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The Paradox of Protection Israel's Right to Self-Defence and its Erosion through Conduct

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ABSTRACT

This paper argues that Israel has a right to self-defence under international law, but contends that its conduct in Gaza and the West Bank often compromises that very entitlement. To make this case, it first unpacks the classic elements of lawful self-defence material, temporal and personal showing how each is meant to constrain a state's use of force. It then turns to the twin principles of necessity and proportionality, assessing whether Israel's military responses to rocket fire and low-intensity West Bank incidents genuinely meet these strict criteria. Building on that foundation, the paper explores key International Humanitarian Law safeguards distinction between combatants and civilians, proportionality in attack, and the duty to take all feasible precautions. Drawing on ICRC analyses, ICJ jurisprudence and humanitarian reports, it highlights instances where broad bombardments, pre-emptive raids and punitive demolitions appear to stray beyond legal bounds. Throughout, the discussion balances Israel's legitimate security concerns with the human cost of its operations, asking whether tactics that inflict civilian harm and blur combatant-civilian lines ultimately erode the very legal framework that justifies self-defence. In doing so, this paper offers a nuanced, human-centred critique of how Israel's actions both invoke and undermine its right to protect itself.

Keywords: Self-Defence (Article 51 UN Charter), International Humanitarian Law (IHL), Proportionality and Necessity, Occupied Palestinian Territory (OPT), Use of Force in Armed Conflict.

I. USE OF FORCE

Israel's entitlement to self-defence is firmly rooted in Article 51 of the UN Charter, which affirms that "nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs" against a UN Member State.² Yet this right is neither unlimited nor unconditional: international law attaches three core elements material, temporal and personal that together define when and against whom force may lawfully be

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² U.N. Charter art. 51, June 26, 1945, 1 U.N.T.S. XVI.

used.³ Scrutinising Israel's operations in the Gaza Strip and the West Bank through each of these lenses reveals persistent legal and moral tensions. The three elements of self-defence are discussed next to illustrate how the actions of Israel in Gaza and West bank under use of force fail to meet them.

Material Element

The material element examines whether an armed attack has occurred or is imminent. In the landmark *Nicaragua v United States* case, the International Court of Justice held that large-scale acts by irregular armed groups provided they reach the requisite gravity can qualify as armed attacks akin to those by states.⁴ In numerous rounds of hostilities, including Operation Protective Edge in 2014 and more recent flare-ups, Hamas and other armed factions in Gaza have unleashed rocket barrages into southern Israel, targeting civilian communities and critical infrastructure.⁵ Such indiscriminate fire plainly meets the threshold of an armed attack and thus triggers Israel's right to respond militarily. Nevertheless, the right of self-defence does not permit unrestricted force. The response must be necessary and proportionate to the threat faced, rather than serving broader objectives such as deterrence or territorial control.

Israel's right to self-defence hinges on the material element of an "armed attack" – a threshold only met by force whose scale and effects mirror those of interstate aggression.⁶ In *Nicaragua*, the ICJ distinguished between "most grave" uses of force (armed attacks) and "mere frontier incidents," insisting only the former trigger Article 51.⁷ By analogy, cumulative rocket barrages from Gaza clearly qualify as armed attacks, legitimising Israel's defensive response.⁸ However, many operations in the West Bank target low-intensity incidents that lack both sufficient gravity and State attribution, and thus fall below the material threshold for lawful self-defence.⁹ Consequently, while Israel may lawfully defend against large-scale attacks in Gaza, its invocation of self-defence for routine West Bank raids often fails the material element test.

Temporal Element

³ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 176 (June 27).

⁴ Id. At ¶ 195.

⁵ Human Rights Council, Rep. Of the Detailed Findings of the Comm'n of Inquiry on the 2014 Gaza Conflict, ¶¶ 19–21, U.N. Doc. A/HRC/29/CRP.4 (June 22, 2015).

⁶ Abdulqawi A. Yusuf, The Notion of Armed Attack in the Nicaragua Judgment and Its Influence on Subsequent Case Law, 25 LEIDEN J. INT'L L. 461, 469 (2012).

⁷ Id. At 463, ¶ 191.

⁸ Id. At 463, ¶ 195.

⁹ Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶ 146 (Dec. 19).

