SEEING RED: 'OPERATION SINDOOR' AND THE PROPORTIONALITY OF A PRE-EMPTIVE RESPONSE

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"It is lawful to kill him who is preparing to kill"

- Hugo Grotius.

ABSTRACT

On 22 April 2025, a fatal terrorist incident in Pahalgam led India to initiate "Operation Sindoor," involving a calibrated set of forward-looking military strikes directed at terrorist installations located in Pakistan and Pakistan-occupied Kashmir. The operation reopened a long-standing and deeply contested question in public international law, namely the permissibility of anticipatory uses of force and the scope of self-defence when the threat originates from non-state actors based beyond a state's borders. Central to this controversy are the interlinked principles of necessity, proportionality, and self-defence which are foundational doctrines of international humanitarian law that restrict attacks where foreseeable civilian harm would outweigh the concrete military advantage expected. Embedded both in Additional Protocol I to the Geneva Conventions and in customary international law, the proportionality rule demands a constant balancing exercise between military imperatives and humanitarian considerations. This paper undertakes a critical evaluation of whether Operation Sindoor may be defended as a lawful instance of anticipatory self-defence, or whether it should instead be characterised as an impermissible use of force contrary to the United Nations Charter. In doing so, it analyses the relevance of the Caroline formulation on overwhelming necessity, alongside the general prohibition on force under Article 2(4) and the narrowly framed self-defence exception under Article 51 of the Charter. The study seeks to determine the degree to which India's actions conformed to, or departed from, established international legal standards. It further situates the discussion within broader debates on pre-emptive self-defence and the evolving trajectory of international law in response to transnational terrorism. Structurally, the paper proceeds in four parts. The introductory section sets out the factual context surrounding the Pahalgam attack and India's military response. The second section revisits the classical doctrines of jus ad bellum and jus in bello, highlighting the friction between Charter-based restraints and customary rules on self-defence. The third section applies the principles of

necessity, distinction, and proportionality to the conduct of Operation Sindoor, assessing India's assertion that civilian harm was minimised while security threats were neutralised. The paper concludes by advancing the case for targeted reforms to the UN Charter to ensure its continued relevance and effectiveness.

Keywords: Operation Sindoor; anticipatory self-defence; pre-emptive strikes; proportionality; international humanitarian law; UN Charter Article 51; cross-border terrorism; jus ad bello.

Introduction:

In 2008, political scientist Sanjay Gupta observed that the United States' controversial "Bush Doctrine," which asserted a right to pre-emptive military action, held serious implications for international stability, as it could encourage other states, such as India, to adopt a similar posture against their adversaries.[1] On April 22, 2025, this analysis proved prophetic. Following a deadly terrorist attack in Pahalgam resulting in 26 people being killed and several others injured,[2] India launched "Operation Sindoor," a coordinated series of strikes directed at terrorist infrastructures situated in Pakistan and Pakistan-occupied Kashmir. New Delhi justified it as a necessary counter-terrorism measure, aligning with the United Nations Security Council's directives, aimed at deterring future attacks and ensuring the safety of its citizens.[3] However, in acting before another threat could fully materialise, India's operation revived the divisive question as to whether anticipatory self-defense is legally permissible.

The United Nations Charter was founded on the principle of saving *"succeeding generations from the scourge of war,"*[4] primarily through the categorical prohibiting the use of force as enshrined in Article 2(4).[5] Yet, as Mr. Franck noted, this Article has been progressively diluted by state practice, with powerful nations often choosing their national interest over strict legal compliance. The principal exception to this prohibition is the *"inherent right"* of self-defence in Article 51, which is triggered *"if an armed attack occurs,"*[6] as explained by Mr. Schachter.[7]

