

## Legal Position: The February 28 Joint Kinetic Operation and the Exercise of Preemptive Self-Defense under Article 51 against the Imminent Iranian Threat

### I. Introduction and Legal Framework

On February 28, 2026, the State of Israel (Operation Roaring Lion) and the United States (Operation Epic Fury) launched a coordinated, joint series of precision strikes against military and nuclear infrastructure in the Islamic Republic of Iran.<sup>1</sup> This paper demonstrates that these actions were a lawful exercise of the inherent right of self-defense under Article 51 of the UN Charter and a necessary enforcement of the principles found in Articles 2 and 4.<sup>2</sup>

### II. About the Jerusalem Institute of Justice

The Jerusalem Institute of Justice (JIJ) is a leading legal and research institute with Special Consultative Status at the United Nations. JIJ pursues justice on behalf of survivors of terrorism, human trafficking, and discrimination, while upholding the legitimate standing of the State of Israel within the community of Nations.

### III. Article 51: The *Caroline* Test and Modern Imminence

The traditional *Caroline* test requires a threat to be "instant, overwhelming, leaving no choice of means, and no moment for deliberation."<sup>3</sup> In the context of the 2026 nuclear breakout, this standard was met through the "Last Window of Opportunity" doctrine.

- 1. Preventing Irreversibility:** Intelligence confirmed Iran had reached a "breakout capacity of zero."<sup>4</sup> Under modern *jus ad bellum*, a state is not required to absorb a nuclear first strike; the "imminence" of the threat is reached when the technical window to prevent a catastrophe is about to close.<sup>5</sup>
- 2. Accumulation of Events:** The justification also rests on the "pin-prick" theory, where a 24-month series of lower-intensity attacks, including drone swarms and maritime sabotage directed by the IRGC, qualitatively transforms into a single, continuing "armed attack" under Article 51.<sup>6</sup> Evidence confirms these proxy operations were a unified campaign of aggression.<sup>7</sup>

<sup>1</sup> U.S. Cent. Command, *Update from CENTCOM Commander on Operation Epic Fury* (Mar. 3, 2026); see also Israel Defense Forces, *Statement on Operation Roaring Lion* (Feb. 28, 2026).

<sup>2</sup> U.N. Charter art. 51.

<sup>3</sup> Letter from Daniel Webster, U.S. Sec'y of State, to Lord Ashburton (Aug. 6, 1842), *reprinted in* 2 John Bassett Moore, *A Digest of International Law* 412 (1906).

<sup>4</sup> Int'l Atomic Energy Agency [IAEA], *Report on the NPT Safeguards Agreement with the Islamic Republic of Iran*, U.N. Doc. GOV/2026/02 (Feb. 20, 2026).

<sup>5</sup> Marco Roscini, *Assessing the Role of AI in Determining the Necessity and Proportionality of the Exercise of Self-Defense*, 102 Int'l L. Stud. 76, 82 (2026).

<sup>6</sup> Yoram Dinstein, *War, Aggression and Self-Defence* 230-32 (6th ed. 2017).

<sup>7</sup> Mike Waltz, U.S. Ambassador to the U.N., *Statement at the Emergency Meeting of the U.N. Security Council* (Feb. 28, 2026).

#### IV. Jurisprudential Precedents: National Survival and Territorial Responsibility

The legitimacy of the February 28 operation is anchored in established ICJ jurisprudence regarding existential survival and state responsibility:

- **The Survival Doctrine (ICJ 1996):** In its Advisory Opinion on *Nuclear Weapons*, the International Court of Justice emphasized the "fundamental right of every State to survival" and its corollary right to self-defense.<sup>8</sup> The Court explicitly declined to rule that the use of force is illegal when "the very survival of a State would be at stake." This confirms that the Charter cannot be interpreted to require a state to accept its own annihilation at the hands of a nuclear-armed aggressor.
- **The Principle of Territorial Responsibility (Corfu Channel, 1949):** The ICJ established that every state has an obligation "not to allow knowingly its territory to be used for acts contrary to the rights of other States."<sup>9</sup> By weaponizing its territory through the establishment of IRGC command-and-control centers, the strategic command hubs from which regional strikes are orchestrated, the Iranian regime converted its sovereign land into an active military platform for aggression. This material breach of territorial duty negates the absolute protection of sovereignty.
- **The Precedent of Technical Verification:** The 2007 strike on Syria's Al-Kibar reactor serves as a legal blueprint. While initially controversial, the IAEA's 2011 formal declaration confirming the site as an illegal nuclear facility provided the retroactive legal verification that acting against a maturing clandestine threat is a law-enforcing measure.<sup>10</sup>

#### V. Article 2: The Prohibition on the Threat of Force

Article 2(4) prohibits not only the use of force but also the **threat** of force.<sup>11</sup> The Iranian regime's state-sanctioned policy of "Death to Israel," coupled with its material breach of nuclear obligations, constitutes a manifest and ongoing threat.<sup>12</sup> Sovereignty is not an absolute shield for states that utilize their territory to threaten the existence of other Member States. By initiating the threat, the regime forfeited the protections of Article 2, necessitating a defensive response to restore regional peace.

#### VI. Article 4: Obligations of "Peace-Loving" States

UN membership is contingent under Article 4 upon a state being "peace-loving" and "able and willing" to carry out Charter obligations.<sup>13</sup> The Iranian regime has repudiated its membership status through:

- **Systemic Non-Compliance:** The Islamic Republic of Iran has repeatedly violated

<sup>8</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, para. 97 (July 8).