Unlike a narrow reading of Article 51, which limits self-defence to a response after an armed attack, customary international law recognises the right to anticipatory self-defence. The Caroline doctrine sets the benchmark: the threat must be “instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”¹⁰ Israel often invokes this anticipatory framework to justify pre-emptive strikes against what it deems imminent attacks from Hamas or other militant groups.¹¹ While anticipatory self-defence is not prohibited per se, its use must be based on concrete and credible evidence of an impending attack. However, Israel’s extended operations, including those that persist after the initial threat has passed, blur the line between pre-emptive and preventive force.¹² For example, aerial bombings of civilian infrastructure days after rocket launches ceased raise serious concerns about whether such action meets the legal threshold of necessity and immediacy.

Israel’s actions in Gaza and the West Bank often fail to satisfy the temporal element of the right to self-defence, which requires that any force used must respond to an imminent threat and occur within a limited time frame after the threat arises. Continued military operations long after hostilities have subsided undermine claims of immediacy. For instance, strikes on civilian infrastructure or targeted killings days or even weeks after the last rocket fire from Gaza cannot reasonably be framed as responses to imminent attacks. Instead, such actions appear retaliatory or preventive, rather than defensive. The Caroline standard and prevailing interpretations of customary international law demand that self-defence be instantaneous and necessary, not part of an extended campaign. In the West Bank, where many operations occur absent any direct, imminent armed attack, the justification under self-defence becomes even more tenuous, suggesting a breach of the temporal requirement and raising questions under international humanitarian and human rights law.¹³

Personal Element

Finally, the personal element confines self-defence to actions against the actor directly responsible for the attack. The ICJ in *Nicaragua* drew a clear line between legitimate

¹⁰ Letter from Mr. Webster to Mr. Fox (Apr. 24, 1841), reprinted in 2 MOORE, DIGEST OF INTERNATIONAL LAW 412 (1906).

¹¹ Elizabeth Wilmschurst, Principles of International Law on the Use of Force by States in Self-Defence (Chatham House, Oct. 2005), <https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/ilp101005.pdf> (accessed May 5, 2025).

¹² CHRISTIAN HENDERSON, THE USE OF FORCE AND INTERNATIONAL LAW 111–13 (Cambridge Univ. Press 2018).

¹³ The Caroline Case, 29 Brit. & For. St. Papers 1137 (1837); see also NOAM LUBELL, EXTRATERRITORIAL USE OF FORCE AGAINST NON-STATE ACTORS 41–43 (Oxford Univ. Press 2010).

self-defence and unlawful reprisals or collective punishment of innocent populations.¹⁴ In Gaza, Israel's stated targets are military assets and rocket launching sites, but numerous reports document civilian casualties often in areas where combatants are intermingled with the civilian population.¹⁵ Worse still, in the occupied West Bank, IDF operations have on occasion targeted protesters, bystanders and political activists who bear no clear link to armed groups. Such broad application of force contravenes the personal element by sweeping in individuals and communities unconnected to the initial aggression. Moreover, the ICJ's 2004 Advisory Opinion on the Separation Wall explicitly held that Israel cannot invoke Article 51 against populations under its effective control in occupied territory, since occupation imposes policing duties rather than a licence for military reprisals.¹⁶

Israel's conduct in Gaza and the West Bank fails the personal element of lawful self-defence, which limits force to those directly responsible for an armed attack. Yet countless civilians children in schools, patients in hospitals, families sheltering in their homes have borne the brunt of strikes targeting areas with alleged militant presence. In Gaza, where dense urban environments make separation of combatants and civilians near-impossible, disproportionate harm to uninvolved persons violates this principle. In the West Bank, raids have resulted in the deaths of unarmed protesters and political dissidents far removed from any direct threat. These actions amount not to surgical self-defence but to collective punishment, in breach of international law. The ICJ has been unequivocal: a state cannot invoke Article 51 to justify force against a population it occupies.¹⁷ The legal boundary is clear but too often, it is civilians who pay the price when it is ignored. The principle of necessity and proportionality are discussed next to argue that use of force by Israel doesn't comply with them.