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[1] Sanjay Gupta, *The Doctrine of Pre-Emptive Strike: Application and Implications During the Administration of President George W. Bush*, 29 INT'L POL. SCI. REV. 181, 189 (2008).
[2] *Pahalgam Terror Attack: A Memorial, THE HINDU (Apr. 24, 2025), https://www.thehindu.com/infographics/2025-04-24/pahalgam-terror-attack-victims-tribute/index.html.*
[3] Dinesh, *Operation Sindoor: A Counter Terrorism Effort in Line with UNSC Directive*, GYAN LO (May 8, 2025), https://gyan-lo.in/blog/operation-sindoor-a-counter-terrorism-effort-in-line-with-unsc-directive.
[4] U.N. Charter pmbl.
[5] Thomas M. Franck, *Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States*, 64 AM. J. INT'L L. 809, 810 (1970).
[6] U.N. Charter art. 51.
[7] Oscar Schachter, *Self-Defense and the Rule of Law*, 83 AM. J. INT'L L. 259, 260 (1989).

The central legal ambiguity that exists is whether a state must suffer a blow before it can lawfully respond, or whether a pre-emptive response can be made. The *Caroline case,*[8] which crystallised customary international law has recognised that there exists a narrow opening for anticipatory action, but only when the necessity for self-defence is "*instant, overwhelming, and leaving no choice of means and no moment for deliberation."*[9]

Furthermore, reliance on force, whether anticipatory or reactive, is subject to the principle of proportionality, a principle that operates at multiple normative levels. Under the principle of *jus ad bellum*, proportionality requires that defensive force be commensurate with the threat confronted, while under *jus in bello* principle, mandates that incidental civilian harm must not be excessive relative to the military advantage anticipated.[10] This paper critically examines legality and legitimacy of India's Operation Sindoor under these established norms. It will first examine the normative framework governing the use of force, then assess the operation against the standards of necessity and proportionality, and finally argues that doctrinal recalibration of the UN Charter is essential to preserve its relevance in an era characterized by transnational terrorism.

The International Legal Framework on the Use of Force and the Paradox:

The contemporary law governing the use of force is established upon the distinction between *jus ad bellum*, i.e., the legality of resorting to force, and *jus in bello*, i.e., the regulation of conduct during hostilities. Historically, these two concepts were deeply intertwined within Christian and secular *"just war"* theories, where the justness of a state's cause for war largely determined the permissible limits of its conduct in that war. However, with the emergence of modern nation-state system, these principles gradually diverged. This separation is a cornerstone of modern international humanitarian law, which insists upon the equal application of rules governing armed conflict irrespective of the legality of the initial resort to force. The Additional Protocol I of the Geneva Conventions reaffirms of this distinction with emphasis on its application, as evidenced from its Preamble, "*without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by... the Parties to the conflict."*[11] Hence, violations of *jus in bello*, such as disproportionate attacks, cannot be

[8] *The Caroline Case* (U.K. v. U.S.), 29 Brit. & For. St. Papers 1137 (1837).
[9] Gupta, supra note 1, at 185.
[10] Keith Pavlischek, *Proportionality in Warfare*, 27 NEW ATLANTIS 21 (2010).
[11] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts pmbl., June 8, 1977, 1125 U.N.T.S. 3.

excused by invoking self-defense under jus ad bellum.[12]

The modern *jus ad bellum* is anchored in the United Nations Charter. Its central prohibition is found in Article 2(4),[13] which obligates all member states to *"refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."*[14] This highly ambitious resolve, however, has been described as a rule that now *"mocks us from its grave."* Its demise is attributed to several factors, primarily the failure of the Charter's collective security mechanism, which was premised on the false assumption that the great powers' cooperation of World War II would continue.[15] With the recurrent paralysis of the Security Council by the veto, the practice of powerful states has consistently prioritised national interest over legal norms, leading them to violate, ignore, and explain away the prohibition on force.

