

# Use of Force in Self-Defence for Global Peace: A Conceptual Framework

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## Abstract

*This paper attempts to link legal and theoretical perspectives of the use of force in self-defence and, thereafter, formulates a conceptual framework based on these two key concepts: use of force as a legitimate right for self-defence and pre-emptive self-defence as an unlawful security doctrine in existing legal structure (UN Charter). The focus is on identifying: i) the primary factors which, in combination as well separately, present a broader view of legal justification for use of force in self-defence and ii) the factors facilitating an unlawful unilateral military action in self-defence. The primary objective is to link both theoretical and legal aspects to formulate a conceptual model. In fact, this study presents an overall picture capable of explaining the key linkage of the use of force in self-defence and breach of international peace, whereby a state launches a pre-emptive attack against another state.*

**Keywords:** Strategy of Pre-emption, Pre-emptive Self-defence, Unilateral Use of Force, Unlawful Military Action, Changing Nature of Security Threats, Emerging Threats, Breach of Global Peace.

## Introduction

In the international system, the changing nature of threats remains a serious security concern for the states because, in order to maximise power and influence, great powers tend to pursue military means against any type and nature of the emerging threat. Survival is a key factor which “mandates

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aggression”<sup>1</sup> (realists) and forces a state to adopt a security strategy of unilateralism<sup>2</sup> (neo-conservatism). The existing legal security architecture allows a state to use force, unilaterally but only when its survival is at stake. Under both (theoretical and legal) perspectives, several factors can be identified to explain the state’s justification for pre-emptive self-defence against another state(s). However, from the legal perspective, this study examines the legality of pre-emptive self-defence and argues that the new security strategy of pre-emption is a real threat to global peace.

The existing literature does not explain this particular aspect of the use of force. In fact, the main focus of published works lies only on one dimension of the use of force i.e. self-defence. This study tries to formulate a theoretical model having potential to befittingly explain the phenomena of state behaviour: legality of pre-emptive self-defence and consequent breach of international peace.

## **Theoretical and Legal Perspectives**

Realism defines international system on the basis of the principle of self-help<sup>3</sup> but totally state-centric,<sup>4</sup> thus, “structure of the international system is anarchic,” meaning that “there is no central authority or global government.” The realists believe that a “state is the unitary actor in the international political system and survival is the primary objective of national interest”<sup>5</sup> of a state. Hence, they believe in the unilateral use of force,<sup>6</sup> focusing on the state’s survival (security) and safeguarding its interests.

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<sup>1</sup> Camilla Hansen, “US Foreign Policy and the Iraq War: An empirical study of realism?” (Thesis, University of Lund, 2005), 10.

<sup>2</sup> Musarat Amin, et al., “Realism-Dominating Theory in International Relations: An analysis,” *Berkeley Journal of Social Sciences* 1, no. 7 (2011): 4.

<sup>3</sup> Hansen, “US Foreign Policy,” 8 and Tim Dunne and Brian C Schmidt, “Realism,” *in The Globalisation of World Politics: An Introduction to International Relations* (New York: Oxford University Press, 2001), 153-155.

<sup>4</sup> Leo S F Lin, “State-Centric Security and its Limitations: The Case of Transnational Organised Crime,” *Research Institute for European and American Studies*, no. 156 (2011): 8.

<sup>5</sup> Lin, “State-Centric Security,” 8-9 and Amin, et Al., “Realism Dominating Theory.”

<sup>6</sup> Paul R Viotti and Mark V Kauppi, “Realism: The State, Power, and the Balance of Power,” *in International Relations Theory: Realism, Pluralism, Globalism, and Beyond* (USA: Pearson, 1999), 56,

<https://www.acsu.buffalo.edu/~fczagare/PSC%20346/V&K%20Ch%202.PDF>

Offensive and defensive neo-realism also support such type of action with a key “focus on national interest with an aim to achieve maximum power and security respectively.”<sup>7</sup> Neo-conservatives believe that:

- i. Military might enables a powerful state to “use its power especially the military force, to influence others, for achieving its interests.”<sup>8</sup>
- ii. A militarily strong state can achieve its ultimate goals and interests by asserting more emphasis on military strength over diplomacy.<sup>9</sup>

In other words, “neo-conservatives favour unilateralism over multilateralism and a state can act unilaterally by relying exclusively on its military power.”<sup>10</sup> The same is depicted below in tabulated form under the headings: i) Theoretical Perspective of Use of Force and ii) Legal Perspective of Use of Force.

Theoretical Perspective of Use of Force						
Theory	Focus	Elements	Aims/Goals	Strategy/Doctrine	Measures	Outcome
Realism/ Neorealism	- Interests - Maintain Hegemony - Unipolarity - Security - Elimination of Threat	Three “S” -Statism -Self-help -Survival	-Power Maximisation -Security Maximisation -Resources	Unilateralism (Unilateral State Action)	Military Action (Use of Force for Security)	Pre-emption
Neo-conservatism	Emphasis on Military Power over Diplomacy	- Military Might - Interests	- Removal of Dictatorial Regime - Multi-Dimensional Interests	Unilateralism	Use of Force for Security	Pre-emption

Source: Summarised by the authors from different sources

<sup>7</sup> Muhammad Nasrullah Mirza, “Indus Water Disputes and India-Pakistan Relations” (Doctoral Dissertation, University of Heidelberg, 2007), 18 and Kenneth N Waltz, “Structural Realism after the Cold War,” *International Security* 25, no. 1 (2000): 5.

<sup>8</sup> John J Mearsheimer, “Hans Morgenthau & the Iraq War: Realism versus Neo-conservatism,” *Open Democracy*, October 12, 2016, [https://www.opendemocracy.net/democracy-americanpower/morgenthau\\_2522.jsp](https://www.opendemocracy.net/democracy-americanpower/morgenthau_2522.jsp),

<sup>9</sup> Similar argument of both theories; realism and neo-conservatism.

<sup>10</sup> Mearsheimer, “Hans Morgenthau & the Iraq War.”