Necessity

The principle of necessity requires that force be used only as a last resort, when peaceful means are no longer available, and only to avert or respond to an imminent or ongoing armed attack.¹⁸ Israel argues that it has a right to defend itself against attacks by non-state actors such as Hamas in Gaza and other militant groups in the West Bank. These groups have launched rockets, carried out ambushes, and built tunnels for potential infiltration into Israeli territory.¹⁹

¹⁴ Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.), 1986 I.C.J. 14, ¶ 113.

¹⁵ Comm'n of Inquiry on the 2014 Gaza Conflict, *supra* note 5, ¶¶ 348–52.

¹⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 139 (July 9).

¹⁷ *Id.* ¶¶ 138–39; Nicaragua, 1986 I.C.J. 14, ¶¶ 195–200; Elizabeth Wilmshurst (ed.), *INTERNATIONAL LAW AND THE CLASSIFICATION OF CONFLICTS* 63–65 (Oxford Univ. Press 2012).

¹⁸ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 41 (July 8).

¹⁹ Human Rights Council, Rep. of the Indep. Comm'n of Inquiry on the 2014 Gaza Conflict, ¶¶ 26–33, U.N. Doc. A/HRC/29/52 (June 22, 2015).

These actions, taken cumulatively, could arguably constitute an armed attack as defined by the International Court of Justice (ICJ) in *Nicaragua v United States*, provided they reach a certain scale and intensity.²⁰ Yet, invoking self-defence requires more than pointing to a hostile act. It also requires a clear and convincing demonstration that force was necessary that no viable alternative existed to prevent the threat.

This is where the Israeli position becomes contentious. The necessity test is not met merely by the presence of a threat; rather, it is satisfied only if military action is the only feasible way to neutralise that threat.²¹ In the case of Gaza, critics argue that Israel's airstrikes and military incursions have, at times, gone beyond what is necessary to halt rocket fire.²² There have been documented instances where ceasefire options or negotiation channels were available but not fully exhausted.²³ This raises the question of whether force was truly the last resort or whether it was used pre-emptively without exhausting less destructive means.

In the West Bank, the case is even more complex. Israel continues to exercise effective control over parts of the territory, and its incursions are often framed as counter-terrorism measures rather than acts of war.²⁴ However, international law holds that a state cannot invoke self-defence against a population under its own occupation.²⁵ If Israel is considered an occupying power in the West Bank a status supported by UN resolutions and ICJ advisory opinions then its use of force cannot be justified under Article 51.²⁶ In such cases, the necessity standard shifts toward law enforcement criteria, which demand a more restrained and proportionate response. Moreover, necessity is closely tied to the immediacy and specificity of the threat. The ICJ and legal scholars have argued that for self-defence to be necessary, the threat must be clearly identifiable and not just a generalised risk.²⁷ Indiscriminate strikes or broad-based operations that target infrastructure or civilian areas do not satisfy this criterion. Reports from the UN and NGOs have noted that Israeli operations have, on multiple occasions, affected hospitals, schools, and residential buildings with high

²⁰ *Nicaragua*, 1986 I.C.J. 14, ¶ 195.

²¹ YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 233 (6th ed. Cambridge Univ. Press 2017).

²² Amnesty Int'l, *Israel/Gaza: Apparent War Crimes During May 2021 Conflict Must Be Investigated* (May 27, 2021), <https://www.amnesty.org/en/latest/news/2021/05/israelgaza-apparent-war-crimes-may-2021/> (accessed May 5, 2025).

²³ B'Tselem, *Ceasefires Violated: Civilian Harm in Israel's Gaza Campaigns* (2022), <https://www.btselem.org> (accessed May 5, 2025).

²⁴ U.N. Off. For the Coordination of Humanitarian Affairs [OCHA], *West Bank Protection of Civilians Report* (Apr. 2024), <https://www.ochaopt.org> (accessed May 5, 2025).

²⁵ Wall Advisory Opinion, *supra* note 16, ¶ 139.

