



FROM PROTECTION TO JUSTIFICATION: THE CRISIS OF THE PROPORTIONALITY PRINCIPLE IN INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT

The ongoing humanitarian crisis during times of war has long been established, as civilians are often the main victims of armed conflict despite having laws intended to protect them. Although the principle of proportionality was established in IHL to protect civilians from undue suffering, it is being increasingly misused by state actors as a justification for mobilising rather than providing civilian protection. This paper uses a comparative case study of the wars in Gaza and Ukraine. The analysis of data about state justifications, state discourse, and civilian casualty numbers will be conducted through qualitative discourse analysis. The states are able to use IHL to justify their military actions through the vagueness of the principle of proportionality and the lack of effective mechanisms for accountability. The study findings identify two different strategies employed by states, either absolute denial or justification for IHL, as well as the fact that the subjective interpretation of "military advantage" allows disproportionate attacks to be viewed as lawful. Hence, the integrity of IHL is decreasing due to the lack of accountability and political barriers to prosecution.

Keywords: International humanitarian law, proportionality principle, civilian protection, armed conflict, Gaza, Ukraine, accountability.

INTRODUCTION

International Humanitarian Law (IHL) is a set of rules, aimed at limiting the effect of war for humanitarian reasons.¹ These rules provide protection for non-combatants or former

¹ Int'l Comm. of the Red Cross, What Is International Humanitarian Law?, ICRC (July 22, 2004), <https://www.icrc.org/en/document/what-international-humanitarian-law>.

combatants and place limitations on how combatants can conduct hostilities by setting limits on the actions and conduct of all parties involved.² IHL balances military necessity with humanitarian protection by stating that even if there is a need for military action, there are limits to how that action should occur. IHL can be used positively as a source of protection and as a source of legal justification for military action. In other words, rather than providing actual protection to civilians during armed conflict, IHL has been used by states as a means of justifying acts of violence against civilians through the use; of language in IHL written ambiguously. In Gaza and Ukraine, civilians continue to suffer as a result of the violence inflicted by all parties to the conflict, despite IHL being in effect.

The humanitarian law which aims to protect civilians can simultaneously justify violence against them. For example, Article 51(5)(b) of Additional Protocol I prohibits attacks which can be expected to result in incidental civilian casualties "which would be excessive in relation to the concrete and direct military advantage anticipated". However, the relevant treaties do not define terms such as "excessive" and "military advantage", creating difficulty in their implementation.³ This is more than just theoretical; there are lives at stake. As of mid-August 2024, Israel had killed more than 40,000 Palestinians in Gaza, including an estimated 60% who were civilians, and Russia has conducted acts of war against Ukraine, including extensive and brutal assaults on hospitals, apartment buildings and civilians and more than 1,500 documented attacks on healthcare facilities.⁴

The viability of international law in general hinges on this: if we fail to act now, there are high chances that IHL will lose all its effectiveness, and no accountability for violators will arise, and that civilians' lives will become expendable due to international inaction.

LITERATURE REVIEW

The concept of proportionality was developed during the drafting of the 1949 Geneva Conventions and further refined in the 1977 Additional Protocols, specifically Article 51(5)(b)

² Int'l Comm. of the Red Cross, *The Basics of International Humanitarian Law* (Oct. 2011), <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-0850.pdf>.

³ Diakonia Int'l Humanitarian L. Ctr., *The Principle of Proportionality*, <https://www.diakonia.se/ihl/resources/international-humanitarian-law/ihl-principle-proportionality/> (last visited June 15, 2026).

⁴ Juri Berger, *Gaza Exposes the Limits and Dangers of IHL's Proportionality Rule*, JURIST (Dec. 18, 2025, 4:02 PM), <https://www.jurist.org/features/2025/12/18/gaza-exposes-the-limits-and-dangers-of-ihls-proportionality-rule/>.

of Additional Protocol I. The 1949 Geneva Conventions and their Additional Protocols are internationally agreed-upon conventions that have the most significant provisions regarding restraining the savagery of war. The principle of proportionality has been derived from just war principles, where military necessity is balanced with humanitarian concerns. Article 51(5)(b) forbids attacks resulting in incidental damage to civilians that "would be excessive in relation to the concrete and direct military advantage anticipated". As per academics such as Christopher Greenwood, Marco Sassòli, and Sean Watts, its primary purpose was the protection of civilians from suffering excessive harm.