To clarify the use of force and self-defence linkage, the legal perspective of state action is required to be discussed in detail because the key concern of the international community is its legal justification of the act. For this purpose, some important variables have been identified and explained in the next section of this study.

Legal Perspective of Use of Force					
Legal Aspect			Illegal Aspect		
State Action	Threat	Outcome	State Action	Threat	Outcome
- Unilateral Action (Use of Force) - Pre-emptive Self-defence	Imminent Threat Existence of an Armed Attack Justification: - Collective Security - Regional Security International Peace Approval: - UNSC - Strategy/ Doctrine: Internationalism	- Legal Action - Accepted by the International Community & Legal Experts/ Authorities - Sense of Security	- Unilateral Action (Use of Force) - Pre-emptive Self-defence	- Not imminent, - Absence of an Armed Attack -Justification: Security, Interest, Survival - No Approval: UNSC - Strategy/ Doctrine: Nationalism	- Illegal action - Not accepted by the international community & legal experts/ authorities - Sense of insecurity

Source: Summarised by the authors from different sources

The nature of the threat, “possession of weapons of mass destruction (WMDs) by governments or individuals, poses a serious threat to global security, especially the security of great power.”<sup>11</sup> In this context, pre-emptive self-defence (attack) can be explained on “the basis of state’s action as a rational actor for maximising its security in a neo-realist perspective”<sup>12</sup> and on the basis of military might as a tool for unilateral action to achieve certain goals or interests in neo-conservative perspective.<sup>13</sup>

<sup>11</sup> Means that the argument of great powers that states like Syria, North-Korea and previously Iraq “posed a threat to their security and international peace.” For details see Gustar Lind Storm, “Proliferation of WMDs,” in Graeme P Herd (ed), *Great Powers and Strategic Stability in the 21<sup>st</sup> Century: Competing Visions of World Order* (London & New York: Routledge, 2010), 45-47.

<sup>12</sup> Mirza, “Indus Water Disputes,” 19.

<sup>13</sup> Mearsheimer, “Hans Morgenthau and the Iraq War.”

### *Hypothesis*

If a state takes pre-emptive action (military action) in self-defence, it endangers global peace.

### *Sets of Variables*

For better understating, this study utilises two sets of variables. The first one includes some important independent variables which present a viable legal approach to explain the nature of the threat, state response to the threat and the specific circumstances in which use of force is legally justified. These comprise the nature of the threat (such as possession of WMDs by governments or individuals including state/non-state actors); relevancy with the foundation principle; “approval of action by the United Nations Security Council (UNSC).”<sup>14</sup> The second set of independent variables explain the state’s unilateral action with a view on the typical power and security aspects of neo-realism. These include justification through logic; danger to the survival of the state and likelihood of military hegemony by another state. Two intervening variables: i) state’s interests<sup>15</sup> and ii) state’s intentions are included in this study.

### **Self Defence-Legal Justification: Independent Variables**

To understand legal dimensions of unilateral action, different factors can be accounted for but the “nature of threat and state’s approach to eliminate/counter the threat”<sup>16</sup> are two major dimensions which help to legalise pre-emptive action for self-defence. The key focus is on changing nature of threat such as the proliferation of WMDs,<sup>17</sup> a serious security concern for any great power in “the changing international security environment.”<sup>18</sup> Therefore, “in order to deal with contemporary security

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<sup>14</sup> Article 51 of the UN Charter allows unilateral or joint action for self-defence: to counter enemy’s armed attack, or to counter imminent threat.

<sup>15</sup> As an illustration, geo-strategic and economic interests; geography and economy are essential factors which determine the “Intentions” of a state.

<sup>16</sup> Nature of threat; proliferation of WMDs and state’s approach; pre-emptive response to that threat.

<sup>17</sup> Spread of WMDs and intentions of non-state actors to acquire such weapons or technology by using different means.

<sup>18</sup> Nature of threat, specifically, after 9/11.

threats,”<sup>19</sup> a state’s unilateral action for self-defence is logically justified but this action can only be accepted if it meets the legal criteria given in the UN Charter.<sup>20</sup>

### *Nature of Threat*

The nature of the threat (types of weapons, actors, means and methods<sup>21</sup>) has been changed<sup>22</sup> as the proliferation of WMDs and international terrorism have emerged as “new security threats.”<sup>23</sup> Possession of WMDs by the vulnerable government(s) poses a greater threat to global peace and security. Therefore, a militarily strong state justifies the use of force on the existing legal architecture. As Natasja Duhem argues that the UN Charter, the traditional international law and other multilateral treaties are inadequate to deal with the ‘new security threats.’<sup>24</sup> She states that the UN Charter, as a “pre-atomic document, was drafted without envisioning future threats of nuclear weapons.”<sup>25</sup>

Obviously, the international community and legal experts recognise the use of force against the threat, only, when the act meets the criteria: action according to the nature of the threat. In addition, “Article 39 of the UN Charter clearly states: The Security Council (SC) will i) determine nature of the threat and ii) decide counter-measures to maintain global peace.”<sup>26</sup> With a view to nature of the threat, the following two factors set the legal criteria for self-defence attack: i) An existence of actual armed attack and ii) Imminence of immediate armed attack.

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<sup>19</sup> Great powers logically justify the action against threats like proliferation of WMDs and terrorism. For details see Allen S Weiner, “The Use of Force and Contemporary Security Threats: Old Medicine for New Ills?,” *Stanford Law Review* 59, no. 2 (2006): 415.

<sup>20</sup> Legal requirements of “self-defence attack” under both; the UN Charter and international customary law.

<sup>21</sup> Abraham D Sofaer, “On the Necessity of Pre-emption,” *European Journal of International Law* 14, no. 2 (2003): 221.

<sup>22</sup> Natasja Duhem, “The Legitimacy of Anticipatory Self-defence in Combating Transnational Terrorism” (Master’s Thesis, Ghent University, 2013), 76.