²⁶ *Id.*

²⁷ CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 150–53 (4th ed. Oxford Univ. Press 2018).

civilian casualties.²⁸ In the absence of clear evidence that such targets posed immediate danger, the claim of necessity becomes tenuous. To be clear, no state is expected to remain passive in the face of real and ongoing violence. However, the legal framework demands rigorous justification for when and how force is used. In the case of Israel, while the right to respond to threats is recognised, the extent to which its actions in Gaza and the West Bank adhere to the principle of necessity remains highly contested. The repeated failure to show that force was the only remaining option, especially when alternatives existed or when the threat was not imminent, undermines the legal validity of many of Israel's military actions. Necessity requires exhausting peaceful alternatives and a strict assessment against non-state actors.²⁹ While Hamas' attacks justify defensive measures, prolonged military operations and settlement expansions in the West Bank where Palestinian authorities lack control may fail the necessity test if non-forcible alternatives (e.g., diplomatic pressure) remain unutilised.³⁰ Anticipatory strikes demand higher certainty of imminent threats, which Israel's broad security rationale often lacks.³¹

The necessity principle functions as a safeguard against excessive or pre-emptive use of force. In the context of Israel's operations in Gaza and the West Bank, the requirement that force be used only when absolutely unavoidable appears to have been breached on several occasions. While Israel undoubtedly faces real security threats, the manner and scale of its military responses reflects that the principle of necessity has not been properly met under international law.

Proportionality

Proportionality under *jus ad bellum* necessitates balancing defensive force against the threat's severity.³² Israel's extensive airstrikes in Gaza, causing significant civilian casualties, risk violating proportionality if measured against Hamas' rocket attacks.³³ The conception weighing harm against objectives complicates this: preventing future attacks may justify force, but repeated large-scale operations suggest excess.³⁴ In the West Bank, disproportionate force against protests or alleged militants undermines claims of strict adherence to proportionality principles.³⁵

²⁸ Comm'n of Inquiry on the 2014 Gaza Conflict, *supra* note 5, ¶¶ 221–25.

²⁹ Rep. Of the Indep. Comm'n of Inquiry on the 2014 Gaza Conflict, *supra* note 19, ¶ 419.

³⁰ *Id.* ¶ 370.

³¹ *Id.*

³² *Id.* ¶ 37.

³³ *Id.* ¶ 294.

³⁴ *Id.*

³⁵ *Id.* ¶ 505.

Israel has long maintained that its military operations in Gaza and the West Bank are acts of lawful self-defence, aimed at neutralising the threat posed by groups such as Hamas and Islamic Jihad.³⁶ In recent years, these groups have fired rockets into Israeli territory, often indiscriminately, threatening civilian lives and infrastructure.³⁷ Undoubtedly, such acts constitute violations of international law and can legally justify a response under Article 51. However, the crucial question is whether Israel's responses have been proportionate to the threat faced.

Proportionality does not demand symmetry states are not limited to responding with the same weapons or exact level of force.³⁸ However, the response must remain within the limits of what is necessary to repel the attack and prevent further harm. The use of overwhelming force, especially where civilian harm is foreseeable, may violate this principle.³⁹ Reports from UN bodies and human rights organisations indicate that during recent operations, Israeli strikes have resulted in the deaths of hundreds of civilians, including women and children, and the destruction of homes, schools, and healthcare facilities.⁴⁰

For example, during the May 2021 escalation, Israel launched strikes in densely populated areas of Gaza, leading to substantial civilian casualties and damage to non-military infrastructure.⁴¹ Israel justified these strikes on the basis that militants were using civilians as human shields. While the use of human shields by non-state actors is itself unlawful, this does not absolve a state from its obligation to minimise civilian harm.⁴² As the ICJ has consistently held, the legality of a military response depends not only on the presence of a threat but also on whether the response was proportionate and discriminated between military and civilian targets.⁴³

In the West Bank, Israeli military operations are presented less as self-defence and more as security measures. Nevertheless, even under this framing, the use of force must comply with the proportionality requirement. Israeli raids, curfews, and demolitions of homes belonging to suspected militants have been criticised for being excessive and often impacting individuals

³⁶ Israel Ministry of Foreign Affairs, Israel's Right to Self-Defense (2021), <https://mfa.gov.il> (accessed May 5, 2025).

³⁷ Rep. Of the Indep. Comm'n of Inquiry on the 2014 Gaza Conflict, *supra* note 19, ¶¶ 40–45.

³⁸ Dinstein, *supra* note 21, at 234

³⁹ Gray, *supra* note 27, at 152–54.

⁴⁰ Amnesty Int'l, Gaza: Unlawful Israeli Airstrikes (2021), <https://amnesty.org> (accessed May 5, 2025).

