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Critical Analysis of the Eroding Threshold: Anticipatory Self-Defence and the Imperilment of IHL Integrity in the Iran-Israel Situation

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Abstract

This paper critically analyzes the doctrinal evolution of anticipatory self-defence (ASD) and its corrosive impact on the integrity of International Humanitarian Law (IHL). Through a case study of the Iran-Israel situation, the authors argue that ASD has been strategically expanded from a narrow, customary law exception into a broad doctrine of preventive force. This shift, exemplified by state practices such as the "Bush Doctrine" and Israel's "Begin Doctrine, " has led to an inflation of the key thresholds of *imminence*, *necessity*, and *proportionality*. The paper identifies two dangerous patterns: "Imminence Inflation," where speculative threats are legally re-cast as imminent, and "Proxy Attribution," where states attribute the actions of non-state actors to sovereign rivals to justify direct strikes. The analysis demonstrates how this erosion of *jus ad bellum* principles directly imperils *jus in bello*, facilitating violations of distinction and proportionality, enabling the avoidance of IHL obligations, and undermining civilian protections. The paper concludes that this trend destabilizes the UN Charter's prohibition on the use of force and weakens the collective security system. It calls for a urgent recommitment to clear legal thresholds and multilateral review mechanisms to restore the primacy of law over pre-emptive force.

1. Introduction

The prohibition on the use of force, as articulated in Article 2(4) of the United Nations Charter, remains one of the most significant achievements of international law in limiting inter-state violence.[1] Central to this framework is Article 51, which permits the use of force in self-defence only 'if an armed attack occurs'.[1] Despite the seemingly restrictive wording of Article 51, some states and scholars have argued that customary international law permits anticipatory self-defence in response to an imminent armed attack. This view is often grounded in the Caroline

[1] C Henderson, *The use of force and international law* (Cambridge University Press 2018).
[1] N Tsagourias, 'The Use of Force Against Terrorist Attacks: The Two Facets of Self-Defence' [2023] Louis ULJ, 68, 327.

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correspondence of 1837, which articulated the requirement that necessity must be "instant, overwhelming, leaving no choice of means, and no moment for deliberation." However, this interpretation remains highly contested, as the International Court of Justice (ICJ) has never explicitly endorsed anticipatory self-defence in its jurisprudence, including in the Nicaragua, Oil Platforms, and Armed Activities cases. In recent decades, the doctrine of self-defence has increasingly blurred the line between anticipatory and preventive action. While anticipatory self-defence traditionally refers to the use of force in response to an imminent armed attack, preventive self-defence extends to addressing potential or future threats that are not yet imminent. Some states have invoked Article 51 to justify the use of force against such emerging threats, effectively expanding the concept of anticipatory self-defence beyond its original, narrowly defined scope. This expansion has lowered the threshold for the lawful use of force and

has posed serious challenges to the integrity of international humanitarian law (IHL), particularly by increasing the likelihood of military action outside clearly defined armed conflicts, thereby complicating the application of IHL principles such as distinction, proportionality, and necessity[1]

A particularly concerning development is Israel's June 2025 military operation, 'Operation Rising Lion', which targeted Iranian nuclear facilities, scientists, and military infrastructure. The operation was framed as a lawful exercise of self-defence, despite the fact that the International Atomic Energy Agency (IAEA) had found no evidence that Iran was actively producing nuclear weapons.[2] This case reflects the growing trend of using ASD to justify force based on projected threats, rather than actual attacks.

The broader trajectory of ASD's evolution reveals a consistent pattern. Powerful states have increasingly exploited legal ambiguities to reinterpret self-defence as a preventive measure against hypothetical future dangers. However, this trend reflects a shift away from traditional anticipatory self-defence, which operates within strict limits such as the requirement of imminency, necessity, and proportionality.. The United States played a pivotal role in this shift following the attacks of September 11, through the articulation of the 'Bush Doctrine', which asserted the right to strike against 'emerging threats before they are fully formed'.[3] While framed as self-defence, this approach more closely aligns with preventive rather than anticipatory self-defence and therefore risks undermining the legal criteria that have historically constrained the

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[1] John T Psaropoulos, 'Are Israel's attacks against Iran legal' (*Aljazeera*, 20 June 2025) <https://www.aljazeera.com/news/2025/6/20/are-israels-attacks-against-iran-legal> accessed 26 June 2025 ; Amichai Cohen and Yuval Shany, 'A New War or a New Stage in an Ongoing War – Observations on June 13 Israeli Attack against Iran' (*Just Secuity*, 15 June 2025) <https://www.justsecurity.org/114641/israel-iran-un-charter-jus-ad-bellum/>. accessed 26 June 2025

[2] Canton, H. 'International Atomic Energy Agency—IAEA. In The europa directory of international organizations 2021' (2021) Routledge. pp. 305-314

[3] R Jervis, 'Understanding the Bush doctrine: preventive wars and regime change' [2016] Political Science Quarterly 285; Oona A. Hathaway, 'How the Expansion of "Self-Defense" Has Undermined Constraints on the Use of Force' (*Just Security*, 18 September 2023) <https://www.justsecurity.org/88346/the-expansion-of-self-defense/> accessed 26 June 2025 ; Andrew Garwood-Gowers, 'Pre-Emptive Self-Defence: A Necessary Development or the Road to International Anarchy?' [2004] Australian Year Book of International Law 51.

use of force under international law. Israel's strategic doctrine, known as the 'Begin Doctrine', similarly embraced this logic, as seen in its strikes on Iraq's Osirak reactor in 1981 and Syria's Al-Kibar facility in 2007.[4] These actions helped to normalize the pre-emptive use of force against perceived weapons of mass destruction (WMD) programs.

Operation Rising Lion represents the culmination of this doctrinal shift. It signifies a movement from a reactive model of self-defence to one that is preventive in nature, where unverified or speculative threats are treated as sufficient grounds for unilateral military action. This development has serious implications for the foundational principles of IHL, particularly the principles of distinction, necessity, and proportionality. When states are allowed to unilaterally determine what constitutes an "imminent" threat based on classified intelligence, they effectively bypass the oversight of the United Nations Security Council. This creates a parallel legal framework in which assertions of national security override the collective mechanisms intended to govern the use of force.

The consequences of this erosion are far-reaching. By expanding the concept of self-defence beyond its established legal boundaries, powerful states risk transforming it into a strategic instrument of aggression. This shift undermines the legal protections afforded to civilians and erodes the constraints that IHL places on military conduct. It also threatens to blur the distinction between the legality of going to war (jus ad bellum) and the rules governing conduct in war (jus in bello), thereby destabilizing the broader international legal order. The Iran-Israel context must therefore be understood not only as a regional security issue but also as a critical test of the robustness of the international legal framework in the face of unilateral reinterpretation.

This paper critically analyses the erosion of the threshold for lawful anticipatory self-defence and its consequences for international humanitarian law. It begins by outlining the traditional legal framework governing self-defence under the UN Charter and customary international law. It then examines the expansion of ASD through state practice and key doctrinal developments, focusing on the United States and Israel. Following this, the paper assesses the challenges this expansion poses to the core principles of IHL, particularly in the context of recent military operations.

2. The Legal Contours of Anticipatory Self-Defence

The prohibition on the threat or use of force under the UN Charter[5] mirrors a rule of customary international law and remains a foundational norm of public international law.[6] Nevertheless, the UN Charter allows for two exceptions to this rule: the inherent right to self-defence,[7] and force

[4] Nicholas Tsagourias, 'Assessing the Legality of Israel's Action Against Iran Under International Law' (*Lieber Institute*, 20 June 2025) <https://lieber.westpoint.edu/assessing-legality-israels-action-iran-international-law/> accessed 26 June 2025.