<sup>23</sup> Weiner, “The Use of Force,” 418.

<sup>24</sup> Duhem, “The Legitimacy of Anticipatory Self-defence,” 76.

<sup>25</sup> *Ibid.*, 77.

<sup>26</sup> UN Charter, Chapter VII, Art. 39.

*i. Existence: Actual Armed Attack*

The term ‘existence,’ specifically, refers to the physical “occurrence of an armed attack”<sup>27</sup> (i.e., presence of actual threat). Article 51 clearly describes the very notion of the term.<sup>28</sup> The “use of force is legally justified, only, in circumstances in which it is in line with the key purposes of UN;”<sup>29</sup> maintaining regional as well as global peace. The “text of Article 2 (paragraph 4) describes a prohibition against the threat or use of force but not against armed attack.”<sup>30</sup> Weiner pointed out that, in combination, both articles “limits state response to the situation of occurrence of an armed attack,”<sup>31</sup> the presence of physical attack is an essential criterion for the use of force. In other words, “actual threat,”<sup>32</sup> is the primary condition for both unilateral or joint use of force in existing legal architecture. Therefore, under Article 51, “the UN Charter, allows a state to take unilateral action, only, when threat is materialised; if an armed attack occurs.”<sup>33</sup>

*ii. Imminence: Immediate Armed Attack*

There are two circumstances “in which a state can exercise the right of the use of force,”<sup>34</sup> unilaterally, to eliminate the threat under International Law; “in response to an armed attack i.e., unilateral response and an imminent threat i.e., self-help.”<sup>35</sup> The UN Charter termed it an “inherent right of a state for self-defence.”<sup>36</sup> Gorener states that interpretations of Article 51 by some legal experts or international lawyers allow a state to launch a pre-emptive attack when the threat is imminent.<sup>37</sup>

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<sup>27</sup> UN Charter, Chapter VII, Art 51.

<sup>28</sup> Ibid.

<sup>29</sup> Thomas Remler, “The Right of Anticipatory Self-Defence and the Use of Force in Public International Law” (LL.M.-Thesis, University of Cape Town), 8.

<sup>30</sup> Charlotta Nilsson, “The Legality of Anticipatory Self-Defence in International Law” (Master Thesis, University of Lund, 2008), 8.

<sup>31</sup> Weiner, “The Use of Force,” 423.

<sup>32</sup> Referring enemy’s armed attack.

<sup>33</sup> UN Charter, Chapter VII, Art. 51.

<sup>34</sup> John Burroughs, et al., “Lawyer’s Statement on the UN Charter and the Use of Force against Iraq,” Western States of Legal Foundation (2002), <http://www.wslfweb.org/docs/iraqstatement.htm>,

<sup>35</sup> Duhem, “The Legitimacy of Anticipatory Self-Defence,” 17-21.

<sup>36</sup> UN Charter, Chapter VII, Art. 51.

<sup>37</sup> Aylin Seker Gorener, “The Doctrine of Pre-emption & Iraq War,” *Perception Journal of International Affairs* 9 (Summer 2004): 34.

On the other hand, a state's unilateral action against an imminent threat is acceptable under international customary law<sup>38</sup> [*state practice and opinio juris*].<sup>39</sup> The major source, in this regard, "for the legal justification of right of pre-emptive self-defence is the Caroline case."<sup>40</sup> Immanency, necessity, and proportionality are the three main pillars of the "Caroline Doctrine."<sup>41</sup> The evidence of an imminent threat is required "for the justification of pre-emptive self-defence in International Law."<sup>42</sup> Regarding the intent of a state, Muehlheuser identifies three material pieces of evidence<sup>43</sup> to attack and destroy another state:

- i. Physical strength (such as increasing the number of troops)
- ii. Capacity build-up (such as increasing the number of weapons)
- iii. Deployment of the troops on borders

He also pointed a few other pieces of evidence such as "written documents/ letters indicating an intent to take action against other state and the verbal or written statement(s)."<sup>44</sup>

### *Urgency of Unilateral Action*

Enemy's armed attack is a mandatory condition for immediate unilateral response: "a state has legal 'right' to use force, unilaterally, in self-defence when it suffers an armed attack."<sup>45</sup> In order to protect its territory or prevent further attacks/destruction, the immediate military response of a victim state is justified under International Law. Under the customary norms, pre-

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<sup>38</sup> Albina Gracheva, "Legitimation: the Case of the 1967 Israeli Strike against Egypt and the US-led Invasion of Iraq in 2003" (Master Thesis, Linköpings University, 2013), 28, Afeno Super Odomovo, "New Security Threats, Unilateral use of Force, and the International Legal Order," *Military and Strategic Affairs* 5, no. 3 (2013): 113.

<sup>39</sup> Odomovo, "New Security Threats," 113.

<sup>40</sup> Mathew Allen Fitzgerald, "Seizing Weapons of Mass Destruction from Foreign-Flagged Ships on the High Seas Under Article 51 of the UN Charter," *Virginia Journal of International Law* 49, no. 2 (2008): 477-478.

<sup>41</sup> Gracheva, "Legitimation," 28.

<sup>42</sup> One of the legal principles of self-defence under Caroline Doctrine.

<sup>43</sup> John L Muehlheuser, "Self-Defence by Any Other Name is Still Self-Defence" (Master Thesis, The Judge Advocate General's School United States Army, 2013), 55.

<sup>44</sup> *Ibid.*, 52-54.