The principal exception to this prohibition is the *"inherent right"* to self-defence which is recognised in Article 51 of the Charter. A strict reading of the text suggests that this right may only be exercised *"if an armed attack occurs,"* thus, it precludes any precautionary utilisation of force. However, many scholars and Nation-State's argue that this interpretation is dangerously narrow, as it fails to account for modern weaponry and would force a state to absorb the first blow, which can be catastrophic, before responding, thereby making them cry over spilt milk rather than taking swift action and avoiding any harm/casualty. This view holds that Article 51 does not extinguish the pre-existing customary right of anticipatory self-defence but merely highlights one clear situation in which the right may be exercised.[16] The *locus classicus* of this customary right is the 1837 *Caroline* case,[17] which established a strict test for its application. This action must also be proportionate to the threat, meaning the defensive act must not be unreasonable or excessive.[18]

This legal framework is further complicated by the changing nature of modern conflict, particularly the rise of terrorism and warfare carried on by non-state actors. The Charter's

[12] Judith Gail Gardam, *Proportionality and Force in International Law*, 87 AM. J. INT'L L. 391, 393–95, 397 (1993).
[13] Gupta, supra note 1, at 183.
[14] U.N. Charter art. 2, ¶ 4.
[15] Jan-Philipp Graf, *The Death of the Prohibition on the Use of Force: An Attempt at Reimagination*, VÖLKERRECHTSBLOG (Feb. 15, 2022), https://voelkerrechtsblog.org/an-attempt-at-reimagination.
[16] Gupta, supra note 1, at 184.
[17] Gardam, supra note 12, at 391.
[18] Id. at 403.

drafters largely envisioned conventional interstate aggression, but modern threats often manifest as *"indirect aggression,"* such as providing arms, training, and financing to insurgent or terrorist groups operating in another state. These actions do not fit comfortably within the traditional definition of an *"armed attack"* required to trigger Article 51, creating a legal grey area. Consequently, states have often stretched the concept of self-defence to justify military responses to such provocations.[19] This has led to a reality where the exceptions to the prohibition on force, particularly self-defence, have been expanded through state practice to the point where they risk overwhelming the rule itself.

A Critical Legal Analysis of Operation Sindoor:

The Schism Between Legality and Legitimacy

A comprehensive legal analysis requires moving beyond the simple declaration of the operation as lawful or unlawful and instead examining the complex interplay between its strict legality under the United Nations Charter and its perceived legitimacy when viewed through the lens of contemporary state practice. Johanis Steny Franco Peilouw, in his article, assessed the legality and legitimacy of pre-emptive strikes.[20] In this sub-part, his argument is used to assess India's action. Legality refers to the strict conformity to codified international law, such as the UN Charter, while legitimacy refers to the broader acceptance of an action as justified and appropriate, even if it deviates from formal rules.

From a standpoint of strict legality, Operation Sindoor is open to serious legal challenge. As a unilateral, pre-emptive military strike not authorised by the Security Council, it contravenes the Charter's core principles, i.e., Article 2(4) and does not come under the exception contained in Article 51. It largely relies on a controversial and expansive interpretation of self-defence discourse as discussed by Peilouw in his article, stating that various attempts have been made to broaden this exception and such action to be made as a precedent.[21] But as Thomas Frank and later Gupta stated that such actions, if legalised, will nullify Article 2(4).[22] Thus, such an action is arguably outside the bounds of established positive law.

[19] Franck, supra note 5, at 812–16.
[20] Johanis Steny Franco Peilouw, *The Effect of the Pre-Emptive Military Strike Doctrine on Efforts to Establish New International Legal Provisions*, 28 SASI 395–444 (2022).
[21] Id. at 434–41.
[22] Id. at 441.

However, as Franck argues in his article that when formal legal frameworks are perceived to be inadequate in addressing pressing security threats, states often resort to actions that are legally contentious but which they seek to justify on the grounds of a higher legitimacy.[23] While Operation Sindoor struggles to meet the Charter's high legal threshold for the use of force, it aligns with a pattern of conduct established by powerful states and forges a parallel to them. Even if controversial, the operation's claim to legitimacy is built on the state practice that Schachter identifies as indicative of new or emerging developments for legal change.[24] India's actions follow a pattern set by the United States' pre-emptive strike doctrine, which was itself a claim that the existing legal framework was insufficient for countering 21st-century threats.[25] By acting in a manner consistent with such past actions initiated by other nations, India asserts that its response, while perhaps not strictly legal, is legitimate and necessary for its national security. In Peilouw's framework, Operation Sindoor is more than a simple violation of the law; it is a deliberate act of "claims-making." It is an assertion that the norms must evolve, contributing to a body of state practice that seeks to legitimise pre-emptive action against terrorist threats and, eventually, establish new international legal provisions that would close the gap between what is currently perceived as legitimate and what is formally legal.

