

India's Pre-emptive Strike in Pakistan: The Legal Perspective

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Abstract

Within the realm of pre-emptive self-defence, any recourse to the use of force remains a delicate legal undertaking. This is because such a military manoeuvre is conceived and carried out without the evidence of an armed attack that has *already* occurred. Instead, it is justified on the basis of understanding that such an armed attack is *underway*. It involves, thus, numerous pieces of practical measures — meant to prove the coming of harm. These are hostile intentions; capability to inflict harm; and actual movements of the adversary. In this context, provision of precise justifications for these prerequisites is what makes the application of pre-emption complex. Hence, the Indian pre-emptive strikes inside Pakistan to eliminate so-called 'terrorists' and their infrastructure becomes an important case of enquiry and analysis. This study, therefore, seeks to discuss the legal merits of India's recourse to use of force. In terms of its theoretical orientation, it is set within the framework of *positivist* legal traditions. During the course of argumentation, thus, it engages both customary international law and treaty law, relevant to pre-emptive self-defence.

Keywords: Necessity of Self-Defence, 'Unwilling or Unable', Customary International Law, Caroline Criteria, State Responsibility, Treaty Law.

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