<sup>45</sup> The unilateral right of states under existing legal structure (UN Charter).



emptive self-defence by a state is a limited act<sup>46</sup> “to prevent future enemy attacks following the initial attack.”<sup>47</sup> The “unilateral right, of a state, to use force in self-defence, is one of the key features of Article 51”<sup>48</sup> i.e., “state’s sovereign right to defend itself from an actual threat/armed attack.”<sup>49</sup> Therefore, a state believes in unilateral action as an urgent response<sup>50</sup> to counter a future threat (i.e., imminent threat) because under customary norms “self-defence justifies the use of force only against an immediate threat.”<sup>51</sup>

### *Relevancy with the Foundation Principles*

The Caroline case sets the fundamental principles of pre-emptive self-defence.<sup>52</sup> The pre-emptive attack is legally justified only when the nature of the threat and state response meet certain criteria as per international customary law. Hamed states that the Caroline Principle “is a part of international customary law i.e., the origin of pre-emptive self-defence doctrine”<sup>53</sup> and describes the key requirements of pre-emptive self-

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<sup>46</sup> Nayera Mohamed Hamed, “The Change of State Practice In Regard to Pre-emptive Self-Defence in the Presence of Nuclear Threat: The Possibility of Pre-emptive Attack by China Against North Korea, US Invasion of Iraq 2003, Israel Bombing Osirak in Iraq 1981, and Israel Bombing Al Kibar 2007” (Master’s Thesis, The American University in Cairo, 2015), 21.

<sup>47</sup> Mary Ellen O’ Connell, “The Myth of Pre-emptive Self-Defence,” *American Society of International Law* (2002): 7.

<sup>48</sup> UN Charter, Chapter VII, Art. 51.

<sup>49</sup> Weiner, “The Use of Force,” 422.

<sup>50</sup> A state can take an immediate unilateral military action against a real threat when its survival is at stake.

<sup>51</sup> “Self-Defence Overview,” Find Law, <http://criminal.findlaw.com/criminal-law-basics/self-defence-overview.html>

<sup>52</sup> Garic Nahapetian, “Analysis of US Legal Justification for Invading Iraq in 2003” (Political Science Thesis, University of California Irvine, 2007), 10; Leo Van den hole, “Anticipatory Self-Defence under International Law,” *American University International Law Review* 19, no. 1 (2003): 95-97; Megi Medzmariashvili, “Pre-emptive Self-Defence against States Harboring Terrorists,” *Riga Graduate School of Law*, no. 4 (2011): 21; Myra Williamson, *Terrorism, War, and International Law: The Legality of the Use of Force Against Afghanistan in 2001* (UK: Ashgate Publishers, 2009), 88-89; Anthony Clark Arend, “International Law and the Pre-emptive Use of Military Force,” *Washington Quarterly* 26, no. 2 (2003): 90-91 and Jorge Alberto Ramirez, “Iraq War: Anticipatory Self-Defence or Unlawful Unilateralism?,” *California Western International Law Journal* 34, no. 1 (2003): 14-15.

<sup>53</sup> Hamed, “The Change of State Practice,” 21.

defence.<sup>54</sup> Basically, the Caroline Incident limits “pre-emptive self-defence to specific circumstances when:

- i. A threat is imminent;
- ii. An attack is limited/proportional to the threat;
- iii. No other mean(s) available to eliminate the threat.”<sup>55</sup>

Therefore, the “four criteria for a legitimate pre-emptive attack in self-defence”<sup>56</sup> are: “evidence of a real threat; action must be necessary; an attack must be proportional to the threat and military action must be the last option in all circumstances.”<sup>57</sup>

### *Collective Security*

Generally, the term ‘collective security’ refers to the cooperation of several states to strengthen their security (i.e., security alliance). However, the broader view of this term includes the collective/joint use of force, against a real threat, “to maintain global peace.”<sup>58</sup> The UNSC can authorise i) “armed collective security measures”<sup>59</sup> and ii) other essential measures<sup>60</sup> to achieve its primary objectives (international peace and security). Regarding collective security, Craig’s point of view helps to understand the dual responsibility of the UNSC; i) to determine the nature of the threat and ii) to suggest measure(s) according to the nature of the threat.<sup>61</sup> Therefore, the use of force is legally justified for ‘collective security’ reason but in this case, “it

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<sup>54</sup> Two requirements for “self-defence attack”; i) necessity factor and ii) attack’s proportionality.

<sup>55</sup> Williamson, Terrorism, War & International Law, 88-89 and Arend, *Washington Quarterly*, 90-91.

<sup>56</sup> Willian A Owens, et al., *Technology, Policy, Law, and Ethics Regarding US Acquisition and Use of Cyber-attack Capabilities* (Washington D.C.: The National Academies Press, 2009), 243.

<sup>57</sup> Remler, “The Right of Anticipatory Self-Defence,” 37-38.

<sup>58</sup> UN Charter, Chapter VII.

<sup>59</sup> UN Charter, Chapter VII, Art. 42 and Weiner, “The Use of Force.”

<sup>60</sup> UN Charter, Chapter VII, Art. 41.

<sup>61</sup> Craig Martin, “Collective Self-Defence and Collective Security: What the Differences Mean for Japan,” *Japan Times*, August 30, 2007, <http://www.japantimes.co.jp/opinion/2007/08/30/commentary/world-commentary/collective-self-defense-and-collective-security-what-the-differences-mean-for-japan/>

is not a unilateral right”<sup>62</sup> because the SC authorises collective armed attack as per Article 42. Nonetheless, the use of force, as a legal response, needs/requires authorisation of the UNSC.<sup>63</sup>

### *Collective Response*

The “right to use force in collective self-defence is also an important feature of Article 51.”<sup>64</sup> To counter/repel enemy’s armed attack, “this article permits a state to join others: as a partner in security alliance.”<sup>65</sup> In addition, “Article 42 of the UN Charter empowers SC to allow collective action against the actual threat.”<sup>66</sup> Therefore, “collective response against armed attack (launched by other states) is justified under the existing legal structure.”<sup>67</sup>

### *Approval of the Primary Body*

Legally, “a state requires no approval when it faces an actual armed attack and can take immediate action for its self-defence; “UN Charter termed it as the inherent right of a state.”<sup>68</sup> However, in the absence of a direct attack, the SC has a right to determine the nature of the threat and authorise countermeasures. In this case, the states cannot take any unilateral or collective military action “under the guise of collective security;”<sup>69</sup> the UNSC authorisation is mandatory. Without the SC authorisation, the use of force against non-imminent threat(s) is illegal.<sup>70</sup> And, in case of an imminent threat, the state action must be based on solid evidence(s),<sup>71</sup> under the aforementioned criteria: immanency, necessity and proportionality.