Ian Brownlie, in his book, stated that necessity and proportionality are the *"essence of self-defence."*[26] These principles were articulated in 1837 in the *Caroline case,* which established the strict tests for necessity and proportionality and is considered the locus classicus on the topic. The relevance of these twin conditions was further affirmed by the International Court of Justice in the landmark *Nicaragua case,*[27] which confirmed that the requirements of necessity and proportionality remain central to the right of self-defence under the UN Charter system. The issue was further discussed in the *Nuremberg Tribunal,* where it was stated that claims of self-defence cannot be self-judged but must be subject to objective legal standards. Thus, these twin conditions must be satisfied for any party to claim the self-defence exception. The next sub-part analyses India's action in this context.

[23] Franck, supra note 5, at 835.
[24] Schachter, supra note 7, at 263.
[25] Olumide K. Obayemi, *Legal Standards Governing Pre-Emptive Strikes and Forcible Measures of Anticipatory Self-Defense Under the U.N. Charter and General International Law*, 12 ANN. SURV. INT'L & COMP. L. 19–24 (2006).
[26] IAN BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 279 (1963).
[27] *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14.

The Test of Necessity: Evaluating the Imminence of the Threat

The foundational customary law principle governing anticipatory self-defence is necessity. The *locus classicus* for this principle, the *Caroline* case, permits pre-emptive force only in cases where the need for self-defence is *"instant, overwhelming, and leaving no choice of means and no moment for deliberation."*[28] A critical examination of Operation Sindoor must therefore assess whether the threat emanating from Pakistan-occupied Kashmir and Pakistan satisfies this strict standard. The drafters of the UN Charter, and indeed the diplomats in the 19th century, specifically the U.S., envisioned aggression as a conventional military attack, often preceded by a *"visible mobilisation of armies, navies, and air forces preparing to attack"*[29] as evident from their National Security Strategy.[30]

However, the nature of aggression, such as in the form of terrorism, presents a different kind of threat, one that does not fit in the classical framework of an impending invasion. The challenge arises from what the Bush administration's, 2002 National Security Strategy[31] termed *"emerging threats before they are fully formed."*[32] Proponents of a broader right to self-defence argue that waiting for a terrorist plot to reach the point of *"visible mobilization"* is tantamount deferring action until harm becomes inevitable..[33] India's justification for Operation Sindoor rests on the past incidents, including the most deadly 26/11 attack, where multiple evidence were given to the world along with Pakistan pointing towards their territory being used as training camps[34] along with the above modern interpretation. It can be argued that the Pahalgam attack was not an isolated incident but part of a continuous campaign of terror, and that specific intelligence about ongoing operations in the respective attacked sites, a.k.a., training camps, constituted an imminent threat requiring immediate action.

This claim of necessity also involves satisfying the *"least restrictive means"* test, which requires a state to exhaust all viable peaceful alternatives.[35] In the case of India's actions, it can be contended that multiple diplomatic protests, sanctions, and demands to Pakistan to dismantle

[28] Gupta, supra note 1
[29] THE WHITE HOUSE, *THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA* ch. V (2002).
[30] See supra note 25.
[31] Gupta, supra note 1, at 182.
[32] The White House, supra note 29, intro.
[33] See supra note 25.
[34] Chidanand Rajghatta, *Not Only 26/11 or Pahalgam, Overwhelming Evidence Links Pak to Multiple Global Attacks*, TIMES OF INDIA (May 4, 2025), https://timesofindia.indiatimes.com.
[35] Gardam, supra note 12.

the terrorist infrastructure had proven fruitless over decades, as evident from the fact that India's provided evidence in the 26/11 attack was used by them to cover tracks and defend terrorists.[36] In this context, with non-military options exhausted, pre-emptive strikes were the only practicable alternative to neutralise the threat, thereby fulfilling a crucial component of the necessity requirement.