THEORETICAL FRAMEWORKS ON IHL IMPLEMENTATION

IHL implementation within scholarly circles has two perspectives that dominate the debate. In the idealist approach, the effective implementation of IHL will be possible where the states are genuine in adhering to the principles of international humanitarian law. On the other hand, from a critical perspective, IHL is a legal framework designed to favour powerful states. According to David Kennedy's famous article titled "Of War and Law," legal rules are used to legitimize violence. He says that the law currently defines the dynamics of peace and war by institutionalizing the process of war. In doing so, it has changed the institutional, logistic, and physical environment of war. Within the realist school of thought, the states manipulate the law to their own ends. The term lawfare is used to refer to situations in which the rule of law is abused for the sake of achieving militaristic goals. Lawfare has been termed a legal weapon and used either rightly or wrongly, depending on who uses it.

THE PRINCIPLE OF PROPORTIONALITY

The principle of proportionality in international humanitarian law (IHL) says that even when a military target is legal, you cannot attack it if the expected harm to civilians is too great compared to the military advantage you expect to gain.

The exact legal text comes from Article 51(5)(b) of Additional Protocol I to the Geneva Conventions (1977):

"an 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"⁵

Key elements:

- "Incidental loss": civilian harm that is not intended but is foreseeable as a side effect of the attack. It is "collateral damage," not the goal.
- "Excessive": the main problem. The treaty does not define what makes harm "excessive," so commanders and courts must decide based on the situation.
- "Concrete and direct military advantage": also, vague. It means a real, specific benefit for military operations, not a vague or long-term one.

Two-part test used in practice:

1. Is the target legitimate?
First, check whether the object or person being attacked is a lawful military target (for example, enemy fighters, weapons, military bases).
2. If yes, is the expected civilian harm disproportionate?
Then, weigh the expected civilian harm against the expected military advantage. If the harm is excessive compared to that advantage, the attack is prohibited.

This rule is now also part of customary international law (Rule 14 of the ICRC study), so it applies even to states that have not formally ratified Additional Protocol I.⁶

Proportionality does not stand alone. It works together with three other core IHL principles:

1. Distinction

Parties must always distinguish between combatants and civilians, and between military objects and civilian objects. If you cannot distinguish, you cannot even start the proportionality test. Civilians and civilian objects must not be targeted.

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 51, June 8, 1977, 1125 U.N.T.S. 3, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51>.

⁶ Int'l Comm. of the Red Cross, Customary International Humanitarian Law Database, Rule 14: Proportionality in Attack, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule14> (last visited June 15, 2026).

2. Military Necessity

Force may be used only when necessary to achieve a legitimate military goal. If an attack is not necessary, it is illegal regardless of proportionality. Proportionality adds a second check: even necessary attacks must not cause excessive civilian harm.

3. Precaution

Parties must take all feasible precautions to avoid or minimize civilian harm (for example, by choosing weapons, timing, or issuing warnings). Precautions are required before and during attacks. They help make an attack that might otherwise seem disproportionate become acceptable by reducing civilian harm.

IMPLEMENTATION MECHANISMS

The law sets out several ways that proportionality is supposed to be implemented and enforced:

How compliance is supposed to work:

1. Military manuals and training

States are expected to include IHL rules (including proportionality) in their military manuals and train soldiers, pilots, and commanders on how to apply them in real operations.

2. National implementation laws

Countries should pass laws and regulations that make IHL rules part of their national legal system, define crimes like disproportionate attacks, and set penalties for violations.

3. International Criminal Court (ICC) jurisdiction

The ICC can prosecute individuals for war crimes, including attacks that are intentionally disproportionate. If a state is not willing or able to act, the ICC may step in.

4. UN monitoring bodies

United Nations bodies (such as the Security Council, Human Rights Council, and special investigative mechanisms) can monitor conflicts, report on violations, and sometimes call for sanctions or investigations.

Despite these mechanisms, implementation is often weak:

- Many states do not fully train their forces or update their manuals.
- Investigations into violations are often slow, incomplete, or politically blocked.
- International courts have limited resources and jurisdiction.