[5] Article 2 (4) of the UN Charter.

[6] Alina Kaczorowska, *Public International Law* (Routledge 2010) 688.

[7] Article 51 of the UN Charter.

authorised by the United Nations Security Council when deemed necessary.[8] It is this first exception that allows for an analysis of the legal contours of anticipatory self-defence. Article 51 clearly provides that the right to self-defence is permissible only 'if an armed attack occurs against a Member of the United Nations', that is use of force is permissible only in retaliation to an attack against the State.[9] However, despite this clear prohibition by the UN Charter on the use of force, some States, most notably the United States, have strived to expand the inherent right to self-defence to include an 'anticipatory' form of self-defence, mainly citing the 1837 'Caroline incident', which is a historical episode that has helped shape the legal understanding of anticipatory self-defence in international law.[10] The Caroline incident is frequently cited as a foundational precedent for anticipatory self-defence,[11] with particular emphasis on Webster's formulation, endorsed by Ashburton, the then US Secretary of State Daniel and a new British envoy to the United States respectively, that force may be used only when 'a necessity of self-defense [is], instant, overwhelming, leaving no choice of means, and no moment for deliberation'.[12] Polebaum argued for an expansive reading of Article 51 suggesting that the unique realities of nuclear weapons and rapid delivery systems could justify anticipatory self-defence in situations of extreme and imminent danger ; drawing on the Caroline case, she proposed that such action must meet three conditions: exhaustion of peaceful alternatives, proportionality (either in terms of equivalent harm or adherence to human rights principles), and the immediacy of the threat.[13] To justify applying these criteria today, Polebaum maintained that a broad reading of Article 51 is more persuasive than a restrictive one, arguing that the UN Charter was designed either to explicitly prohibit conduct or to preserve existing rights, and, since anticipatory self-defence is not expressly forbidden and Article 51 affirms that nothing impairs the right of self-defence, she concluded that such a right remains intact under the Charter.[14]

Anticipatory self-defence, as endorsed by much of the international community, broadens the definition of an 'armed attack' by recognising that such an attack may be 'imminent' and 'unavoidable' even if it has not yet occurred,[15] framing it as part of a continuum from peace to conflict, and requiring that any defensive response be closely linked in time and space to the

[8] Chapter VII of the UN Charter.

[9] Article 51 of the UN Charter.

[10] Louis-Philippe Rouillard, 'The Caroline Case: Anticipatory Self-Defence in Contemporary International Law' [2004] Miskolc Journal of International Law 104, 106.

[11] JN Maogoto, 'New Frontiers, Old Problems: The War on Terror and the Notion of Anticipating the Enemy'(2004) NILR 1.

[12] Matthew C Waxman, 'The Caroline Affair in the Evolving International Law of Self-Defense' [2018] The LawFare Book Review, Columbia Public Law Research Paper 14, 15.

[13] BM Polebaum, 'National Defense in International Law : An Emerging Standard for a Nuclear Age' [1984] New York University Law Review 187, 200.

[14] Louis-Philippe Rouillard, 'The Caroline Case: Anticipatory Self-Defence in Contemporary International Law' [2004] Miskolc Journal of International Law 104, 115.

[15] DD Smith, 'Establishing a Global Quarantine Against Weapons of Mass Destruction' [2005] Yale Law School Student Scholarship Series 22.

anticipated use of force.[16] However, this has been criticised especially by proponents of 'pre-emptive' self-defence, stating that the traditional imminence requirement in anticipatory self-defence is too narrow to address threats like Weapons of Mass Destruction proliferation, as it limits a state's ability to neutralise the source of danger before the threat fully materialises. They contend that the criterion focuses too heavily on temporal proximity rather than on the evolution of military capabilities, and that in the context of nuclear weapons, waiting until a threat becomes 'imminent', such as when a hostile state actually acquires nuclear capacity,[17] renders anticipatory action dangerously ineffective or even meaningless.[18] Post-9/11 state behaviour, particularly in the United States, Israel, and Russia, has separated imminence from temporality, changing it into a strategic projection of purpose or capacity, which would be analysed in detail in Section III. For example, the United States National Security Strategy of 2002 established the concept of 'pre-emptive' self-defence against threats that are not immediate but could materialise at any time, particularly those involving weapons of mass destruction.[19] This articulation establishes hypothetical or speculative dangers as legal justifications for force. Under international law, the necessity requirement in self-defence requires that force be used only as a last resort, that is, action must be necessary to repel or prevent an imminent assault,[20] and non-forcible means must be inadequate.[21] However, the modern use of necessity, particularly in anticipatory self-defence, has become politicised and policy oriented. The 2003 US strike on Iraq is noteworthy in this regard. Invoking pre-emptive self-defence, the US claimed that Saddam Hussein's suspected WMD capacity warranted military intervention,[22] but subsequent discoveries by the Iraq Survey Group proved that no such stocks existed, which demonstrates that the strike was justified based on created risk and worst-case scenario planning, rather than empirical urgency.[23] This raises the critical issue of whether necessity has become **anticipatory strategy rather than responsive law**, a trend, if exists, that opens the door to preventive war rather than lawful self-defence. The proportionality criterion becomes extremely problematic in the case of anticipatory self-defence, where it is generally regarded as symmetry between the scale and effects of an initial unlawful attack and the legitimate defensive response.[24] This criterion is based on retrospective assessment, comparing the total force used and the ensuing casualties and damage on both sides, making it

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[16] Kalliopi Chainoglou, 'Reconceptualising Self-Defence in International Law' [2007] King's Law Journal, 61, 73.

[17] JW Lango, 'Preventive Wars, Just War Principles, and the United Nations' [2005] Journal of Ethics 247.

[18] Kalliopi Chainoglou, 'Reconceptualising Self-Defence in International Law' [2007] King's Law Journal, 61, 73.

[19] 'The National Security Strategy of the United States of America (September 2002)' < https://2009-2017.state.gov/documents/organization/63562.pdf > accessed 27 June 2025, 14.

[20] E Benvenisti, 'The US and the Use of Force: Double-edged Hegemony and the Management of Global emergencies'(2004) 15 EJIL 677.

[21] Christine Gray, *International Law and the Use of Force* (4th edn, Oxford University Press 2018).

[22] D Joyner, 'The Proliferation Security Initiative: Non-Proliferation, Counter-proliferation, and International Law' [2005] Yale Journal of International Law 507.

[23] William Taft IV and Todd Buchwald, 'Preemption, Iraq, and International Law' The American Journal of International Law [2003] 557, 558.

[24] O Schachter, 'The Right of States to Use Armed Force' [1984] Michigan Law Review 1620, 1627.

difficult to apply meaningfully when force is employed before an attack occurs.[25] While such a framework could be justified to be appropriate for judging immediate reactions or defensive reprisals, it is inadequate to control anticipatory uses of force, where the absence of a confirmed attack renders any proportionality judgement questionable.[26]

The foregoing analysis illustrates that the doctrinal evolution of anticipatory self-defence reveals how the basic legal thresholds of imminence, need, and proportionality, designed as rigid safeguards, have been eroded into strategically malleable criteria. These thresholds, which originated in the Caroline formulation and were later incorporated into the language of Article 51 of the UN Charter, have been subject to broad misinterpretation, particularly by powerful states responding to perceived nontraditional threats. As the ideas of 'imminence' and 'necessity' become more speculative, and 'proportionality' becomes more symbolic or forward-looking, anticipatory self-defence has begun to resemble a preventative warfare strategy, more aligned with power politics than with legal restriction. These conceptual ambiguities and doctrinal shifts create the conditions for anticipatory self-defence to be used not only as a defensive measure, but also as a strategic tool to further geopolitical gains. The following section will examine how these reinterpreted thresholds have been applied in practice, focussing on key examples such as the United States' justification for the 2003 Iraq War, Russia's intervention in Georgia in 2008, and Israel's use of proxy attribution in its attacks on Iranian interests.

