caroline formula. Webster's test looks forward to an attack that is about to occur. A test that looks backward over almost half a century of hostility in order to characterise a present danger is a test of enmity, and enmity was exactly what Israel pleaded against Iraq in 1981 when it relied on the absence of an armistice and on Iraq's declared hostility. The Council did not regard it as sufficient then.

The Iranian episodes do not require this article to reach a conclusion on their legality, which raises questions, including the relevance of an ongoing armed conflict, that did not arise in 1981. They show something narrower but important: forty-five years after the attack, Osirak remains the reference point for the legal analysis of force against nuclear programmes, and the arguments advanced for and against such force have changed little. The central question is still whether a future capability can be treated as an imminent threat, and the answer given by the international community in 1981 remains the most authoritative collective answer available.

XI. SOVEREIGNTY, NON-PROLIFERATION AND THE QUESTION OF WHO DECIDES

Operation Opera also raised questions about the non-proliferation regime itself. Article IV of the NPT recognises the inalienable right of all parties to develop research, production and use of nuclear energy for peaceful purposes, in conformity with their non-proliferation obligations.⁹¹ Iraq was exercising that right under safeguards. Israel, which was not a party to the Treaty, attacked a facility that the regime's own verification body had found to be in compliance. The Security Council's statement that the attack threatened the entire safeguards regime reflected a real concern: if States that accept safeguards are no safer from attack than those that do not, the incentive to accept them is weakened.⁹²

The international response to that concern has been to develop, unevenly, a body of rules protecting nuclear installations as such. Additional Protocol I to the Geneva Conventions, adopted four years before the attack, prohibits attacks on nuclear electrical generating stations where the attack may cause the release of dangerous forces and consequent severe losses among the civilian population.⁹³ The provision belongs to the law governing the conduct of hostilities, it is confined to power stations, and neither Israel nor Iraq was a party to the Protocol in 1981, so that it had no direct application to a research reactor that had not yet been fuelled. Its importance lies in the recognition that nuclear facilities are a special category of object. After Osirak the IAEA General Conference went further. In resolutions adopted in 1985 and 1990 it declared that any armed attack on, or threat against, nuclear facilities devoted to peaceful purposes constitutes a violation of the principles of the Charter, international law and the Statute of the Agency.⁹⁴ Those resolutions are not binding, but the Agency's Director General invoked them when Iranian facilities were struck in June 2025.⁹⁵

The clearest legal expression of the principle comes from South Asia. On 31 December 1988 India and Pakistan signed an Agreement on the Prohibition of Attack against Nuclear Installations and Facilities, which entered into force on 27 January 1991. Each party undertakes to refrain from undertaking, encouraging or participating in any action aimed at causing the destruction of, or damage to, any nuclear installation or facility in the other country, and the parties exchange lists of the installations covered on 1 January of each year.⁹⁶ The exchange has taken place every year since 1992, through periods of acute tension and armed confrontation between the two States.⁹⁷ The agreement was concluded between two States that were not parties to the NPT, that regarded each other as adversaries, and that each suspected the other of pursuing nuclear weapons. Those are the conditions in which the logic of Osirak is at its most tempting. That two such States chose mutual restraint, and reduced it to a treaty, is evidence that the preventive strike is not the only rational response to a rival's nuclear programme. It also offers a model that could be adapted elsewhere.

The deeper issue is institutional. Every argument for Osirak rests on the premise that the attacking State was entitled to make its own assessment of the threat and to act on it. The non-proliferation regime rests on the opposite premise: that assessment is the function of an impartial verification body, and response is the function of the Security Council. The Charter's allocation of authority reflects the same choice. Individual States may act alone only in the narrow window where there is no time for collective action; outside that window, the decision to use force belongs to the collective institution. The difficulty, which defenders of preventive force point to, is that the Council may fail to act because of the veto or political division. That is a genuine

⁹¹Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161, art IV.

⁹²UNSC Res 487 (n 5) paras 3-4.

⁹³Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 56(1).

⁹⁴IAEA General Conference, Resolution (1985) GC(XXIX)/RES/444; IAEA General Conference, Resolution (1990) GC(XXXIV)/RES/533.

⁹⁵IAEA, 'Statement on the Situation in Iran' (n 89).

⁹⁶Agreement between India and Pakistan on the Prohibition of Attack against Nuclear Installations and Facilities (signed 31 December 1988, entered into force 27 January 1991) arts 1 and 2.