- In many conflicts, powerful states are not easily subject to ICC or UN enforcement.

As a result, the principle of proportionality remains a strong legal idea but is often unevenly applied in real war situations.

CASE STUDY 1: GAZA CONFLICT (2023–2024)

CONTEXT AND BACKGROUND

On October 7, 2023, Hamas and other Palestinian militants launched a surprise attack on southern Israel, killing around 1,200 people and taking hundreds of hostages. One day later, Israel declared war against Hamas and began its military campaign, called “Operation Swords of Iron,” with the stated goals of destroying Hamas, securing the return of hostages, and restoring Israeli border security.⁷

Gaza is a small, densely populated coastal area with about 2.3 million people, 70% of whom are refugees. As of early 2024, the Gaza Health Ministry reported more than 35,000 Palestinian deaths, the majority of whom are women and children. By mid-2024, death tolls reached over 37,000, and later studies suggest total deaths may be closer to 78,000.⁸

The conflict has caused massive destruction as entire neighbourhoods, hospitals, universities, and major infrastructure have been destroyed. UN and human rights reports indicate that over 15,000 homes, 300+ schools, and 40+ hospitals have been destroyed.

ISRAEL’S PROPORTIONALITY CLAIMS

Israel’s official position is that it follows international humanitarian law (IHL) and the principle of proportionality in its military operations. Israel argues that it:

- Issued warnings before attacks, including telephone calls, leaflets, radio broadcasts, and the controversial “roof knocking” technique, where low-yield explosives are dropped on roofs to warn residents to leave

⁷ Ctr. for Preventive Action, Israeli-Palestinian Conflict, Council on Foreign Relations Global Conflict Tracker (updated Apr. 14, 2026), <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>.

⁸ Max Planck Soc’y, Gaza: Study Reveals Unprecedented Losses of Life and Life Expectancy (Nov. 25, 2025), <https://www.mpg.de/25778228/1125-defo-gaza-study-reveals-unprecedented-losses-of-life-and-life-expectancy-154642-x>.

- Targets only legitimate military objectives, such as Hamas fighters, command centers, and weapon caches
- Faces Hamas using civilians as “human shields,” which Israel argues makes civilians responsible for their own deaths in some cases
- Seeks a concrete military advantage by degrading and destroying Hamas’s ability to attack Israel
- Acts under Article 51 of the UN Charter, which recognizes the right of self-defense against armed attacks

Israeli government statements repeatedly claim that Israel follows proportionality and takes all feasible precautions to protect civilians, while still pursuing its military objectives against Hamas.

EVIDENCE OF PROPORTIONALITY VIOLATIONS

Civilian harm data from the Gaza Health Ministry and UN sources indicate extremely high civilian casualties:⁹

- More than 35,000 Palestinians killed, with the majority estimated to be civilians, including a large proportion of children and women
- UN data suggests roughly one civilian death per 1–2 Israeli soldiers killed
- Over 15,000 homes, 300+ schools, and 40+ hospitals destroyed or severely damaged
- As of 2024, more than 87% of schools and almost 84% of health facilities were damaged or destroyed, including in apparently unlawful attacks

Specific incidents:

1. Al-Ahli Arab Hospital explosion (October 17, 2023)

An explosion in the courtyard of Al-Ahli Arab Hospital in Gaza City killed hundreds of civilians, including displaced people sheltering there. The Gaza Ministry of Health reported

⁹ Dore Gold, Israel's Doctrine of Proportionality in Gaza, Jerusalem Ctr. for Pub. Affs. (July 31, 2014), <https://jcpa.org/article/israels-doctrine-proportionality-gaza/>.

471 people killed. Human rights organizations have raised serious concerns about the legality and proportionality of this strike.¹⁰

2. **Jabalia refugee camp airstrikes (November 2023)**

Israeli airstrikes on the densely populated Jabalia refugee camp killed dozens of civilians. WAFA reported 31 civilians killed and many injured in one bombing on 12 homes in the Jabalia Services Club area. Palestinian officials reported over 50 deaths in earlier bombing on the same camp, and later strikes resulted in hundreds of deaths, with many still unaccounted for.¹¹

3. **Siege and destruction of food/water infrastructure**

Israel's "complete siege" of Gaza, including restrictions on food, water, and fuel, has led to severe humanitarian conditions and famine-like situations, raising questions about whether this constitutes collective punishment.¹²

Critics argue that killing tens of thousands of civilians to destroy Hamas is excessive in relation to the military advantage anticipated. They question whether destroying entire residential neighborhoods and infrastructure actually helps defeat Hamas, or whether it disproportionately harms civilians who are not directly involved in the conflict.