3. Anticipatory Self-Defence as a Strategic Instrument: Geopolitical Weaponization

Anticipatory self-defence, originally a narrow exception under Article 2(4) grounded in the Caroline case, was intended for imminent and unavoidable threats. In the twenty-first century, it has expanded into a tool used by powerful states to justify pre-emptive military action beyond its original legal limits.[27]. This section identifies and analyses three patterns through which ASD has been instrumentalized, imminence inflation (United States in Iraq, 2003), proxy attribution alchemy (Israel-Iran conflict, 2023–2025), and pretextual necessity (Russia in Georgia, 2008). Each pattern exemplifies a mode of legal manipulation that erodes foundational principles of international humanitarian law (IHL), including necessity, distinction, proportionality, and sovereignty.

A. Pattern 1: Imminence Inflation – The United States in Iraq (2003)

[25] JG Gardam, 'Proportionality and Force in International Law' [1993] Asian Journal of International Law 391, 404.

[26] Yoram Dinstein, *War, Aggression and Self-Defence* (5the edn, Cambridge University Press 2011), 262.

[27] D Rothwell, 'Anticipatory self-defence in the age of international terrorism' [2005] The University of Queensland Law Journal 337.

The 2003 invasion of Iraq marked a watershed moment in the strategic reinterpretation of ASD.[28] The Bush Administration introduced a novel conceptualisation of imminence, decoupling it from temporal immediacy.[29] The 2002 National Security Strategy proposed a formula in which a combination of hostile capability, demonstrated intent, and the target state's vulnerability could justify pre-emptive action.[30] This framework was rhetorically crystallised in National Security Advisor Condoleezza Rice's warning that "we do not want the smoking gun to be a mushroom cloud."[31] By transforming speculative risks into perceived certainties, the administration constructed a legal and moral imperative for war that bypassed traditional constraints.

The case for war relied on a convergence of four primary falsehoods. First, the alleged existence of Iraqi weapons of mass destruction (WMDs) was central.[32] Despite the post-invasion failure to discover such weapons, the Bush administration repeatedly asserted Iraq possessed chemical and biological stockpiles, with claims of 30,000 litres of anthrax and an active nuclear programme.[33] Second, links between Saddam Hussein and al-Qaeda were fabricated, with Vice President Cheney asserting there was "no doubt" of Iraqi involvement in the September 11 attacks.[34] Public opinion surveys at the time revealed that up to 66 percent of Americans believed Iraq had aided the 9/11 hijackers.[35] Third, President Bush's Cincinnati speech framed containment as ineffective and argued that allowing Hussein to persist would open the door to blackmail and WMD proliferation.[36] Finally, the administration presented regime change as a necessary step to democratise the Middle East, masking a hegemonic agenda beneath the rhetoric of collective security.[37]

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[28] M Khamdan, *Right of a self-defense in international law: developments after september 11, 2001* (Doctoral dissertation, Vilniaus universitetas 2025).

[29] CP Weaver Jr, *The Bush doctrine and the tactic of preemption: understanding the concept, criticism, and implications for National Policy and International Law* (Regent University2009).

[30] MN Schmitt, 'Preemptive strategies in international law' [2002] Mich. J. Int'l L. 513.

[31] Ofira Seliktar, *The Politics of Intelligence and American Wars with Iraq* (Springer 2008).

[32] JP Koenig, *The Origins of the Iraq War: The Role of Anthrax in the Weapons of Mass Destruction Claims* (Thesis, CUNY Bernard M Baruch College 2023).

[33] 'Iraq, before and after those who consign us to our deaths' (*Australian League of* Rights, 28 June 2003) <https://alor.org/Storage/Britain/Iraq%20Before%20and%20After%20Part%202.htm> accessed 26 June 2025.

[34] Risse, A. P. (2024). Why the Neoconservative Theory of American Foreign Policy Failed to Anticipate and Prepare for a Counter-Insurgency in Iraq?.

[35] Carroll Doherty and Jocelyn Kiley, 'A Look Back at How Fear and False Beliefs Bolstered U.S. Public Support for War in Iraq' (*Pew research centre*, 14 March 2023) <https://www.pewresearch.org/politics/2023/03/14/a-look-back-at-how-fear-and-false-beliefs-bolstered-u-s-public-support-for-war-in-iraq/> accessed 26 June 2025.

[36] Richard Stevenson, 'THREATS AND RESPONSES: THE PRESIDENT; Bush Gives Hussein 48 Hours, and Vows to Act' (*NYT*, 18 March 2003) <https://www.nytimes.com/2003/03/18/world/threats-and-responses-the-president-bush-gives-hussein-48-hours-and-vows-to-act.html> accessed 26 June 2025.

[37] SE Baroudi, 'Arab intellectuals and the Bush administration's campaign for democracy: The case of the Greater Middle East Initiative' [2007] The Middle East Journal 390.

This pattern of imminence inflation inflicted serious damage on IHL. While the manipulation of imminence, necessity, and proportionality primarily affects the jus ad bellum framework, its consequences do not end there. First, the instrumentalisation of flawed intelligence as a justification for war undermined the principle of necessity under jus ad bellum.[38] The doctrine of the "last window of opportunity" diluted the requirement that force be a last resort.[39]

Second, the U.S. approach marginalised proportionality, since strategic objectives rather than threat containment shaped the scope and scale of the intervention.[40] Third, there was a complete absence of post-invasion accountability. Investigations such as those led by the U.S. Senate Intelligence Committee and the Chilcot Inquiry confirmed intelligence distortions, yet no senior official was prosecuted or sanctioned.[41]

These erosions in jus ad bellum standards directly compromise the integrity of IHL. When wars are launched on the basis of speculative or manipulated threats, the armed conflicts that follow often lack clear legal justification and operational constraints. This undermines the foundational IHL principles of distinction, proportionality, and precaution in attack. For example, targeting decisions made in reliance on distorted intelligence increase the risk of misidentifying civilians or civilian infrastructure as lawful military objectives. Similarly, if the military campaign is designed to achieve broad strategic goals rather than respond to an imminent attack, proportionality assessments become skewed, justifying excessive or indiscriminate force. The absence of accountability also weakens compliance with IHL, as it signals that violations during such operations may go unpunished. In this way, the expansion of anticipatory self-defence does not merely affect the legality of going to war, it erodes the humanitarian protections that are meant to govern conduct within war itself.

B. Pattern 2: Proxy Attribution Alchemy – Israel's Iran Strategy (2023–2025)

Between 2023 and 2025, Israel employed a proxy attribution strategy that sought to equate attacks by non-state actors such as Hamas and Hezbollah with direct aggression by the Iranian state.[42] Prime Minister Netanyahu referred to Iran as the "head of the octopus," implying that any action by regional proxies was effectively orchestrated by Tehran.[43] This framing collapsed the legal distinction between state responsibility for support and actual operational control, a distinction

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[38] HA Le, *Towards a Theory on the Use of Force Short of War–The Principles of Jus ad Vim* (The University of Manchester 2021).