⁴¹ Human Rights Watch, Gaza: Apparent War Crimes During May Fighting (2021), <https://hrw.org> (accessed May 5, 2025).

⁴² Int'l Comm. Of the Red Cross (ICRC), Interpretive Guidance on the Notion of Direct Participation in Hostilities 75–76 (2009).

⁴³ Nicaragua, 1986 I.C.J. 14, ¶ 237.

unconnected to any violence.⁴⁴ The destruction of homes as a punitive measure, for instance, raises serious legal and ethical concerns and may be seen as collective punishment, contrary to international humanitarian law.⁴⁵

Furthermore, proportionality must be assessed in terms of both the immediate military advantage anticipated and the collateral damage likely to result. In several cases, analysts have questioned whether the military advantage gained by eliminating a single militant justifies the loss of dozens of civilian lives and the destruction of entire neighbourhoods.⁴⁶ Israel often defends its actions by citing the complexity of urban warfare and the difficulty in targeting non-state actors embedded within civilian populations. However, complexity cannot be a blanket justification for breaching proportionality.

In conclusion, while Israel undoubtedly faces real security threats and retains the right to self-defence, the manner and scale of its military operations in Gaza and the West Bank raise fails to comply with the principle of proportionality. A lawful response must not only be necessary but also measured. Excessive civilian casualties and widespread destruction, particularly where less harmful means may have been available, suggest that proportionality has not always been observed. This paper next discusses the issues in International Humanitarian Law mainly principle of distinction and proportionality to contend that Israel's constant violation of it compromises its legality to claim right to defend itself.

II. ISSUES IN INTERNATIONAL HUMANITARIAN LAW

Israel's constant violations of international humanitarian law in Gaza and West Bank compromise its legality to claim self-defence under same IHL which it has been violating continuously.⁴⁷

Distinction

Israel's actions in Gaza and the West Bank starkly test the principle of distinction the obligation under Article 48 of Additional Protocol I to "distinguish between the civilian population and combatants" and target only military objectives.⁴⁸ Attacks on verified rocket

⁴⁴ B'Tselem, Israeli Security Forces in the West Bank (2023), <https://btselem.org> (accessed May 5, 2025).

⁴⁵ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 33, Aug. 12, 1949, 75 U.N.T.S. 287.

⁴⁶ U.N. OCHA, Occupied Palestinian Territory: Protection of Civilians Report (2024), <https://ochaopt.org> (accessed May 5, 2025).

⁴⁷ Ralph Wilde, Israel's War in Gaza is Not a Valid Act of Self-Defence in International Law, OPINIO JURIS (Nov. 9, 2023), <https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/> (accessed May 6, 2025).

⁴⁸ Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 48, June 8, 1977, 1125 U.N.T.S. 3.

launchers or tunnel entrances in Gaza may comply, but the demolition of entire apartment blocks and punitive home destructions in Gaza and the West Bank often lack the requisite verification of military use.⁴⁹ Incidents where schools, mosques, or ambulances have been struck further illustrate a failure to uphold the civilian safeguard. Although Israel asserts the use of warnings and precision munitions, repeated civilian casualties suggest persistent lapses in distinguishing lawful targets from protected persons and objects, undermining the legality of many operations. Israel's operations in Gaza and the West Bank must respect the principle of distinction, which protects civilians from attack "unless and for such time as they take a direct part in hostilities."⁵⁰ Article 50 (1) of Additional Protocol I reinforces this by presuming any doubtful person to be a civilian.⁵¹ Strikes on confirmed Hamas rocket launchers in Gaza arguably comply, since their destruction "is likely to adversely affect the military operations" of armed groups.⁵² Yet the demolition of whole residential blocks without clear proof of hostile use breaches civilian immunity and blurs the civilian-combatant divide. Likewise, punitive home demolitions in the West Bank target dwellings of persons lacking continuous combat functions, wrongly treating civilian shelters as military objectives.⁵³ These practices reveal systemic failures in Israel's targeting procedures and undermine the legality of its self-defence operations.