<sup>9</sup> Corfu Channel (U.K. v. Alb.), Judgment, 1949 I.C.J. 4, 22 (Apr. 9).

<sup>10</sup> Int'l Atomic Energy Agency [IAEA], Implementation of the NPT Safeguards Agreement in the Syrian Arab Republic, U.N. Doc. GOV/2011/30 (May 24, 2011).

<sup>11</sup> U.N. Charter art. 2, para. 4.

<sup>12</sup> Danny Danon, Israel's Ambassador to the U.N., Statement at the Emergency Meeting of the U.N. Security Council (Feb. 28, 2026).

<sup>13</sup> U.N. Charter art. 4, para. 1.

International Atomic Energy Agency (IAEA) safeguards.<sup>14</sup> Following the systematic dismantling of the 2018 Joint Comprehensive Plan of Action (JCPOA) through a series of escalating material breaches, official assessments from the U.S. Secretary of State confirm that Iran has strategically reduced its nuclear breakout window from one year to a critical threshold of less than two weeks. Technical data confirms Iran is stockpiling uranium enriched to 60% purity, a level with no credible civilian justification, which, according to nuclear experts, represented a rapid acceleration toward the 90% weapons-grade threshold, especially as the 20% mark already constituted the technical "halfway" point.<sup>15</sup> This rapid acceleration, coupled with continued monitoring obstruction, demonstrates that Iran is no longer "peace-loving" nor "able and willing" to fulfill its Charter obligations.<sup>16</sup>

- **The "Unwilling or Unable" Doctrine:** When a state is unwilling to stop its territory from being used for regional aggression, victim states may lawfully intervene.<sup>17</sup>
- **Internal Repression:** The regime's brutal crackdown on its own citizens further demonstrates it no longer fulfills the "peace-loving" criterion required for Charter protections.<sup>18</sup>

## VII. Necessity and Proportionality: The "Means-End" Standard

The joint operation adhered strictly to the customary requirements of necessity and proportionality as defined in the *Oil Platforms* case.

- **The Exhaustion of Diplomatic Recourse: The February 2026 Collapse and the "Breakout Capacity of Zero:** In *Oil Platforms* (2003), the International Court of Justice (ICJ) affirmed that the "necessity" of a self-defense action requires a rigorous verification that the threat could not be neutralized by peaceful means.<sup>19</sup> In the context of the February 28, 2026, operation, the legal requirement of "**Last Resort**"<sup>20</sup> was satisfied through the following conditions:
  - **The Finality of the February 2026 Collapse:** The definitive failure of the February 2026 diplomatic talks represented more than a procedural impasse; it marked the absolute exhaustion of the "means" of diplomacy. When the "end" -an Iranian nuclear breakout - becomes an accomplished reality, diplomacy ceases to be a viable legal alternative.
  - **The "Breakout Capacity of Zero":** Technical evidence of a "breakout capacity of

<sup>14</sup> S.C. Res. 1929 (June 9, 2010).

<sup>15</sup> Antony Blinken, U.S. Sec'y of State, Remarks at the Aspen Security Forum (July 19, 2024), *as reported in* Itamar Eichner, *Blinken: Iran's Nuclear Breakout Time is Down to One or Two Weeks*, YNET (July 19, 2024), <https://www.ynet.co.il/news/article/bydmipuu0>

<sup>16</sup> S.C. Res. 1929 (June 9, 2010).

<sup>17</sup> *Self-Defence and Non-State Actors: An Inquiry into the Morphology of the Right of Self-Defence*, 55 *Isr. L. Rev.* 27 (2022).

<sup>18</sup> Waltz, *supra* note 7.

<sup>19</sup> *Oil Platforms (Iran v. U.S.)*, Judgment, 2003 I.C.J. 161, para. 73-76 (Nov. 6).

<sup>20</sup> Int'l L. Ass'n, *Report of the Committee on the Use of Force*, 22-25 (2018)

zero" renders continued negotiation legally moot.<sup>21</sup> In international law, the principle of *Lex non cogit ad impossibilia* (the law does not compel the impossible) applies here: the international community cannot be legally required to pursue diplomatic "means" that are incapable of preventing the prohibited "end."

- **The Necessity of Kinetic Intervention:** With years of IAEA non-compliance and the final collapse of the 2026 talks, the threat shifted from *potential* to *imminent and irreversible*. Because "no other measures" remained to prevent the transition of Iran into a nuclear-armed state, the use of force became the only remaining legal instrument to uphold the object and purpose of Article 51.

## VIII. Conclusion

The joint kinetic operation of February 28, 2026, was a law-enforcing measure of last resort, not an act of aggression. It strictly adhered to the Caroline Test, addressing a threat that had become instant, overwhelming, and beyond diplomatic resolution. By neutralizing a clandestine, illegal nuclear program—a status retroactively verified in the Syrian context (2011)—the United States and Israel acted as the ultimate guarantors of international law while collective security mechanisms remained paralyzed.

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<sup>21</sup> Int'l Atomic Energy Agency [IAEA], *Report on the NPT Safeguards Agreement with the Islamic Republic of Iran*, U.N. Doc. GOV/2026/02 (Feb. 20, 2026).