[39] JD Huntsman and GH McCormick, *JUST STRIKE: A COMMANDER'S GUIDE TO PREEMPTIVE SELF-DEFENSE* (Doctoral dissertation, Monterey, CA; Naval Postgraduate School 2018).

[40] N Lubell and A Cohen, 'Strategic proportionality: limitations on the use of force in modern armed conflicts' [2020] International Law Studies 159.

[41] J Betts and M Phythian, *Iraq War and Democratic Governance: Britain and Australia go to War* (Springer 2020)117-158.

[42] AR Shalev, 'Hamas' October 7th Genocide: Legal Analysis and the Weaponization of Reverse Accusations: A Study in Modern Genocide Recognition and Denial' [2025] Israel Law Review.

[43] 'Israel' (*Crisis Group*, 25 Jun 2025) <https://www.crisisgroup.org/trigger-list/iran-usisrael-trigger-list/flashpoints/israel>.

upheld in the ICJ's Nicaragua judgment.[44] Through this "ring of fire" narrative, Israel constructed a continuous armed conflict against Iran, despite the lack of evidence of direct Iranian involvement in specific operations.[45]

The strategy unfolded in two phases. The first involved the use of cyber-physical sabotage in Lebanon during September 2024, targeting Hezbollah operatives via remote-triggered pager explosions.[46] These strikes were justified as efforts to disable Iranian command nodes. The second phase, "Operation Northern Arrows," launched in October 2024, involved the assassination of Hezbollah leadership and strikes against Iranian Revolutionary Guard Corps (IRGC) officers and nuclear scientists in Syria and Iran.[47] These actions were framed as ASD responses to Iran's existential threat, even though the IAEA continued to find no evidence of an active Iranian nuclear weapons programme.

Proxy attribution alchemy eroded several core IHL principles. First, the distinction between civilians and combatants was blurred, with nuclear scientists and civilian infrastructure rebranded as components of Iran's "terror machine."[48] Second, proportionality was disregarded, as extensive civilian casualties in Lebanon were justified by the need to counter Iran's strategic reach. Third, by attributing Hamas's October 2023 attack to Iranian direction, Israel used ASD to legitimise broader military operations in Gaza, portraying them as extensions of its defensive war against Iran.[49]

C. Pattern 3: Pretextual Necessity – Russia's Invasion of Georgia (2008)

Russia's 2008 invasion of Georgia presents a textbook case of pretextual necessity. Through the policy of passportisation, Russia issued more than 90,000 Russian passports to residents of South Ossetia, effectively manufacturing a population of nationals whose protection could be invoked under Article 51.[50] In early August 2008, South Ossetian militias shelled Georgian villages,

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[44] B Samson and T Barsac, *Nicaragua Before the International Court of Justice: Impacts on International Law* (Springer 2018) 281-303.

[45] A Bernstein, *Israel's Divine Mission Against Iran: How Meticulously Israel Plans to Break Iran's Ayatollah's Neck* (2025).

[46] David Aaronovitch, 'One week on, how the Lebanon attacks have changed the Middle East' (BBC, 24 September 2024) <https://www.bbc.com/news/articles/c5y8gv1d8j8o>.

[47] 'Iran threatens more 'crushing attacks' after ballistic missile barrage' (*Telegraph*) <https://www.telegraph.co.uk/world-news/2024/10/01/israel-lebanon-inavsion-latest-news/>.

[48] Andrew Bernard, ''We exposed the Iranian terror machine operating in Yemen,' Danon says' (*JNA*, 2 January 2025) <https://www.jns.org/we-exposed-the-iranian-terror-machine-operating-in-yemen-danon-says/> accessed 26 June 2025.

[49] Jeremy Sharp and Jim Zanotti, 'Israel and Hamas Conflict In Brief: Overview, U.S. Policy, and Options for Congress' (*Congress*, 4 October 2024) <https://www.congress.gov/crs-product/R47828> accessed 26 June 2025.

[50] 'Passportization: Russia's "humanitarian" tool for foreign policy, extra-territorial governance, and military intervention' (*EUI*, 25 March 2022) <https://globalcit.eu/passportization-russias-humanitarian-tool-for-foreign-policy-extra-territorial-governance-and-military-intervention/> accessed 26 June 2025.

drawing a Georgian response that was then portrayed by Moscow as a genocidal assault on Russian citizens.[51] Although casualties were minimal prior to Russia's intervention, Moscow cited genocide and humanitarian emergency to justify a full-scale military incursion.

Evidence subsequently emerged that undermined the official Russian narrative. The Russian Ministry of Defence's own newspaper initially reported that troops had entered South Ossetia prior to Georgia's military response.[52] Furthermore, intercepted communications and personal accounts revealed that soldiers had been deployed under the guise of routine exercises, disguising Russia's offensive intent. Cyberattacks that disabled Georgian communications coincided with the ground assault, constituting a coordinated hybrid operation.[53]

The consequences of Russia's ASD claim were both immediate and long-term. Russia recognised South Ossetia and Abkhazia as independent states, installing permanent military bases and effectively annexing 20 percent of Georgian territory.[54] President Medvedev later acknowledged that the intervention halted further NATO expansion into the region.[55] Russia also replicated this model in Ukraine, employing passportisation in Crimea and the Donbas to justify its 2014 and 2022 interventions.[56]

D. Cross-Case Doctrinal Impact

Each case contributed to the degradation of the legal regime governing the use of force. The traditional requirement of imminence has been systematically eroded. The United States expanded it into a capability-based calculus, Israel framed existential danger as continuous imminence, and Russia invoked humanitarian necessity to obscure its offensive posture. All three states bypassed the Security Council and invoked unilateral interpretations of ASD. Whether through coalitions of the willing (United States), "inherent right" assertions (Israel), or Collective Security Treaty Organization (CSTO) proxies (Russia), these actions collectively fractured the principle of collective security.

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[51] Stephen Jones, 'Georgia: The conflict with Russia and the crisis in South Ossetia' (*International Affairs and Defence Section*, 2008) <https://researchbriefings.files.parliament.uk/documents/SN04819/SN04819.pdf> accessed 26 June 2025.

[52] Roy Allison, 'The Russian case for military intervention in Georgia: international law, norms and political calculation' [2009] European Security 173.

[53] P Pernik, SAlatalu, I Borogan, E Chernenko, S Herpig, O Jonsson, X Kurowska, J Limnell, *Hacks, leaks and disruptions: Russian cyber strategies* (European Union Institute for Security Studies 2018) 53-64.

[54] N Samkharadze, *Russia's Recognition of the Independence of Abkhazia and South Ossetia* (Columbia University Press 2021).

[55] Ria Novosti, 'Medvedev: Russia's 2008 war with Georgia prevented NATO growth' (*Atlantic* Council, 21 November 2011) <https://www.atlanticcouncil.org/blogs/natosource/medvedev-russias-2008-war-with-georgia-prevented-nato-growth/> accessed 26 June 2025.

[56] Oskar Kappel, *Did Russia's passportization in Donbas, 2019, serve as a casus belli for its full scale invasion of Ukraine in 2022?* (Thesis, Swedish Defence University 2022) <https://fhs.diva-portal.org/smash/get/diva2:1926715/FULLTEXT01.pdf> accessed 26 June 2025.