The Proportionality Principle as a Mobilization Device

In terms of politics, the Israeli government utilizes the phrases "we comply with international law" and "we comply with proportionality" to receive international support for their military actions. The media and political discourse tend to present civilian casualties as "unavoidable" or "collateral damage," which removes the issue of disproportionate use of force from the agenda.¹³

Israel responds with "we comply with proportionality" when criticized about the scale of casualties and destruction in Palestinian areas rather than acknowledging the magnitude of

¹⁰ Hum. Rts. Watch, Gaza: Findings on October 17 al-Ahli Hospital Explosion (Nov. 26, 2023), <https://www.hrw.org/news/2023/11/26/gaza-findings-october-17-al-ahli-hospital-explosion>.

¹¹ Palestinian News & Info. Agency (WAFA), One Palestinian Killed, Several Injured by Israeli Fire in Gaza, <https://english.wafa.ps/Pages/Details/139254> (last visited June 15, 2026).

¹² Office of the United Nations High Commissioner for Human Rights, Six-Month Update on the Human Rights Situation in Gaza: 1 November 2023–30 April 2024 (Nov. 8, 2024), <https://www.ohchr.org/sites/default/files/documents/countries/opt/20241106-Gaza-Update-Report-OPT.pdf>.

¹³ How Israel Moved Its Own Goalposts on Civilian Deaths in Gaza Bombings, The Nat'l, <https://www.thenationalnews.com/news/mena/2024/12/18/how-israel-moved-its-own-goalposts-on-civilian-deaths-in-gaza-bombings/> (Dec. 18, 2024).

harm to civilians and civilian infrastructures. This legal rhetoric is being used to rationalize the military action within Israel among the Israeli population and abroad among Western governments.¹⁴

Hence, the use of proportionality is increasingly becoming a cover-up story instead of the limit to military operations.

RESPONSE AND ACCOUNTABILITY INTERNATIONALLY

South Africa filed charges of genocide against Israel in the International Court of Justice (ICJ), arguing that Israel is pursuing genocide against the Palestinians of Gaza. In January 2024, the ICJ gave interim decisions in which Israelis must do everything they can to avoid genocide and give humanitarian assistance to Palestinians in Gaza, acknowledging that Palestinians have a right to protection from acts of genocide.¹⁵

The court also reiterated provisional measures in May 2024, demanding that Israel stop its offensive on Rafah since it could create circumstances that would lead to the destruction of Palestinians in Gaza. International organizations and human rights activists have also accused Israel of non-compliance with the principles of distinction, proportionality, and precautionary measures in conducting hostilities. However, despite these accusations, Israel continues to receive no punishment as no actions have been taken so far to address potential war crimes, and ICJ decisions cannot be enforced by means of armed force.¹⁶

This raises questions about the effectiveness of the response since, no matter how many concerns are raised by the International Court of Justice or UN institutions regarding proportionality and other aspects of IHL violations, there is still no mechanism to ensure that the requirements will be fulfilled.

CASE STUDY 2: RUSSIA-UKRAINE WAR (2022-PRESENT)

CONTEXT AND BACKGROUND

¹⁴ Author(s), Title of Work, Oxford Univ. Research Archive, <https://ora.ox.ac.uk/objects/uuid:add488e7-52d6-46b5-a609-20a861506243/files/r2z10wr64h> (last visited June 15, 2026).

¹⁵ Deutsche Welle, Israel-Hamas War: South Africa Files Genocide Case at ICJ, DW (Jan. 11, 2024), <https://www.dw.com/en/israel-hamas-war-south-africa-files-genocide-case-at-icj/live-67848567>.