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<sup>62</sup> Weiner, “The Use of Force,” 425.

<sup>63</sup> Thomas Lee, “International Relations Theory & Pre-emptive War: The Vitality of Sovereign Equality Today Case Studies in Conservative and Progressive Legal Orders,” *Fordham Law School* 67, no. 147 (2004): 149.

<sup>64</sup> UN Charter, Chapter VII, Art. 51.

<sup>65</sup> Weiner, “The Use of Force.”

<sup>66</sup> UN Charter, Chapter VII, Art. 42.

<sup>67</sup> UN Charter, Chapter VII, Art. 51.

<sup>68</sup> *Ibid.*

<sup>69</sup> Martin, “Collective Self-defence.”

<sup>70</sup> Rachel A Weise, “How Nuclear Weapons Change the Doctrine of Self-Defence,” *International Law and Politics* 44, (2012): 1334.

<sup>71</sup> Remler, “The Right of Anticipatory Self-Defence,” 88.

## **Unlawful Unilateral Action: Independent Variables**

Keeping the pre-emptive use of force in mind, the focus lies on the nature of the threat (especially on the new security threat) as a core causative factor. The main question in this section concerns: under what circumstances, the states pursue military measures, as a necessary step, for self-defence? And what are the major factors that facilitate an unlawful unilateral action to achieve certain goals? The first question, specifically, deals with the logical justification of self-defence attack; action is necessary to eliminate/counter new threats.

Some variables have been incorporated from Hansen's study that examines the aggressive behaviour of a state under Mearsheimer's offensive realism and identifies some important factors with a view to explain the power-gaining strategy of realism.<sup>72</sup> The other variables are specifically derived by observing the post 9/11 circumstances and the justification of unilateral action in the changing security environment. The review of the existing literature in this field suggests that: "national interest of a state is an influential factor which facilitates the unilateral military action in the international system."<sup>73</sup> For better understanding, all the factors are precisely discussed below under the theoretical perspective of the use of force.

### *Justification through Logic*

Many strategists and policymakers argue that rules/principles of International Law, regarding self-defence, have not been transformed according to the changing nature of threats. They observe an adequate gap between the existing legal security architecture and the contemporary security needs of a state. They also believe that the rules of International Law and relevant international institutions working under the fundamental principles of the UN Charter are not capable to deal with emerging security

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<sup>72</sup> Hansen, "US Foreign Policy."

<sup>73</sup> John F Troxell, "Military Power & Use of Force," in *US Army War College Guide to National Security Policy and Strategy* (USA: DIANE publishing, 2004), 197; Jules Pretty, et. al, *The Sage Handbook of Environment and Society* (Los Angeles, London, New Delhi, Singapore: SAGE Publications, 2007), 444 and Larissa Forster, *Influence without Boots on the Ground: Seaborne Crisis Response* (Newport & Rhode Island: Naval War College Press, 2013), 66.

threats. So, a state adopts new security strategies against these threats and, finally, “justifies unilateral use of force for its self-defence.”<sup>74</sup> Endorsing this perspective, the realists believe that the existence of international organisations do not have any influence on the international political system. They believe that everything is uncertain and a state should not believe in international organisations like the UN, EU, etc., for security assistance. In this context, “a state justifies unilateral use of force for its survival and safety.”<sup>75</sup>

In the light of the above-mentioned perspectives, a state logically justifies the unilateral action for its survival (security). Therefore, the state’s justification for self-defence attack is a dependent variable in this study. Two basic aspects of the state’s unilateral use of force - survival and safety- are analysed here. Accordingly, the two types of intervening variables are measured to analyse these two aspects of the unilateral action: i) the state intentions and ii) the interests of a state respectively. In order to justify the action for its self-defence, great power stretches the limits of the law to its logical extreme. For better comprehension, the main factor is precisely described below.

*i. Stretching the Conventional Boundaries of Law*

Ramirez pointed that the new security threat (such as availability of WMDs and its possession by an individual) is a cause of an unlawful unilateral military action and a state stretches the limits of law in order to justify the action against such types of threat(s). In this context, he quotes that the “US action against Iraq as an example; US stretches the limits of law and justified the action against al-Qaeda.”<sup>76</sup>

*ii. Survival of the State*

Hansen mentioned that the survival of a state is the key element of realism and the realists believe that “the essential goal/objective for every state is to achieve maximum security or safety in the global politics.”<sup>77</sup> It is that “security is the main element: a prerequisite for achieving other objectives

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<sup>74</sup> Weiner, “The Use of Force,” 415.

<sup>75</sup> Hansen, “US Foreign Policy,” 8.

<sup>76</sup> Ramirez, “Iraq War,” 25-26.

<sup>77</sup> Hansen, “US Foreign Policy,” 8.

of a state.”<sup>78</sup> According to the Mearsheimer’s offensive realism, “the structure of international system forces a state to behave or act aggressively to achieve maximum security.”<sup>79</sup>

Survival is the main factor which defines the behaviour/action of a state. In fact, a state’s aggressive behaviour is very much dependent on this factor. In particular, this factor forces a state to enhance its power (such as military capacity) with an aim to eliminate/counter the internal or external security threat(s). A state specifically takes an aggressive action (i.e., military action) when its survival is at stake. Both Keir A Lieber and Camilla Hansen support the realist’s perspective, which espouses that the survival (of a state) “mandates aggression.”<sup>80</sup> In this context, neoconservatives advocate (new) security strategies of unilateralism, military hegemony and pre-emption.<sup>81</sup> According to the realists, the power gaining strategy is very important in an anarchic environment and the “states will routinely pursue their rational interests of power gain in order to further ensure their survival.”<sup>82</sup> The changing nature of the threat has become a serious security concern for great power(s). Therefore, the great power adopts new security strategy of pre-emption in order to counter the existing as well as the emerging threat(s) and the main purpose of adopting such a strategy is security maximisation.<sup>83</sup>

### *Military Hegemony*

The word hegemony includes the concentration of (both) the military and the economic powers in the prevailing international system. But without military power, hegemony cannot be defined as a military power is an essential element for the survival or security of a state and without achieving maximum security no country can be considered as a hegemon in the world. The ability of a state to impose its will on other states is the key factor which defines hegemony and the military power has a vital role in this regard. Neorealism defines hegemony by the relative power of a state vis-à-vis other states in global politics. A state which has more military power,

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<sup>78</sup> Ibid., 8.