The foundational principles of IHL have suffered significant degradation. The requirement of distinction has been blurred through the targeting of civilians labelled as combatants, such as scientists or passportised populations. Proportionality has been overridden by vague notions of existential threat. Perhaps most concerning is the systematic avoidance of accountability. Legal justifications were bolstered by Office of Legal Counsel (OLC)memos in the United States, "ongoing conflict" designations in Israel, and peacekeeping pretexts in Russia. These strategies have created jurisdictional loopholes that shield state actors from scrutiny.

The weaponisation of ASD poses a contagion risk to the entire international legal order. The precedents set by these powerful states have been cited or emulated by others. Russia explicitly invoked NATO's 1999 Kosovo intervention and the U.S. invasion of Iraq to legitimise its actions in Ukraine.[57] Israel's attribution logic has been echoed by Saudi Arabia in its strikes on Houthi targets.[58] Additionally, Iran and North Korea have accelerated their WMD programmes, citing recent ASD precedents to justify strategic deterrence.[59]

In sum, ASD has been transformed into a lawfare toolkit—a set of rhetorical, doctrinal, and operational strategies that reframe aggression as self-defence. This evolution has not only hollowed out the legal constraints on the use of force but has also normalised impunity in modern conflict. The Israel-Iran context, with its escalating attribution logic and targeting expansion, may represent the most lethal expression of this trend to date.

4. Iran-Israel Conflict and the Gaza Subtext

Israel invoked the doctrine of anticipatory self-defence to justify Operation Rising Lion in June 2025. The operation targeted Iranian nuclear infrastructure and personnel, based on three main legal claims.

Israel argued that Iran's nuclear program constituted an existential threat, referencing IAEA reports indicating uranium enrichment to 83.7 percent, which is close to weapons-grade levels. Intelligence assessments suggested that Iran could achieve nuclear weaponization within months, framing this moment as the "last window of opportunity" to act.[60] Israeli officials further pointed to Iranian leadership rhetoric including statements about wiping Israel "off the map" and

[57] Hughes, J. "Russia and the secession of Kosovo: Power, norms and the failure of multilateralism." (2013). Europe-Asia Studies, 65(5), 992-1016; Ahmed, M. M. "De-Legitimating the Russian War in Ukraine in US President Biden's Speeches: A Critical Discourse Analysis." (2023). *Textual Turnings: An International Peer-Reviewed Journal in English Studies*, *5*(1), 133-149.

[58] Kagan, F. W. *"Attribution, intent, and response in the Abqaiq attack*." (2019). American Enterprise Institute.

[59] Shoham, D. "Contrasting Trends in WMD Proliferation in the Middle East: Iran and Libya." (2005). International Journal of Intelligence and Counterintelligence, 18, 89-141.

[60] Nicholas Tsagourias, 'Assessing the Legality of Israel's Action Against Iran Under International Law' (*Lieber Institute*, 20 June 2025) <https://lieber.westpoint.edu/assessing-legality-israels-action-iran-international-law/> accessed 26 June 2025.

referring to the state as a "cancerous tumor" as evidence of genocidal intent, thus reinforcing the perceived urgency and severity of the threat.[61]

Israel rejected the classical temporal test of imminence (requiring visible military mobilization) in favor of a contextual approach consistent with the Bethlehem Principles. According to this framework, a combination of factors justified anticipatory action, Iran's residual ballistic missile capabilities despite 2024 strikes, proxy attacks by groups such as Hamas and Hezbollah, and intelligence suggesting the revival of Iran's covert nuclear weapons group.[62]

Israel further argued that Iran's support for Hamas, particularly in relation to the October 7 attacks, demonstrated a concerted and sustained pattern of armed activity. It characterized Iran's network of proxies as an "existential ring of fire," the dismantling of which was presented as necessary to ensure national survival. This networked threat was cited as justifying anticipatory self-defence under Article 51 of the UN Charter.[63]

Despite Israel's legal assertions, international legal scholars and diplomatic actors raised several counterarguments challenging the legitimacy of Israel's anticipatory self-defence rationale.

Key international actors disputed Israel's claim of imminent nuclear threat. IAEA Director-General Rafael Grossi stated that Iran had "no systematic nuclear weapons program," casting doubt on the immediacy of the threat.[64] Similarly, U.S. Director of National Intelligence Tulsi Gabbard testified that Iran was "not building a nuclear weapon," contradicting assertions made by President Trump. These statements undermined the necessity and urgency required for anticipatory action under international law.[65]

At the time of the strikes, diplomatic negotiations between the United States and Iran were actively underway in Geneva. Critics argued that the operation violated the Caroline doctrine's requirement that force be used only as a last resort. European diplomats condemned the timing

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[61] 'Understanding the War between Israel and Iran: Q&A with Amichai Magen and Abbas Milani' (*Stanford University*, 18 June 2025) <https://fsi.stanford.edu/news/understanding-war-between-israel-and-iran-qa-amichai-magen-and-abbas-milani> accessed 26 June 2025.

[62] Atlantic Council Experts, 'Twenty questions (and expert answers) on the Israel-Iran war' (*Atlantic Council*,16 June 2025) <https://www.atlanticcouncil.org/blogs/menasource/twenty-questions-and-expert-answers-on-the-israel-iran-war/> accessed 26 June 2025; Marten Zwanenburg, 'Select IHL Issues Arising from the Israel-Iran Conflict' (*Lieber*, 19 June 2025) <https://lieber.westpoint.edu/select-ihl-issues-arising-israel-iran-conflict/> accessed 26 June 2025.

[63] Brett McGurk, 'Iran-Israel conflict: Is that it? Probably not' (*CNN*, 24 June 2025) <https://edition.cnn.com/2025/06/24/politics/iran-israel-conflict-ceasefire-analysis> accessed 26 June 2025.

[64] Nicholas Tsagourias, 'Assessing the Legality of Israel's Action Against Iran Under International Law' (*Lieber Institute*, 20 June 2025) <https://lieber.westpoint.edu/assessing-legality-israels-action-iran-international-law/> accessed 26 June 2025.

[65] Dmytro Hubenko and Jon Shelton, 'Iran calls Israeli attack a 'betrayal' of diplomacy' (*DW*, 6 June 2025) <https://www.dw.com/en/iran-calls-israeli-attack-a-betrayal-of-diplomacy/live-72979030> accessed 26 June 2025.

of the strikes, labelling them a "betrayal of diplomacy." The existence of viable non-military options cast further doubt on the operation's legality under jus ad bellum.[66]

The operation resulted in the deaths of over 224 Iranians, including at least 74 women and children, with airstrikes targeting major cities such as Tehran and Isfahan.[67] Reports indicated that non-military infrastructure, including hospitals, media offices, and residential buildings, was damaged, raising concerns about violations of IHL principles, particularly the rule of distinction and proportionality.[68]

In addition to challenges under jus ad bellum, Israel's conduct during Operation Rising Lion has been scrutinized under international humanitarian law, particularly with respect to targeting, protected infrastructure, and civilian protection.

Israel justified the killing of more than 14 Iranian nuclear experts on the basis that they were "directly participating in hostilities" (DPH). However, ICRC guidance limits such status to individuals directly engaged in weapons assembly or deployment.[69] The ICRC's Interpretive Guidance on DPH explicitly excludes research scientists, whose work lacks a direct causal link to specific attacks. Consequently, these killings may constitute unlawful targeting of civilians under IHL.[70]

Strikes on facilities like Natanz, which resulted in limited radiological release, raised concerns about the legality of targeting dual-use infrastructure.[71] Although Israel refrained from striking the Fordow facility due to the risk of catastrophic fallout, the Natanz attack set a precedent for attacking sites that are not clearly military objectives.[72] Article 56 of Additional Protocol I protects

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[66] Dmytro Hubenko and Jon Shelton, 'Iran calls Israeli attack a 'betrayal' of diplomacy' (*DW*, 6 June 2025) <https://www.dw.com/en/iran-calls-israeli-attack-a-betrayal-of-diplomacy/live-72979030> accessed 26 June 2025.