¹⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Order on Request for the Modification of the Order of 28 March 2024 Indicating Provisional Measures, I.C.J., 24 May 2024, <https://www.un.org/unispal/document/icj-provisional-measures-24may24/>.

The full-scale invasion of Ukraine by Russia commenced on February 24, 2022, marking the beginning of the largest international war in Europe since the Second World War. The objectives of Russia in this conflict included the demilitarization of Ukraine (removal of its combat capability) and the denazification¹⁷ of Ukraine (regime change). The effects on civilians have been extremely tragic, with the UN estimating over 15,000 casualties as a result of the war, including more than 745 child deaths, despite being in the occupied territories.

These events involve the massacres committed by the Russian army, such as the murder of civilians in Bucha, the bombings of Mariupol and its theatres, and missile attacks on Kharkiv and other Ukrainian cities. The Russian Army has been attacking civilian infrastructure such as power stations, hospitals, water plants, and silos holding grain stores. In addition to other attacks, 217 attacks have been reported on energy infrastructure since early 2026 alone.¹⁸

RUSSIA'S PROPORTIONALITY CLAIMS

It should be noted that from the standpoint of the Russian leadership, its actions in Ukraine are both legitimate and proportional because they are directed only at Ukrainian military objects. Russia argues that the fact that its attacks cause the death of civilians cannot be regarded as a violation since, according to Russia, Ukraine itself organizes military activities on the territories where civilians live. According to Russian Defence Ministry spokesman Igor Konashenkov, "the Russian armed forces are not striking at the cities of Ukraine. They are not threatening the civilian population." Russia believes that the main task of its army is to destroy Ukrainian military infrastructure, aircraft, and airfields.

From the standpoint of the Russian leadership, the fact that Russia enjoys military superiority in the war is due to the fact that it achieves its goal of defeating Ukraine while destroying the military capabilities of its opponent. The Russian government maintains that it is only involved in military conflict, which implies attacks on military troops of another state and not civilians.

¹⁷ Ukraine's "De-Nazification, De-Militarisation" Are Russia's Goals: Putin on Ukraine Russia War, NDTV (Dec. 14, 2023), <https://www.ndtv.com/world-news/ukraines-de-nazification-de-militarisation-are-russias-goals-putin-on-ukraine-russia-war-4674145>.

¹⁸ Amnesty Int'l UK, Ukraine: Further Evidence of Russian War Crimes in Bucha and Other Towns—New Report (May 6, 2022), <https://www.amnesty.org.uk/press-releases/ukraine-further-evidence-russian-war-crimes-bucha-and-other-towns-new-report>.

In addition, the Russian authorities note that strikes in Ukraine are conducted by precisely targeted rockets that do not lead to massive deaths among civilians.¹⁹

EVIDENCE OF PROPORTIONALITY VIOLATIONS

According to OHCHR, there were around 10,000 civilian casualties in Ukraine from 2022 to 2024, which, however, is believed to be a significant underestimate due to lack of data on occupied areas by Russia. It has been estimated that more than 50,000 civilians have died during the war, including almost 25,000 killed in Mariupol.²⁰

Here are some cases demonstrating breaches of proportionality under IHL. In April 2022, the Bucha massacre occurred when over 458 civilians got killed by Russia, with torture and summary execution having been proven. The Mariupol theatre was bombed in March 2022 with a large number of civilians getting killed while hiding in the underground facility, which had the word "CHILDREN" written on the roof of the building in huge, visible letters.²¹ Russian artillery shelled residential areas of Kharkiv city during 2022-2023 with many people being injured and killed with no military necessity.

Over 40 missiles launched by Russia attacked Ukrainian infrastructure in the autumn of 2022 to destroy its ability to provide an energy supply to civilian residents. The use of bombings against urban areas to gain territory is always an act that is deemed disproportionate and contravenes the most basic tenet of distinction between combatants and civilians in warfare. The bombing of areas like Bucha and Mariupol, as well as the energy facilities, was not serving any legitimate military purpose.

HOW PROPORTIONALITY BECAME MOBILIZATION TOOL

Russia utilizes the principles of "lawful warfare" and proportionality to defend itself against international sanctions and isolation, positioning itself as a state that acts legally and within international law, while characterizing Ukraine as an aggressor. In domestic politics, Russian propaganda assures its citizens that their army acts exclusively towards military objectives in

¹⁹ William Echols, Fact Check: Russian Strike on Ukrainian Cities and Civilians, Voice of Am. (July 8, 2022), <https://www.voanews.com/a/fact-check-russian-strike-ukrainian-cities-civilians/6743293.html>.