<sup>79</sup> Ibid., 11.

<sup>80</sup> Ibid., 10.

<sup>81</sup> Amin, et. al, “Realism-Dominating Theory,” 10.

<sup>82</sup> Greogry Edward Johnson, “The End of Anarchy: Weapon of Mass Destruction and the States Systems” (Master’s Thesis, University of South Florida, 2013), 9.

<sup>83</sup> US action in 2003, Israeli action against Syrian in 2007, and joint attack of US, UK and France in Syria in 2018 etc.

relative to others, could be considered as a hegemon in global politics. The realists believe that the hegemon state can use its military power, unilaterally, to achieve even the economic goals. They believe that “the anarchic structure of the international system”<sup>84</sup> compels a state to increase its military force and act unilaterally. In this context, a strong connection can be established between realism and unilateralism.<sup>85</sup>

### **Unlawful Unilateral Action: Intervening Variables**

The following two factors, as a catalyst for unlawful unilateral military action, are the focus of discussion in this section of the study. These factors (as intervening variables) have an important role in the aggressive behaviour of a state which ultimately leads to the pre-emption.

#### *State Intentions*

For a state, it is very difficult to know the present or future intentions of other state(s). Strategic and rational think of a state is more unpredictable due to uncertainty regarding the state’s intentions and its offensive military capability. In this context, Jakobsen highlighted that the key focus of a state to ensure its security is on the means of power, especially more military power.<sup>86</sup> The neoconservatives also highlight the two key factors having a significant role in the emergence of threats: the capabilities and the intentions of the state(s).<sup>87</sup> In order to counter the emerging threat(s), this helps a state to justify self-defence attack (use of force). In the prevailing international system, the great powers believe that the changing nature of threat such as the possession of WMDs by a vulnerable state is a potential threat to their survival/security. For its security, a great power tends to take an aggressive (military) action to counter the intentions<sup>88</sup> of the vulnerable state(s).

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<sup>84</sup> Lin, “State-Centric Security,” 8-9.

<sup>85</sup> Bradley F Podliska, *Action Alone: A Scientific Study of American Hegemony and Unilateral-Use-of-force Decision Making* (Lanham, Boulder, New York, Toronto, Plymouth, UK: Rowman & Littlefield Publishers, 2010), 2-3.

<sup>86</sup> Jo Jakobsen, “Israel-The Poster Child of Realism,” *Popular Social Science*, (2012), <http://www.popularsocialscience.com/2012/11/19/israel-the-poster-child-of-realism/>,

<sup>87</sup> Gerard Alexander, “International Relations Theory Meets World Politics,” in *Understanding the Bush Doctrine: Psychology and Strategy in an Age of Terrorism* (London and New York: Routledge, 2007), 41.

<sup>88</sup> Such as the use of WMDs in future.

### *State Interests*

According to the realists, there exist some constant rules/laws which regulate the behaviour of an individual and the state: “both, individuals and states, adopt an aggressive approach to achieve their interest regardless of law/morality.”<sup>89</sup> Basically, the aggressive behaviour/action of a state in the anarchic international system is mostly interest-oriented. In other words, the key interests of a militarily strong state facilitate aggression/unilateral action. Geostrategic and economic interests being two major interests of the state cannot be neglected in this case as they trigger unilateral action/s. Finnemore states, “the state practice (use of force) shows that strong states will intervene against weak states in order to achieve two key interests: geostrategic and economic interests.”<sup>90</sup>

### **Theoretical Model: Assembling the Factors**

All the key variables, discussed in this section, are included in the following flowcharts which help to formulate a theoretical model which presents both the legal and theoretical perspectives of the use of force in self-defence. With a view to formulate an explanatory model, the legal justification for self-defence attack and the factors that lead to the unlawful unilateral action are described in this section. Therefore, the study is limited to the above mentioned independent, dependent and intervening variables.

To understand how the use of force against an emerging threat becomes a major source of i) breach of international peace or ii) peace/security for others (here, states), the focus lies on the ‘specific causal role’ of the ‘changing nature of threat’ in question. There is a way to deal with this case: one can ‘analyse the hypothesised relationship’ between cause (i.e. the nature of threat) and its effect (either an unlawful unilateral action or a legal response for self-defence). The unilateral action against the emerging security threat(s) launched by a state produces an effect: either the insecurity or the peace and security for the other states.

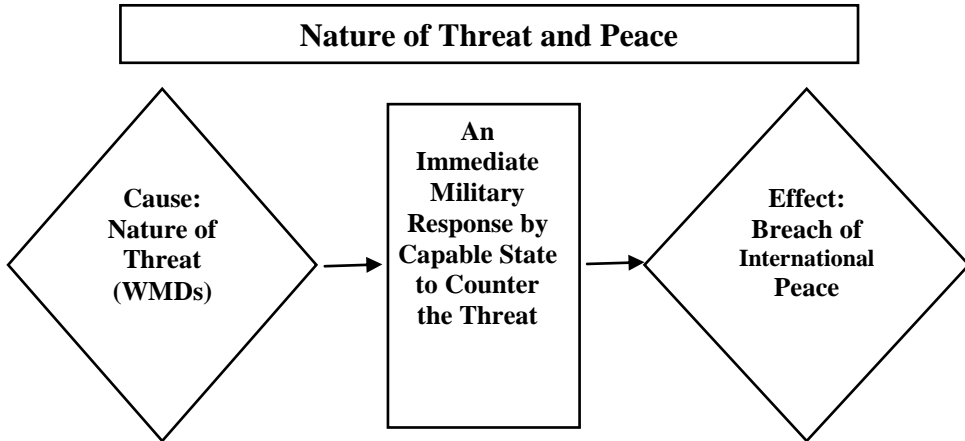
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<sup>89</sup> Jill Steans, et. al., *An Introduction to International Relations Theory: Perspectives and Themes* (New York: Routledge, 2010), 53.