[67] Brett McGurk, 'Iran-Israel conflict: Is that it? Probably not' (*CNN*, 24 June 2025) <https://edition.cnn.com/2025/06/24/politics/iran-israel-conflict-ceasefire-analysis> accessed 26 June 2025.

[68] Marten Zwanenburg, 'Select IHL Issues Arising from the Israel-Iran Conflict' (*Lieber*, 19 June 2025) <https://lieber.westpoint.edu/select-ihl-issues-arising-israel-iran-conflict/> accessed 26 June 2025.

[69] Nicholas Tsagourias, 'Assessing the Legality of Israel's Action Against Iran Under International Law' (*Lieber Institute*, 20 June 2025) <https://lieber.westpoint.edu/assessing-legality-israels-action-iran-international-law/> accessed 26 June 2025.

[70] Marten Zwanenburg, 'Select IHL Issues Arising from the Israel-Iran Conflict' (*Lieber*, 19 June 2025) <https://lieber.westpoint.edu/select-ihl-issues-arising-israel-iran-conflict/> accessed 26 June 2025.

[71] Marten Zwanenburg, 'Select IHL Issues Arising from the Israel-Iran Conflict' (*Lieber*, 19 June 2025) <https://lieber.westpoint.edu/select-ihl-issues-arising-israel-iran-conflict/> accessed 26 June 2025.

[72] Nema Milaninia, 'From War to Control: How the Recent Iran-Israel Conflict Risks Deepening the Islamic Republic's Repression' (*Just Security*, 26 June 2025) <https://www.justsecurity.org/115533/iran-israel-conflict-deepening-repression/> accessed 26 June 2025.

nuclear power plants, but not enrichment facilities, exposing a significant legal gap in the protection of critical infrastructure.[73]

Israel issued broad evacuation orders for Tehran, affecting up to 330,000 civilians. These warnings lacked specific instructions regarding safe routes or time frames.[74] Under Article 57 of Additional Protocol I, parties must take feasible precautions and issue effective warnings prior to attacks. The failure to provide adequate guidance arguably transformed a precautionary measure into collective punishment, in violation of IHL.[75]

Some analysts argue that the framing of Iran as an existential threat served to distract from international scrutiny over Israel's actions in Gaza, where proceedings for genocide were ongoing

While Israel emphasized the Iranian threat, the UN Office of the High Commissioner for Human Rights documented ongoing humanitarian violations in Gaza, including the blocking of essential supplies and the use of white phosphorus in populated areas.[76] By invoking anticipatory self-defence against Iran, Israel potentially deflected attention from IHL violations in Palestine.[77]

Although Israel cited Iran's support for Hamas as justification for ASD, this rationale ignored the role that prolonged occupation and humanitarian deprivation in Gaza played in fueling militancy.[78] Described as an "open-air prison," Gaza has faced a blockade since 2005, with unemployment reaching 57 percent prior to the October 7 attacks.[79] Experts such as Amichai Magen have noted that Iran's proxy strategy is empowered by grievances originating from occupation.[80]

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[73] Marten Zwanenburg, 'Select IHL Issues Arising from the Israel-Iran Conflict' (*Lieber*, 19 June 2025) <https://lieber.westpoint.edu/select-ihl-issues-arising-israel-iran-conflict/> accessed 26 June 2025.

[74] Nada Atallah, 'Israel sows panic with Tehran eviction orders that echo Gaza and Lebanon' (*The National*, 19 June 2025) < https://www.thenationalnews.com/news/mena/2025/06/19/israel-sows-panic-with-tehran-eviction-orders-that-echo-gaza-and-lebanon/ > accessed 26 June 2025.

[75] Clive Baldwin, 'How Does International Humanitarian Law Apply in Israel and Gaza?' (*HRW*, 27 October 2023) <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza> accessed 26 June 2025.

[76] 'Israel's assault on the foundations of international law must have consequences: UN experts' (*OHCHR*, 30 December 2024) <https://www.ohchr.org/en/press-releases/2024/12/israels-assault-foundations-international-law-must-have-consequences-un> accessed 26 June 2025.

[77] Rohini Haar and Saman Zia-Zarifi, 'Will International Humanitarian Law Survive the Israel-Hamas Conflict?' (*ThinkGlobalThink*, 8 April 2024) <https://www.thinkglobalhealth.org/article/will-international-humanitarian-law-survive-israel-hamas-conflict> accessed 26 June 2025.

[78] Clive Baldwin, 'How Does International Humanitarian Law Apply in Israel and Gaza?' (*HRW*, 27 October 2023) <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza> accessed 26 June 2025.

[79] Rohini Haar and Saman Zia-Zarifi, 'Will International Humanitarian Law Survive the Israel-Hamas Conflict?' (*ThinkGlobalThink*, 8 April 2024) <https://www.thinkglobalhealth.org/article/will-international-humanitarian-law-survive-israel-hamas-conflict> accessed 26 June 2025.

[80] 'Understanding the War between Israel and Iran: Q&A with Amichai Magen and Abbas Milani' (*Stanford University*, 18 June 2025) <https://fsi.stanford.edu/news/understanding-war-between-israel-and-iran-qa-amichai-magen-and-abbas-milani> accessed 26 June 2025.

Israel's expectation that Iran comply with IHL contrasts starkly with its own conduct in Gaza. While Israel used precision strikes in Iran, 70 percent of casualties in Gaza were civilians.[81] The asymmetry suggests a selective application of IHL standards.[82]

The Natanz strike illustrates broader patterns in Israel's use of anticipatory force and its parallels with military conduct in Gaza.

Israel claimed Natanz was lawfully targetable as it contributed to nuclear weapons development. However, IAEA monitors confirmed that Iran had no active weaponization program.[83] Among the casualties were civilian metallurgists uninvolved in combat.[84] This justification echoes Israel's prior claims that Gaza hospitals were Hamas command centers claims that were later disputed by investigations conducted by Human Rights Watch.[85]

The strike on Natanz disrupted power to approximately 400,000 civilians. A comparable incident in Gaza occurred when the siege of Al-Shifa Hospital resulted in a power outage in its neonatal ICU, leading to infant deaths. Both instances illustrate the disproportionate impact of military operations on civilian infrastructure.[86]

Prime Minister Netanyahu portrayed Iran as the "head of the octopus," framing pre-emptive strikes as necessary while deflecting criticism over Gaza. Analysts such as Brett McGurk observed that Israel's Iran doctrine emerged post-October 7 as a way to reframe domestic security failures and externalize threats.[87]

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[81] Clive Baldwin, 'How Does International Humanitarian Law Apply in Israel and Gaza?' (*HRW*, 27 October 2023) <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza> accessed 26 June 2025.

[82] Clive Baldwin, 'How Does International Humanitarian Law Apply in Israel and Gaza?' (*HRW*, 27 October 2023) <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza> accessed 26 June 2025; Nema Milaninia, 'From War to Control: How the Recent Iran-Israel Conflict Risks Deepening the Islamic Republic's Repression' (*Just Security*, 26 June 2025) <https://www.justsecurity.org/115533/iran-israel-conflict-deepening-repression/> accessed 26 June 2025.