²⁰ Over 12,300 Civilians Killed Since Start of Ukraine War, U.N. Says, U.S. News & World Rep. (Jan. 8, 2025), <https://www.usnews.com/news/world/articles/2025-01-08/over-12-300-civilians-killed-since-start-of-ukraine-war-un-says>.

²¹ Amnesty Int'l UK, Ukraine: Further Evidence of Russian War Crimes in Bucha and Other Towns—New Report (May 6, 2022), <https://www.amnesty.org.uk/press-releases/ukraine-further-evidence-russian-war-crimes-bucha-and-other-towns-new-report>.

accordance with law and thereby limits any attention to damage done to civilians, increasing public support for the war.²² On the international stage, Russia positions itself as under a biased attack by the West and appeals to Global South states through rhetorical strategies on proportionality.

In this case, legal warfare consists of invoking proportionality to delegitimise the efforts of Ukraine's resistance movement, claiming that it was not acting proportionally compared to Russia's justified necessity. In doing so, Russia once again demonstrates how legal language is used in warfare in much the same way as previously mentioned cases, becoming another tool of legitimizing and justifying military actions rather than being used as a constraint on military actions.²³

INTERNATIONAL RESPONSE AND ACCOUNTABILITY

The ICC has released an arrest warrant for Putin for the illegal deportation of Ukrainian children, which is considered a grave breach of war crimes laws. The United Nations established a Commission of Inquiry that documents violations of IHL committed by Russia against Ukraine. Ukraine has lodged cases at the ICJ claiming that Russia breached international conventions regarding discrimination and other laws. However, the problem remains that there is still a lack of enforcement. No action has been taken against Putin and other officials for their actions, while the arrest warrant from the ICC requires the consent of the state to be enforced. Similar to the situation in Gaza, law continues to prove powerless.

ANALYSIS: PATTERNS OF MISUSE

Common Patterns Across Both Cases (Israel/Gaza & Russia/Ukraine)

²² Hum. Rts. Watch, Russia, Ukraine & International Law: On Occupation, Armed Conflict and Human Rights (Feb. 23, 2022), <https://www.hrw.org/news/2022/02/23/russia-ukraine-international-law-occupation-armed-conflict-and-human-rights>.

²³ Michael N. Schmitt, Retaliatory Warfare and International Humanitarian Law, Articles of War (Lieber Inst. W. Point), <https://lieber.westpoint.edu/retaliatory-warfare-international-humanitarian-law/> (last visited June 15, 2026).

Pattern	Explanation
1. Vague definitions allow flexibility	Both states define "military advantage" broadly and claim civilian harm was "unavoidable" rather than "excessive," using the same legal language but interpreting it differently to suit their interests.
2. Warnings don't equal compliance	Both claim issuing warnings (leaflets, phone calls, roof knocking) means they followed proportionality, but warnings alone do not make excessive civilian harm proportional.
3. Blame shifting on civilians	Israel says " Hamas uses human shields" and Russia says "Ukraine uses civilian areas," making civilians responsible for their own deaths and deflecting responsibility from the attacking state.
4. Documentation control	Both control information about civilian deaths, downplay their own casualties, exaggerate the enemy's, and hide the true scale of civilian harm to shape public perception.
5. Law as justification, not restraint	International law becomes a tool for justifying military action rather than limiting harm, and accountability gaps persist because powerful states ignore court orders and international bodies cannot force compliance.

PROPORTIONALITY FAILING AS PROTECTION

Legal concerns: There are no clearly defined key terms such as "excessive" and "military advantage." Therefore, there is no clear measure of proportionality that can help in determining what constitutes a legitimate target and an unlawful one. It becomes easier for commanders to prove proportionality ex post facto instead of adhering to the principle beforehand.

Structural concerns: States make self-assessments regarding proportionality and there is no independent way to determine the amount of civilian harm inflicted and the extent of military

advantage gained by such acts. Weak enforcement measures, political considerations being given priority over legal ones, and the resistance from powerful states against being held accountable are some other reasons why proportionality lacks accountability.