Proportionality in *Jus ad Bellum*: Assessing the Scale of India's Response

Once the test of necessity is satisfied the inquiry shifts to proportionality. The test of proportionality under *jus ad bellum* requires that a retaliatory response to an aggressive action must be equivalent in scale, scope, and intensity to the harm suffered and the threat that is to be averted. It is a holistic assessment that weighs the "*total evil of the war"* against its *"total good,"* ensuring the costs of the conflict do not outweigh the benefits.[37] This assessment is not a one-time calculation but remains relevant throughout a conflict, influencing strategic decisions such as the selection of targets and the overall intensity of the campaign.[38]

In the case of Operation Sindoor, the grievance was twofold. Firstly, the heinous attack in Pahalgam, and secondly, the ongoing threat posed by the terrorist networks responsible for it. A narrow retaliatory strike might have been considered proportionate to the singular attack as was done in Balakot, but India's stated objective was to dismantle the infrastructure that made such attacks possible, which was also in pursuance of the UN's Resolution 2178 of 2014.[39] The Indian government's justification of action being precise and limited to terror sites frames the operation as a preventive goal, which is viewed by legal experts as more proportional than a punitive one.[40] The scale of Operation Sindoor was proportionate not merely to the Pahalgam incident, but to the larger, legitimate objective of preventing future catastrophic loss of life in the context of prolonged aggression by such internationally banned non-state actors, with the neighbouring country being accused multiple times of harbouring such actors and recent admittance of this fact[41] by their defence minister, further bolsters that India's action was

[36] FP News Desk, *Pak Uses Evidence that India Provides to Cover Its Tracks and Defend Terrorists*, FIRSTPOST (May 8, 2025), https://www.firstpost.com.
[37] Gardam, supra note 12..
[38] Gardam, supra note 12, at 404.
[39] Dinesh, supra note 3.
[40] Raanan Sulitzeanu-Kenan et al., *Facts, Preferences, and Doctrine: An Empirical Analysis of Proportionality Judgment*, 50 LAW & SOC'Y REV. 368 (2016).
[41] *Doing This Dirty Work for U.S. for Three Decades: Pakistan Defence Minister Admits Helping Terrorists, TELEGRAPH (INDIA) (Aug. 20, 2025), https://www.telegraphindia.com.*

necessary, proportionate and in line with the UN Resolutions. A counterargument is that a significant military operation targeting assets within the territory of a sovereign state is an inherently disproportionate response to an attack carried out by non-state actors. This clash of interpretations reveals that the assessment of *jus ad bellum* proportionality is a fact sensitive[42] and evaluative exercise rather than a mechanically determinable rule.[43] Thus, such an ambiguity can be resolved by the UNSC amending the charter or putting forward a clarification pertaining to this issue.

A Strict Proportionality Test in *Jus in Bello*: Evaluating the Conduct of Hostilities

On the other hand, *jus in bello* proportionality governs the conduct of specific military operations, focusing almost entirely on the foreseen but unintended harm done to noncombatants and civilian infrastructure. This principle is codified in Article 51(5)(b) of Additional Protocol I and is fundamental to protecting non-combatants and prohibits any attack *"which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."*[44] The use of the term *"excessive"* rather than *"proportional"* was a deliberate choice to avoid any suggestion that a certain level of civilian death is acceptable.[45] Thus, it is not a simple comparison of casualty numbers; a lopsided ratio of deaths is not in itself proof of a crime, but rather may reflect military advantage if the casualties are combatants. The core of the test is the good faith balancing of military advantage and civilian life.

An analysis of Operation Sindoor under this strict test requires examining each individual strike according to an objective standard, such as what a reasonable commander may be expected to foresee, not what was subjectively intended.