[83] Nicholas Tsagourias, 'Assessing the Legality of Israel's Action Against Iran Under International Law' (*Lieber Institute*, 20 June 2025) <https://lieber.westpoint.edu/assessing-legality-israels-action-iran-international-law/> accessed 26 June 2025.

[84] Marten Zwanenburg, 'Select IHL Issues Arising from the Israel-Iran Conflict' (*Lieber*, 19 June 2025) <https://lieber.westpoint.edu/select-ihl-issues-arising-israel-iran-conflict/> accessed 26 June 2025.

[85] Clive Baldwin, 'How Does International Humanitarian Law Apply in Israel and Gaza?' (*HRW*, 27 October 2023) <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza> accessed 26 June 2025.

[86] Clive Baldwin, 'How Does International Humanitarian Law Apply in Israel and Gaza?' (*HRW*, 27 October 2023) <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza> accessed 26 June 2025.

[87] Brett McGurk, 'Iran-Israel conflict: Is that it? Probably not' (*CNN*, 24 June 2025) <https://edition.cnn.com/2025/06/24/politics/iran-israel-conflict-ceasefire-analysis> accessed 26 June 2025.

The Iran-Israel conflict demonstrates the strategic deployment of anticipatory self-defence to justify uses of force that raise serious legal and ethical questions. By adopting the notion of contextual imminence, Israel bypassed the rigorous standards set by the Caroline doctrine, facilitating military operations with significant civilian costs. Meanwhile, the Gaza subtext reveals how ASD can serve to mask IHL violations under the pretext of national security. As the UN has warned, the normalization of anticipatory strikes risks eroding the jus ad bellum framework and legitimizing a state of permanent warfare.

5. Consequences for International Humanitarian Law and Public International Law

The normalisation of anticipatory self-defence, and its threshold being subtly eroded to allow for pre-emptive self-defence, has caused egregious consequences for the public international law and international humanitarian law. When States use anticipatory self-defence without meeting the strict standards of imminence, need, and proportionality, they do more than just stretch legal interpretation; they actively contribute to the undermining of fundamental norms within international humanitarian law and public international law. This section investigates the systemic consequences of the normalisation of anticipatory self-defence and the consequences of eroding its threshold to practice pre-emptive self-defence, ranging from the destabilisation of the jus ad bellum framework and the weakening of UN Charter prohibitions on use of force to the dilution of civilian protections under international humanitarian law and the proliferation of unilateral justifications for cross-border violence.

The law with regard to armed force is based on a 'dualist conception' of armed force, which differentiates between *jus ad bellum* and *jus in bello*. *Jus ad bellum*, which governs the legality of the use of force,[88] is enshrined in the UN Charter.[89] International humanitarian law, the law of armed conflict or *jus in bello*, is a set of rules that seeks to limit the humanitarian consequences of armed conflicts, by protecting persons who are not, or no longer taking a direct part in the hostilities and prohibiting or restricting means and methods of warfare that parties to a conflict may employ.[90] However, when anticipatory self-defence is abused or its threshold is arbitrarily elasticated to allow for pre-emptive self-defence, the distinction between these two complementary legal systems begin to blur, which could result in threatening and dismantling the coherence of the two systems. The UN Charter clearly provides that it is an armed attack that would allow for a State to use its inherent right to self-defence.[91] International humanitarian law begins to apply during

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[88] Rotem Giladi, 'The jus ad bellum/jus in bello distinction and the law of occupation' [2008] Israel Law Review 246, 248.

[89] Article 2(4) and 51 of the UN Charter.

[90] Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (1st edn, ICRC 2016) 17: 'The basic principles of IHL are the principle of necessity, principle of proportionality, distinction between civilians and combatants, prohibition to attack those *hors de combat*[90], and prohibition to inflict unnecessary suffering'; Marco Sassòli, Antoine A. Bouvier and Anne Quintin, *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* (3rd edn, ICRC 2011) 1.

[91] Article 51 of the UN Charter.

times of armed conflict, regardless of whether the said conflict is lawful or not,[92] which ensures humanitarian protections even in illegal wars. However, a serious issue arises when anticipatory self-defence or pre-emptive self-defence is exercised, as according to the foregoing analysis, both these types of self-defence require its invocation before an actual force is used against the State in question. Therefore, such pre-emptive strikes would happen before an armed conflict is formally recognised, thereby complicating the possible application of international humanitarian law. Due to this legal ambiguity arising as a response to an 'unclear' armed attack or States refusing to label certain acts of force as an 'armed conflict', they would be able to circumvent international humanitarian law obligations that they would otherwise be liable to uphold. An example for such a situation was the incident of 'Stuxnet'. Stuxnet was a highly advanced cyber weapon and one of the earliest known instances of cyber warfare, specifically designed to target a nuclear facility in Iran, which sabotaged the operation of gas centrifuges used for uranium enrichment, thus delaying Iran's nuclear programme by several years.[93] It is alleged that this was a joint effort between the US and Israeli intelligence.[94] Such targeted attacks, through cyber means or otherwise, exploit the uncertainty with regard to the applicability of international humanitarian law. Thus, the abuse of anticipatory self-defence dangerously collapses the firewall between initiating conflict and regulating its conduct, eroding both *jus ad bellum* and *jus in bello*.[95]

Another issue that arises consequent to anticipatory self-defence and its threshold erosion is anticipatory self-defence justifications, especially when invoked without hard proof of imminent attack, directly undermine Article 2(4) of the UN Charter and dilute the collective security framework intended to prevent unilateral aggression. Anticipatory self-defence is a jurisprudential fault line that jeopardises the UN Charter's fundamental prohibition on force. Article 2(4) of the Charter forbids 'the threat or use of force against the territorial integrity or political independence of any State', with exceptions for legal self-defence as defined in Article 51 or when sanctioned by the Security Council.[96] This framework offers a well-defined two-tiered system: self-defence is strictly limited, while collective measures must emanate from Security Council decisions. Brownlie appropriately summarised Article 2(4) as a 'rigid prohibition' that reflects the Charter's purpose to eliminate unilateral armed adventurism.[97] However, as analysed above, since the early 2000s, a number of State acts have attempted to broaden the definition of justifiable self-defence beyond its traditional limits. The United States' 2002 National Security Strategy represented a watershed moment, expressly backing pre-emptive action against states or non-state entities considered to possess or produce weapons of mass destruction, regardless

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[92] *Nuclear Weapons Advisory Opinion* [1996] ICJ Rep 226.

[93] John Richardson, 'Stuxnet as Cyberwarfare: Applying the Law of War to the Virtual Battlefield' [2011] John Marshall Journal of Computer and Information Law 1, 3.

[94] Mariusz Antoni Kamiński, 'Operation "Olympic Games." Cyber-sabotage as a tool of American intelligence aimed at counteracting the development of Iran's nuclear programme' [2020] Security and Defence Quaterly 64, 66.

[95] Rotem Giladi, 'The jus ad bellum/jus in bello distinction and the law of occupation' [2008] Israel Law Review 246, 248.

[96] Articles 2(4), 51 and Chapter VII of the UN Charter.