Israel's military actions in Gaza and the West Bank must adhere to the principle of distinction, which obliges parties to differentiate between combatants and civilians, protecting the latter from direct attack unless they participate in hostilities.⁵⁴ In non-international conflicts, organised armed groups like Hamas may qualify as "fighters" under IHL, making members targetable during active membership if they assume continuous combat roles.⁵⁵ However, Israel's strikes in densely populated Gaza often fail to distinguish adequately between Hamas operatives and civilians. For example, repeated bombings of residential areas justified as targeting Hamas tunnels frequently lack verifiable evidence that all casualties were fighters or directly participating in hostilities, violating the duty to ensure attacks are "strictly limited to military objectives".⁵⁶

Kleffner emphasizes that even when fighters embed within civilian areas, IHL mandates "all

⁴⁹ Protocol I, *supra* note 48, art. 52(2).

⁵⁰ Michael Meyer & Charles Garraway, *Clearing the Fog of War? The ICRC's Interpretive Guidance on Direct Participation in Hostilities*, 91 INT'L REV. RED CROSS 219, 221 (2009).

⁵¹ *Id.* At 225.

⁵² *Id.* At 232.

⁵³ *Id.* At 238.

⁵⁴ Jann K. Kleffner, *From "Belligerents" to "Fighters" and Civilians Directly Participating in Hostilities*, 54 NETH. INT'L L. REV. 315, 321 (2007).

⁵⁵ *Id.* At 334.

⁵⁶ *Id.* At 345.

feasible precautions” to verify targets and minimise harm.⁵⁷ Yet, Israel’s use of wide-area explosive weapons in Gaza City’s urban core, where Hamas’ presence is diffuse, suggests systemic disregard for distinction. Similarly, in the West Bank, labeling Palestinian protesters as “militants” without proof of direct participation risks unlawful targeting of civilians.⁵⁸ While Israel has a right to self-defence, its operational tactics often conflate permissible military action with indiscriminate harm to civilians, undermining the principle of distinction.⁵⁹

Israel’s conduct under its asserted right of self-defence must conform to IHL’s principle of distinction, which obliges belligerents to direct operations solely against military objectives and to protect civilians and civilian objects from attack.⁶⁰ The UNHRC Commission stressed that every strike requires rigorous target verification to exclude civilian sites.⁶¹ In the occupied West Bank, the Commission also documented punitive demolitions of civilian dwellings belonging to individuals not engaged in hostilities, further treating protected objects as combat targets.⁶² Such practices seriously undermine Israel’s legal justification for self-defence, since IHL permits force only when directed at bona fide military objectives and executed with due care to spare civilians.⁶³

Proportionality and precaution in attack

Israel’s invocation of self-defence under Article 51 of the UN Charter is contingent on respecting the principle of proportionality, which in armed conflict permits incidental civilian harm only if it is not excessive in relation to the concrete and direct military advantage anticipated.⁶⁴ Incidental harm must be both causally linked to the attack and reasonably foreseeable by the commander at the time the strike is planned.⁶⁵ In Gaza, large-scale airstrikes have destroyed civilian infrastructure homes, schools and hospitals often in the absence of clear evidence that these objects were directly contributing to hostilities, suggesting that foreseeable civilian loss was not adequately weighed.⁶⁶ Conversely, precision targeting of verified rocket launchers and tunnel shafts in Gaza arguably achieves a concrete

⁵⁷ *Id.*

⁵⁸ B’Tselem, *Unlawful Killings in the West Bank* (2023), at 7–9.

⁵⁹ Kleffner, *supra* note 54, at 336.

⁶⁰ Comm’n of Inquiry on the 2014 Gaza Conflict, *supra* note 5, ¶ 420.

⁶¹ *Id.* ¶ 447.

⁶² *Id.* ¶ 526.

⁶³ *Id.* ¶ 545.

⁶⁴ Protocol I, *supra* note 48, art. 51(5)(b) (“An attack... which may be expected to cause incidental loss of civilian life... which would be excessive in relation to the concrete and direct military advantage anticipated.”).

⁶⁵ ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 42, at VII.

⁶⁶ Comm’n of Inquiry on the 2014 Gaza Conflict, *supra* note 5, ¶ 221.

military advantage neutralising imminent threats while minimising collateral damage.⁶⁷ Yet, even these strikes have produced significant civilian casualties in densely populated areas, raising doubts about whether incidental harm exceeded the military gain.⁵

The excessiveness test requires a comparison: if expected incidental damage outweighs anticipated military advantage, the attack is indiscriminate.⁶ The destruction of entire apartment blocks days after rocket barrages ceased points to a *prima facie* imbalance and a failure to reassess proportionality once the immediate military advantage lapsed. Moreover, the principle of precautions in attack obliges commanders to verify targets, select means to minimise harm, give advance warning and cancel strikes when the proportionality equation is breached.⁶⁸ Reports of warnings issued seconds before bombardment, and of operations continuing despite evolving circumstances, indicate that feasible precautions were not always taken.