<sup>90</sup> Martha Finnemore, “The Purpose of Intervention 2003” in *Beyond Paradigms: Analytic Eclecticism in the Study of World Politics* (Basingstoke and New York: Palgrave Macmillan, 2011), 70.



The changing security environment is a key factor which forces a state to opt for the new security strategy<sup>91</sup> of pre-emption rather than the legal approach. So, the influence of this factor is very much visible in the strong actor's decision regarding the unilateral use of force against emerging security threat(s).

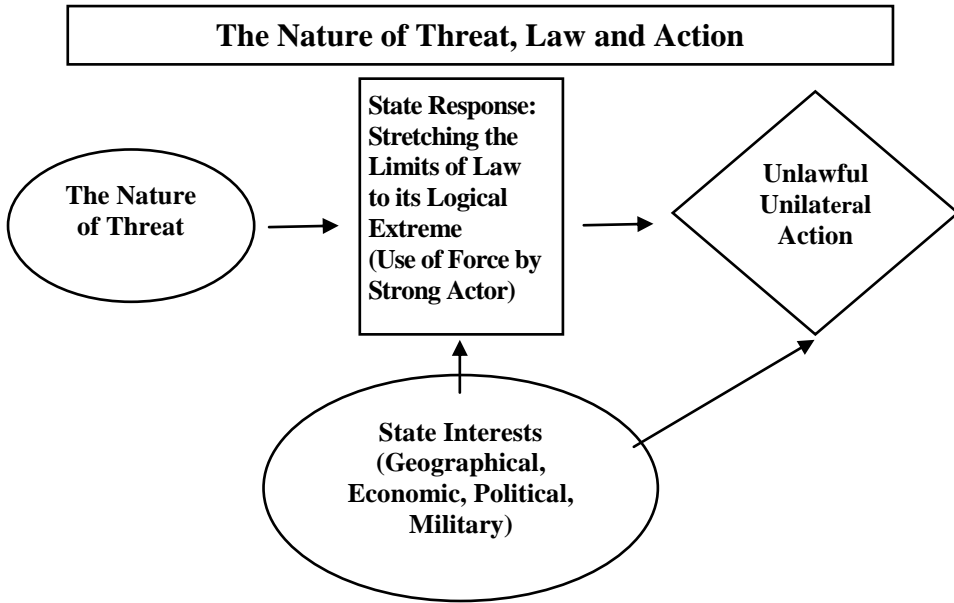


*Source:* Formulated by the authors

The realists believe in the unilateral action (i.e., self-help principle) by considering the state as a central player in the international system; in the altering security environment, a state increases its security and power potential (such as the military power). In other words, realism encourages a strong actor (state) to take immediate action against the emerging threat to ensure its security (self-defence). The study: “use of force and self-defence,” focuses on the robust/meaningful linkage between the nature of threat and state’s immediate military response and its impact on global peace. In order to explain this linkage, the vital interests of a strong actor cannot be neglected.

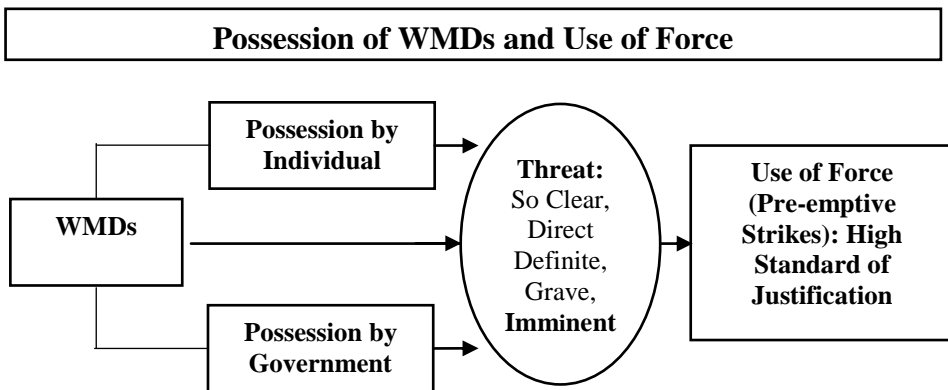
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<sup>91</sup> Weiner, “The Use of Force.”



Source: Formulated by the authors

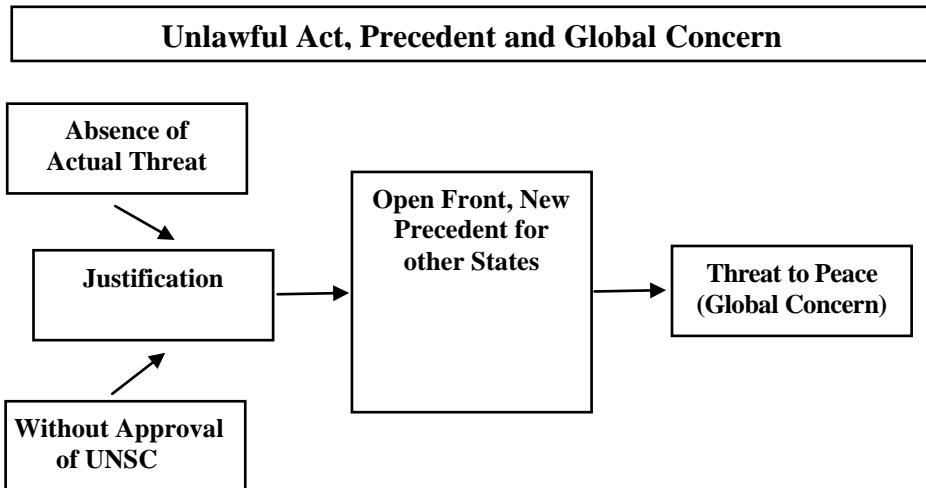
A strong actor considers possession of WMDs by individual(s) or vulnerable state(s) as a real threat to its security/survival. Therefore, it launches a pre-emptive attack for self-defence; the justification for unilateral action against the new security threats. However, the attack requires a “high standard of justification and must meet the legal criteria of self-defence. In short, “the evidence of a clear, direct, definite, grave and/or imminent threat is mandatory for unilateral self-defence action.”<sup>92</sup>