- **Concrete and Direct Military Advantage**: India demonstrated that each targeted sites, such as the various training facilities or launch pads or weapons depots, were precisely identified and offered a distinct and numerous military and general advantage upon their destruction. These advantages largely degraded the terrorists' capacity to launch future

[42] Sulitzeanu-Kenan, supra note 40, at 376.
[43] Gardam, supra note 12, at 405.
[44] Protocol Additional to the Geneva Conventions of 12 August 1949 art. 51(5)(b).
[45] Gardam, supra note 12, at 406.

attacks against Indian citizens.

- **Expected Incidental Harm**: Empirical analysis of scholars shows that legal experts are highly receptive to "rights infringement considerations", but receptivity decreases with the "worthiness of the goal"[46] also, as earlier discussed, the worthiness is fact and ideology specific, thus varies with the individual assessing the action. Hence, it will always be subjective. This can be related to the US Operation Neptune Spear, where Osama bin Laden was targeted and killed in an urban area. In this case, the assessors were more inclined towards worthiness over rights infringement. Similarly, India, being aware of the obligation, assessed the foreseeable harm to civilians for each strike, calibrated there Operation with credible intelligence and precise weapons as seen in the special briefing of Operation Sindoor.[47] Also, in the context of prolonged intrusive activities from such non-state actors, with calls to action being unheard by the neighbouring country and the international community, the worthiness of criplling the abilities of such actors was more than the mere rights infringement.

- **The Balancing Test**: The crucial legal and moral judgment lies in weighing the first factor against the second. Was the military value of destroying a particular terrorist hideout sufficient to justify the foreseen risk of killing a certain number of civilians living nearby? As political philosopher Michael Walzer asks, "What is the appropriate measure? And once we know the answer... how many deaths would it allow?"[48] The law requires that attackers take "positive measures to avoid or minimise injury to civilians,"[49] such as providing warnings and choosing precision weaponry. This responsibility is complicated when terrorist groups deliberately base their operations within civilian areas, using the population as human shields. In such cases, while the "primary responsibility for [civilian deaths then falls upon the... militants who were using them," the attacking force is not absolved of its duty to discriminate and exercise proportionality.[50] India, as seen in the special briefing and as discussed above, took due care of these factors, weighed the possibilities, and took swift action, balancing its

[46] See supra note 40.
[47] Ministry of External Affairs (India), *Transcript of Special Briefing on Operation Sindoor* (May 9, 2025), https://www.mea.gov.in/media-briefings.htm.
[48] Michael Walzer, *Responsibility and Proportionality in State and Nonstate Wars*, 39 PARAMETERS 44 (2009).
[49] Id. at 49.
[50] Pavlischek, supra note 10, at 27.

actions during the Operation.

Thus, India's adherence to *jus in bello* principles is the linchpin to its claim of legitimacy. By asserting that its conduct was consistent with the laws of armed conflict, it demonstrated careful target selection, choice of appropriate means, and avoidance of negligence. India made its case based on the very factors that legal experts empirically prioritise when judging proportionality.

Conclusion:

Thus, Operation Sindoor exemplifies the schism between the UN Charter's formally rigid legal framework and the dynamic security realities of the 21st century. The analysis reveals that while the operation's strict legality under a narrow reading of Article 51 is contentious, it asserts a robust claim to legitimacy by mirroring an established pattern of state practice against transnational terrorism. India's action, arguably satisfying modern interpretations of necessity and proportionality, highlights a critical failure of the international legal order, i.e., its inability to adequately address threats from non-state actors.

This dangerous gap between the law and state practice underscores the imminent need to amend the UN Charter to restore its effectiveness. As Thomas Franck argued, the rule against force is failing due to a *"lack of congruence between the international legal norm... and the perceived national interest of states."*[51] To bridge this gap, reforms should include a modernised definition of *"armed attack"* that encompasses terrorist violence. Furthermore, establishing a robust and impartial international fact-finding body, as suggested by the principle from the *Nuremberg trials*, would limit the ability of states to use justifications or vetoes. Without such changes that align the law with contemporary security imperatives, the Charter's core prohibition on the use of force risks becoming entirely obsolete, leaving a system transformed by practice where the exceptions have overwhelmed the rule.

[51] Franck, supra note 5, at 835.

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