In the West Bank, raids and punitive demolitions against individual homes often lack any tangible military objective, let alone a proportional relationship to the minimal security value claimed treating civilian dwellings as if they were combatants' sanctuaries.⁶⁹ Such actions blur the line between lawful self-defence and collective punishment, undermining Israel's legal justification. Israel's invocation of self-defence under Article 51 of the UN Charter is undisputed; however, the rule of proportionality requires balancing expected incidental harm against concrete and direct military advantage anticipated.⁷⁰ Emanuela-Chiara Gillard underscores that incidental civilian deaths, injuries or damage to objects are only permissible if not excessive relative to anticipated gains.⁷¹ In Gaza and the West Bank, heavy ordnance in dense civilian environments predictably yields reverberating harm power outages, water crises and disease foreseeable yet insufficiently weighted.⁷² Gillard argues that feasible precautions and continuous information gathering are essential to adjust assessments and suspend attacks when proportionality lapses.⁷³ Thus, while self-defence remains, it must operate within the humanitarian constraints of proportionality, a standard that ongoing Israeli military operations have regrettably recently breached.⁷⁴ The ICRC's expert report stresses that, as hostilities unfold in densely populated urban areas such as Gaza and the West Bank, incidental harm

⁶⁷ Protocol I, *supra* note 48, art. 52(2).

⁶⁸ Protocol I, *supra* note 48, art. 57(2)(a)(i)–(iii), (b)–(c).

⁶⁹ Protocol I, *supra* note 48, art. 52(3).

⁷⁰ Emanuela-Chiara Gillard, *Proportionality in the Conduct of Hostilities: The Incidental Harm Side of the Assessment 2* (Chatham House, Dec. 2018).

⁷¹ *Id.* at 2.

⁷² *Id.* at 14.

⁷³ *Id.* at 13.

⁷⁴ *Id.* at 11.

must be scrupulously limited.⁷⁵ Experts note that reliance on heavy bombardment can produce cross-fire and infrastructural damage vastly disproportionate to any concrete military gain.⁷⁶ While counter-terrorism remains a legitimate aim, operations must be calibrated to avoid excessive civilian harm. Accordingly, certain recent actions in Gaza and the West Bank appear incompatible with proportionality's humanitarian imperative.⁷⁷

In sum, while Israel undoubtedly faces real security threats, its large-scale operations in Gaza and routine actions in the West Bank frequently fall short of the rigorous proportionality and precautionary standards demanded by international law, compromising the legality of these self-defence measures.

III. CONCLUSION

This paper has argued that Israel has a right to self-defence under international law, but that its conduct in Gaza and the West Bank often compromises that entitlement. By examining the material element, it showed that many West Bank incursions lack the gravity of an armed attack and therefore do not satisfy the threshold for lawful defence. By analysing the temporal element, it revealed how extended bombardments in Gaza stretch beyond moments of genuine threat, transforming pre-emptive strikes into sustained campaigns. By evaluating the personal element, it highlighted how operations frequently ensnare uninvolved civilians and breach the requirement to target only those responsible for hostile acts. By assessing necessity, it demonstrated that certain assaults go beyond what is strictly required to neutralise an imminent danger. By testing proportionality, it illustrated how civilian harm often outweighs any concrete military advantage. By considering distinction, it emphasised the crucial need to separate combatants from non-combatants. By reviewing precautionary duties, it underscored the legal obligation to minimise civilian suffering. This layered analysis reveals a consistent pattern in which the execution of self-defence measures undermines the very principles that justify them.

⁷⁵ ICRC, *The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law* 6 (Laurent Gisel ed., ICRC 2018).

⁷⁶ ICRC, *Id.* at, p 32 (noting that ground operations may cause greater incidental harm than precision strikes).

⁷⁷ ICRC, *Id.* at, p 9 (highlighting the balance between military necessity and humanity).