Source: Formulated by the authors

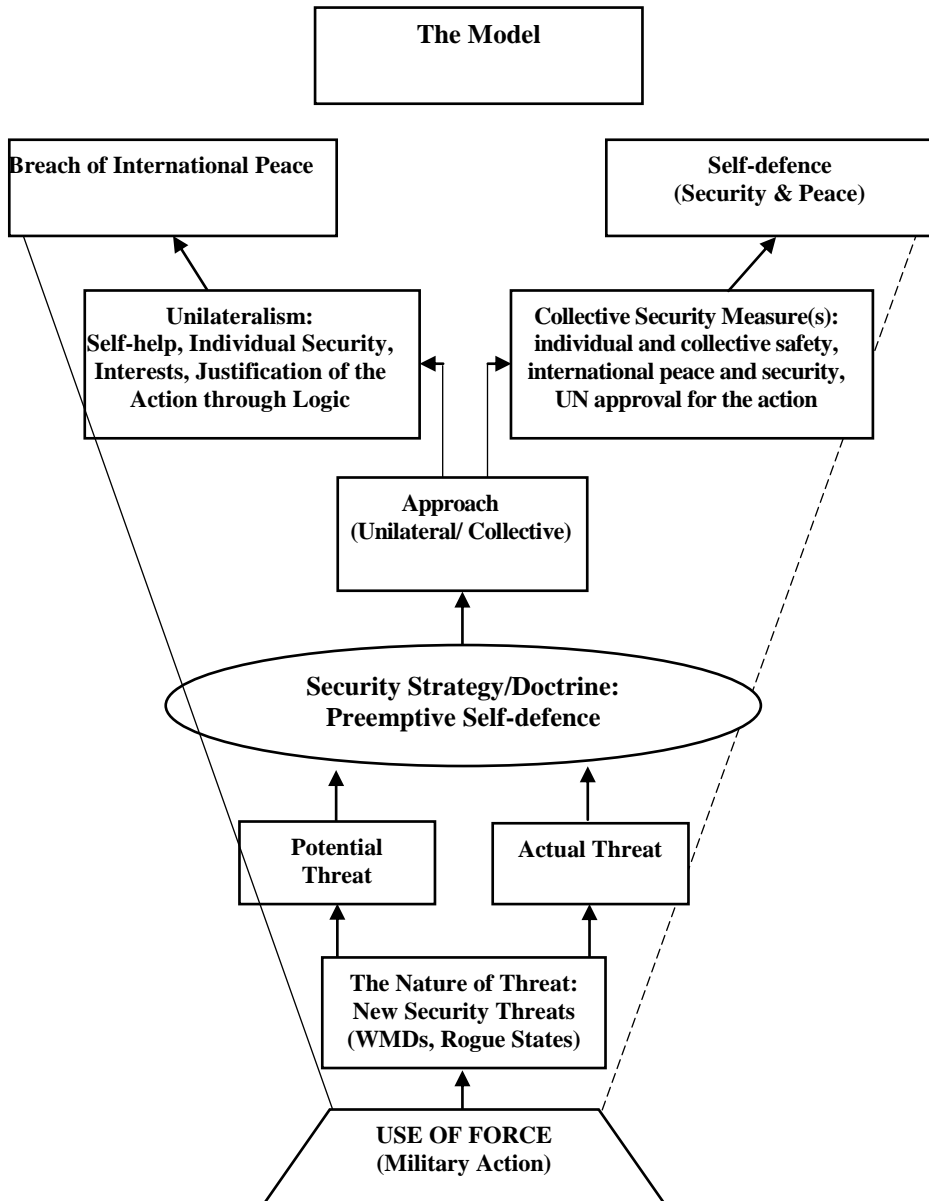
<sup>92</sup> Gorener, “The Doctrine of Pre-emption,” 34.

In order to achieve its objectives, a strong actor justifies the pre-emptive use of force through different logics. This can encourage another capable state(s), in the future, to use force under the guise of self-defence. In absence of imminent threat or without the UNSC authorisation, use of force and its justification create insecurity for other states; an insecure environment which is, definitely, a real threat to international peace.



Source: Formulated by the authors

The interaction of different variables presented in the above flowcharts highlights both the legal and illegal dimensions of the military action (i.e., use of force). To understand the two aspects of the pre-emptive military attack, self-defence and breach of international peace, the above flow charts are presented in the form of a model which presents an overall picture of the interaction between independent and dependent variables identified in this study.



Source: Formulated by the authors

## **Conclusion**

This paper concludes that the pre-emptive use of force against emerging threat(s) is unauthorised under existing legal framework; the SC authorisation is necessary for pre-emptive self-defence and; the changing nature of the threat is a source of an unlawful unilateral military action (a greater threat to global peace). This study accepts with empirical evidence the hypothesis formulated to guide the research. No doubt, if a state takes pre-emptive (military) action in self-defence, it endangers global peacekeeping the 2003 US action against Iraq in mind. The model formulated in this study is equally applicable in a number of other cases especially the Arab-Israel Six-Day War 1967, Operation Babylon 1981 etc. The framework analyses the linkage between the use of force in self-defence and its implications for global peace and concludes that pre-emptive self-defence is illegal.