Preventive and Pre-emptive Military Action and Anticipatory Self-Defense

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Historical Development

- Hague Convention 1918
- Geneva Protocol 1925
- 1949 Geneva Convention
- 1977 Additional Protocols to the Geneva Convention (1949)
Caroline Incident (1837)

Daniel Webster US Secretary of State

There was a right of anticipatory self-defense provided there was “a necessity of self defense instant, overwhelming, leave no choice of other means and no moment for deliberation”
President Roosevelt

- Radio address on 11 September 1941:

  “When you see a rattlesnake poised to strike you do not wait until he has struck before you crush him”
Other Cases

- 1962 Cuban Missile Crisis
- 1967 Six Day War
- 1981 Israeli Strike on the Osirak Nuclear Reactor in Iraq
- 2003 Coalition Invasion of Iraq
Current Technological Environment

End of Imminence?

- Constant Threat
- Time not known
- Place not known
- Fleeting Target of Opportunity for Prevention
Possible Criteria

- Technical Nature of the Threat
- Gravity of the Consequences
- Intentions of the Adversary
- Time Available
- Quality of Information on the Threat
What is the Law Now?

- All states have the right of self-defense against an actual or imminent threat.
- No right of self-defense against a threat that is not imminent.
- UNSC can authorize collective anticipatory action.
- Not just related to threats from states.
Questions

In the context of current and future threats to national security what does imminence mean?

1. In international legal terms what is the meaning of prevention, pre-emption and anticipatory self-defense?