Political considerations: International law becomes a mechanism for the legitimization of political narratives rather than providing protection to civilians. Domestic politics requires that states justify their participation in wars and the costs incurred along with civilian casualties through international law. States find it politically convenient to use proportionality as the legal shield for their conduct in wars while disregarding humanitarian protection altogether.

THE TRANSFORMATION FROM PROTECTION TO MOBILIZATION

The original intent of the proportionality principle was meant to be a protective umbrella for civilians. However, it has turned into legal justification for violence. This transformation happens through a predictable pattern: a state plans an attack it knows will cause civilian harm, claims the military advantage justifies that harm, and then uses proportionality language when criticized by the international community. Hence, the consequence of that phenomenon is a delay of critique while causing harm. Mobilizing effect of proportionality language involves gaining support for violence among domestic as well as international population by making the country's military actions appear legitimate and justifiable, while reducing criticism in terms of civilian harm caused by them.

IMPLICATIONS AND RECOMMENDATIONS

IMPLICATIONS FOR INTERNATIONAL HUMANITARIAN LAW

The scope and magnitude of violations witnessed in Ukraine hold significant implications for the wider International Humanitarian Law regime. The failure of IHL to shield civilians from bombardment, massacre, and systematic destruction of civilian infrastructure raises serious questions about the fundamental principle of compliance. States that get away with such violations may lead other states to conclude that they do not need to comply with international humanitarian law.

The biggest danger lies in the potential erosion of norms. IHL relies not only on enforcement mechanisms but also on the belief that these laws have to be adhered to. If these laws are repeatedly violated without any repercussions, then the belief in them is slowly eroded, leading to a lack of compliance among all sides in conflict.

Communities that experience such violations tend to lose their faith in international mechanisms. Civilians in Mariupol and Bucha will likely lose faith in the international system because of its failure to prevent and mitigate these atrocities.

Such erosion brings a wide range of negative implications. Lower levels of compliance result in increased harm to civilians. It becomes harder for human rights organizations to operate. Finally, lack of proper enforcement allows violence to escalate further in the future.

RECOMMENDATIONS FOR REFORM

Legal and Technical Reforms

The ambiguity surrounding key IHL concepts such as “excessive civilian harm” and “military advantage” must be reduced through clearer legal guidance. Standardized proportionality assessment frameworks should also be introduced, requiring commanders to document pre-attack evaluations and subject them to independent review, thereby improving consistency, transparency, and accountability.

Institutional Reforms

Accountability mechanisms must be strengthened through independent monitoring in conflict zones, better protection for whistleblowers, and stronger action against serious IHL violations through faster investigations and sanctions.

Political and Cultural Reforms

Legal rules alone cannot ensure compliance with IHL. Military training should focus on developing practical proportionality judgment rather than treating IHL as a mere formality. Regular simulations and scenario-based exercises can help commanders make better decisions during conflicts. More importantly, armed forces must foster a culture that prioritizes civilian protection and genuine respect for humanitarian principles, rather than simply meeting minimum legal requirements.

Limitations of Reform

Implementing these reforms will not be easy. States may resist treaty amendments, and political interests often influence the enforcement of international law. Moreover, building a culture of compliance within military institutions is a long-term process. Therefore, the goal should not be perfect adherence but gradual improvement. Even modest reforms can strengthen civilian protection and save lives during armed conflicts.

CONCLUSION

In conclusion, this study found that the principle of proportionality, although designed to protect civilians during armed conflict, is often used to justify military actions that result in civilian harm. The case studies of Gaza and Ukraine revealed common patterns, including vague legal language, weak enforcement mechanisms, and political influence over accountability. As a result, proportionality can become a tool for legal and political mobilization rather than a genuine humanitarian safeguard. This reflects a broader challenge within International Humanitarian Law, where legal principles may be shaped by political interests instead of humanitarian concerns. While achieving perfect compliance may be unrealistic, reforms aimed at greater clarity, accountability, and transparency can strengthen civilian protection. Ultimately, civilians deserve laws that genuinely protect their lives and dignity, and recognizing these challenges is the first step toward meaningful change.