⁹⁷Ministry of Foreign Affairs of Pakistan, 'Annual Exchange of Lists of Nuclear Installations and Facilities between Pakistan and India' (1 January 2026) <<https://mofa.gov.pk/press-releases/annual-exchange-of-lists-of-nuclear-installations-and-facilities-between-pakistan-and-india-4>> accessed 6 October 2026.

weakness. But the remedy the Charter provides for it is not unilateral force; it is political pressure on the Council, recourse to the General Assembly, and the strengthening of verification. A rule that allows each State to act on its own assessment whenever it considers the Council unlikely to agree would allow every State to be the judge in its own cause, which is precisely what the *Gabčíkovo* Court said a State invoking necessity may not be.⁹⁸

XII. TOWARD A PRINCIPLED FRAMEWORK

The analysis suggests several principles for assessing claims to use force against nuclear programmes that have not yet produced weapons.

First, imminence should retain a temporal core. The magnitude of a potential harm may reasonably affect how early a State may act when an attack is genuinely in preparation, and the Chatham House principles accept that imminence is to be assessed in the light of the particular circumstances. But the existence of a capability, without evidence of an attack in preparation, should not satisfy the requirement. Otherwise imminence ceases to be a limit.

Secondly, the "last window of opportunity" argument should be rejected as a free-standing basis for self-defence. The closing of an opportunity to act is a characteristic of almost every future threat and is not equivalent to the imminence of an attack. Where a State considers that its window is closing, the appropriate course is to bring the matter urgently to the Security Council and the IAEA.

Thirdly, the plea of necessity under Article 25 of the Articles on State Responsibility should be recognised as unavailable to justify force contrary to Article 2(4). This follows from the structure of the Articles themselves, and it closes off an argument that tends to blur the conditions of self-defence.

Fourthly, the evidentiary burden should rest on the State using force. A State claiming self-defence must report to the Council under Article 51, and that report should set out the factual basis for the claim of imminence and necessity in sufficient detail to allow it to be evaluated. Unsupported assertions of an existential threat should be treated as insufficient.

Fifthly, the institutional path should be strengthened rather than bypassed. The enhancement of IAEA verification, including through the Additional Protocol, and the willingness of the Council to address proliferation threats under Chapter VII, are the means by which the problem Israel identified in 1981 can be addressed without undermining the prohibition of force. The more effective those institutions are, the weaker the case for unilateral action becomes.

Sixthly, facilities under international safeguards should benefit from a strong presumption against attack, and that presumption should be given treaty form where possible. The agreement between India and Pakistan shows that adversaries can accept such a rule on a reciprocal basis. A regional or multilateral instrument on the same lines, linked to the acceptance of comprehensive safeguards and the Additional Protocol, would restore the bargain that Operation Opera put in doubt: that a State which opens its nuclear programme to inspection is safer for having done so.

XIII. CONCLUSION

Operation Opera was a tactically precise operation undertaken in response to a threat that its authors believed to be existential. Its legal case, however, does not survive analysis. Measured against the requirements of self-defence, the threat it addressed was not imminent, alternatives to force had not been exhausted, and the question of proportionality never arose because the right of self-defence had not been triggered. The alternative plea of necessity under the law of State responsibility cannot justify a use of force contrary to the Charter. The Security Council, including Israel's closest ally, said as much in unanimously condemning the attack as a clear violation of the Charter.

The operation's reputation as a legal precedent for preventive strikes therefore rests on a misreading. What made it a precedent was not its acceptance but its condemnation. Its reputation as a strategic success is also more doubtful than was once believed, and the evidence that it may have accelerated Iraq's pursuit of a weapon reinforces the conclusion that it was not necessary in the legal sense.

The records of the Security Council's debate add something to that conclusion. They show that the condemnation of 1981 was not confined to States that reject anticipatory self-defence altogether. States that accept the *Caroline* doctrine, including the United Kingdom and the United States, reached the same result by applying it, and they did so on the ground of necessity: Israel had other means, and it had time. The defence of Operation Opera as an act of necessity therefore fails on the terms in which necessity was understood by the States most disposed to accept it.

The lasting significance of Osirak lies in the question it posed about who decides. The law of self-defence allows a State to act alone when an attack is

⁹⁸*Gabčíkovo-Nagymaros* (n 40) para 51.

imminent, because there is no time for anything else. When there is time, the Charter allocates the decision to collective institutions. The strikes on Iran in 2025 and 2026 have shown that this question is not settled in practice, and that the arguments made in 1981 continue to be made. The answer the international community gave in 1981 remains the right one: a future capability, however dangerous, is a matter for collective judgment, not for unilateral force.

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