[97] James Crawford, *Brownlie's Principles of Public International Law* (9th edn, Oxford University Press 2019).

of urgency.[98] The concept argued that intent and capability, rather than a specific threat, may justify the use of force.[99] It is worth mentioning that the 2017 National Security Strategy reinforced this perspective, establishing preventive military action as reasonable state behaviour in a world of diffuse threats.[100]

It is apparent that this reinterpretation seeks to shift anticipatory self-defence from the narrow exception in Caroline to a broader notion of unilateral pre-emption. Legal academics such as Bethlehem have attempted to support this conceptual shift by arguing that customary international law allows a broader definition of imminence that incorporates intent and competence.[101] However, this viewpoint is divided and not backed by judicial authorities, particularly the International Court of Justice.[102] Indeed, it contradicts the Charter's explicit text, which states that self-defence is only permitted 'if an armed attack occurs', not in the face of possible threats.[103]

The practical significance of this shift was most evident in the US invasion of Iraq in 2003, which was undertaken on the publicly declared premise that Saddam Hussein's preservation of claimed weapons of mass destruction posed a significant and impending threat, which subsequently through a study by the Iraq Survey Group revealed the lack of such weapons as examined above. The campaign was never submitted to the Security Council for approval, therefore bypassing the Charter's collective security mechanism and establishing a precedent for unilateral force based on speculative security rationales.[104] The 2004 UN Secretary-General's High-Level Panel condemned this logic, noting that unilateral action born of unfounded anticipation weakens the legitimacy of the Charter, even when motivated by good faith.[105] It was strongly emphasised that:

> in a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all. We do not favour the rewriting or reinterpretation of Article 51.[106]

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[98] 'The National Security Strategy of the United States of America (September 2002)' < https://2009-2017.state.gov/documents/organization/63562.pdf > accessed 27 June 2025.

[99] Ibid.

[100] John M Weaver, 'The 2017 National Security Strategy of the United States' [2018] Journal of Strategic Security 62.

[101] Daniel Bethlehem, 'Self-defense against an imminent or actual armed attack by nonstate actors' [2012] The American Journal of International Law 769.

[102] Ibid.

[103] Article 51 of the UN Charter.

[104] Tasneem Meenai, 'From central to peripheral: The United Nations and the recent Iraq crisis' [2003] Strategic Analysis 577, 599.

[105] United Nations, *A more secure world: Our shared responsibility (Report of the High-level Panel on Threats, Challenges and Change)* (United Nations 2004) 63.

[106] United Nations, *A more secure world: Our shared responsibility (Report of the High-level Panel on Threats, Challenges and Change)* (United Nations 2004) 63.

Parallel developments in Russia's operations in Georgia and Ukraine demonstrate how States are creatively recycling anticipatory self-defence narratives. In the Georgian case, Russia used the defence of its ethnic minority and purported threats to Russian citizens to justify military intervention and long-term territorial domination. Most independent analysts and Western countries criticised this as a fabricated rationale for aggression.[107] Similarly, in Ukraine, Moscow used pre-emptive arguments centred on the safety of Russian speakers and supposed extremist threats. Again, these accusations were found legally insufficient because Russian forces were already present on Ukraine's borders prior to any actual conflict.[108] Each case demonstrates a pattern of picking pretextual imminence arguments that are anchored in geopolitical design rather than actuality. Scholars have responded with urgency. Gray cautions that transforming imminence and necessity into an open-ended licence to use force severely undermines legal limitations on governmental action.[109] O'Connell referred to this jurisprudence shift as a dangerous departure from the Charter system, undercutting the accepted limits on state aggression.[110] Cassese also remarked that such legal suppleness threatens to deprive the Security Council of its authority, hollowing out the global governance framework that the Charter envisaged.[111] Proponents of anticipatory self-defence expansion believe that states cannot be left susceptible to high-impact threats, such as weapons of mass destruction proliferation or catastrophic terrorism, by adhering rigidly to old frameworks. Bethlehem, among others, maintains that the Charter does not eliminate the intrinsic right to self-preservation in the face of potential future harms.[112] However, this rationale entails major hazards. Imminence becomes fungible, and security assessments are formed by confidential intelligence and national risk prioritisation, granting states broad authority to act without legal accountability. The limits of the Charter are then transformed into moral gestures, which are only accepted when politically convenient.

The detrimental consequences of this conceptual shift go beyond State-to-State relations to the larger fabric of public international law and international humanitarian law. Anticipatory self-defence undermines *jus ad bellum*, the legal filter that determines whether force is permissible, by changing the primary normative endpoint from 'armed attack' to State threat assessments. However, if force becomes prevalent under anticipatory self-defence, the jurisprudential boundary between *jus ad bellum* and j*us in bello* begins to blur: conflicts may be begun under the guise of self-defence, but in the absence of a factual foundation or legal clarity, violations of international humanitarian law may occur unchecked. Conversely, the pretext of immediate defence may maintain military actions uncontrolled by international humanitarian law principles

[107] Anteneh Gezahegne, 'The Posture of Anticipatory Self-Defense under International Law Underpinning Russo-Ukraine War' [2023] Wallaga University Journal of Law 64.

[108] R Siame, 'Pre-emptive Use of Force in Self-Defence Under International Law' [2025] East African Journal of Law and Ethics 1.

[109] Christine Gray, International Law and the Use of Force (4th edn, Oxford University Press 2018).

[110] Mary Ellen O'Connell, 'Dangerous Departures' [2013] The American Journal of International Law 380.

[111] Antonio Cassese, Paola Gaeta, Jorge E Viñuales, and Salvatore Zappalà, *Cassese's International Law* (3rd edn, Oxford University Press 2020) 349-366.

[112] Daniel Bethlehem, 'Self-defense against an imminent or actual armed attack by nonstate actors' [2012] The American Journal of International Law 769.

entirely, as States deny the existence of an armed war to avoid accountability. The end effect is an enforcement free fall that is not only morally disturbing, but also legally destabilising. It is quite evident from the foregoing analysis that the normative erosion of the Charter does not result in a cleaner or safer society. Instead, it encourages an atmosphere in which force, rather than law, decides legitimacy, which is a step back from the post-1945 concept of a regulated international order. Unless political and legal actors re-establish rigorous evidentiary standards, reassert the priority of legitimate Security Council review, and provide international tribunals more ability to assess anticipatory self-defence claims, the Charter's guarantee may be hollow, a relic of idealism devoured by geopolitical instincts.

6. Conclusion

The foregoing analysis of anticipatory self-defence reveals a gradual but hazardous unravelling of the legal framework governing the use of force in international law. Anticipatory self-defence was once a small exemption based on the Caroline formula's rigid conditions of immediacy, need, and proportionality, but powerful nations have since extended it beyond recognition. The loss of these fundamental boundaries has changed what was intended to be a reactive and exceptional legal theory into a versatile strategic tool, allowing for pre-emptive military action justified by speculative information or ideological threat framing.

This conceptual shift directly contradicts Article 2(4) of the UN Charter and the larger *jus ad bellum* regime. Anticipatory self-defence circumvents the Security Council by permitting states to unilaterally designate threats and respond in the absence of an actual armed attack, weakening the collective security system's normative power. As discussed, this shift not only allows for impunity, as witnessed in Iran, Iraq, Georgia, and Ukraine, but also destabilises the already precarious boundary between justifiable war and unlawful aggression.

If anticipatory self-defence continues to evolve without legal constraints, the boundary between aggression and defence will disintegrate, rendering the core standards of both public international law and international humanitarian law ineffective. To restore international law's legitimacy, a recommitment to clear thresholds, evidence-based reasoning, and multilateral review is required. Otherwise, the UN Charter's vision of peace through law will be irreparably supplanted by a doctrine of pre-emptive force.

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