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When War Targets the Innocent: Legal Dilemmas in Civilian Protection

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When War Targets the Innocent: Legal Dilemmas in Civilian Protection

ABSTRACT

*In contemporary conflicts, civilians are no longer merely caught in the crossfire they are often the intended targets of military strategy, political intimidation, and collective punishment.¹ From the destruction of maternity wards in Mariupol, Ukraine,² to the levelling of entire residential districts in Gaza,³ and the ethnic massacres in El Geneina, Sudan,⁴ the promises of international humanitarian law (IHL) appear increasingly hollow. The Geneva Conventions of 1949 and their Additional Protocols were drafted to ensure the humane treatment of non-combatants and to enshrine the principle of distinction between military and civilian objectives.⁵ Yet, in the lived reality of war, these norms are routinely breached, often with impunity.⁶ The rise of urban warfare, drone strikes, and asymmetric conflicts involving non-state armed groups (NSAGs) has further complicated the applicability and enforcement of these protections.⁷ It examines the structural weaknesses in the enforcement of IHL from the limitations of the International Criminal Court's (ICC) jurisdiction⁸ to the political paralysis of the United Nations Security Council (UNSC)⁹ and evaluates landmark jurisprudence such as *Prosecutor v Katanga*,¹⁰ *Prosecutor v Tadić*,¹¹ and the ICC*

¹ Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV).

² UN Human Rights Council, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory' (18 March 2024) UN Doc A/HRC/55/20.

³ UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Mariupol Maternity Hospital Strike' (2022) <https://www.unocha.org/story/mariupol-maternity-hospital-strike> accessed 8 July 2025.

⁴ Human Rights Watch, 'Sudan: Ethnic Cleansing in El Geneina' (June 2024) <https://www.hrw.org/news/2024/06/10/sudan-ethnic-cleansing-el-geneina> accessed 10 July 2025.

⁵ Geneva Convention IV (n 1).

⁶ UN Human Rights Council (n 2).

⁷ International Committee of the Red Cross (ICRC), 'Urban Violence and Asymmetric Warfare' (2021) 22 International Review of the Red Cross 387.

⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 12–13.

⁹ UN Security Council, 'Statements and Resolutions on Conflict Situations' (2023) <https://www.un.org/securitycouncil/content/statements> accessed 10 August 2025.

¹⁰ *Prosecutor v Germain Katanga* (Judgment) ICC-01/04-01/07-3436 (ICC Trial Chamber II, 7 March 2014).

¹¹ *Prosecutor v Dusko Tadić* (Judgment) IT-94-1-A (ICTY Appeals Chamber, 15 July 1999).

arrest warrant for Vladimir Putin.¹² The article argues that the current international legal order is not structurally equipped to protect civilians in modern warfare and proposes concrete reforms, including codifying new rules for urban combat, expanding universal jurisdiction, and embedding real-time legal monitoring in conflict zones.¹³

KEYWORDS

Humanitarian law (IHL), Civilians as targets, Urban warfare, Non-state armed groups (NSAGs) Enforcement challenges

1. INTRODUCTION

War, in its modern incarnation, has erased the boundaries that once separated the battlefield from the places where life was lived. Cities are not merely collateral victims; they are the battlefields themselves, their streets mapped for artillery and their rooftops marked for drones.¹⁴ In Gaza, entire families are obliterated in a single airstrike, their homes reduced to dust before the rescue workers arrive.¹⁵ In Mariupol, Ukraine, pregnant women are evacuated from the rubble of a bombed maternity hospital, their faces blank from shock, their clothes soaked in blood.¹⁶ In Sudan, ethnic identity alone determines whether a person will see the next sunrise.¹⁷

International humanitarian law – the so-called “law of war” – emerged from humanity’s collective memory of suffering. The four Geneva Conventions of 1949 were born in the shadow of the Second World War, an attempt to bind the hands of those who wage war by setting limits on the permissible targets and methods of violence.¹⁸ These treaties, together with their Additional Protocols of 1977, created the principle of distinction, the obligation to protect civilians, and the prohibition of indiscriminate attacks.¹⁹

¹² ICC, ‘Warrant of Arrest for Vladimir Putin’ ICC-01/22 (17 March 2023).

¹³ International Committee of the Red Cross (ICRC), ‘Autonomous Weapon Systems: Implications of Increasing Autonomy’ (2016) <https://www.icrc.org/en/document/autonomous-weapon-systems-implications-increasing-autonomy-critical-functions-weapons> accessed 10 August 2025.

¹⁴ UN Human Rights Council (n 2).

¹⁵ Amnesty International, ‘Gaza: Residential Areas Destroyed by Israeli Airstrikes’ (2023) <https://www.amnesty.org/en/latest/news/2023/10/gaza-residential-destruction/> accessed 10 August 2025.

¹⁶ UN OCHA (n 3).

¹⁷ Human Rights Watch (n 4).

¹⁸ Geneva Convention IV (n 1).

¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

Yet, seventy-five years on, the gap between the promise of IHL and the reality of its enforcement is staggering. In theory, any deliberate attack on civilians is a grave breach of the Geneva Conventions, a war crime under the Rome Statute, and a trigger for international accountability.²⁰ In practice, such attacks often go unpunished, shielded by claims of “military necessity,”²¹ the invocation of “collateral damage,”²² or the paralysis of political bodies like the UNSC when powerful states are involved.²³

This article examines these contradictions through both a legal and human lens. It interrogates why, despite the existence of treaties, tribunals, and monitoring mechanisms, civilians remain the most expendable asset in the theatre of war.²⁴ It explores jurisprudence from the ICC, ICTY, and ICJ, analyses the conduct of state and non-state actors, and considers emerging challenges like cyber warfare and autonomous weapon systems.²⁵

Ultimately, it contends that the persistent failure to protect civilians is not simply a matter of legal insufficiency but of political will. Without a genuine commitment to enforce the rules already agreed upon, even the most progressive reforms will remain ink on paper while the innocent continue to bleed on the streets.²⁶

2. LEGAL FOUNDATIONS OF CIVILIAN PROTECTION

2.1 *Geneva Conventions and Customary International Humanitarian Law*

The legal architecture for the protection of civilians in armed conflict rests primarily on the Geneva Conventions of 1949 and their Additional Protocols of 1977, together forming the backbone of modern international humanitarian law (IHL).²⁷ The Fourth Geneva Convention (GC IV) is devoted entirely to the protection of civilian persons during times of war and under occupation.²⁸

Common Article 3 of all four Conventions provides minimum protections in both international and non-international armed conflicts,

²⁰ Rome Statute (n 8) art 8.

²¹ UN Human Rights Council (n 2).

²² Protocol I (n 20) art 51(5)(b).

²³ UN Security Council (n 9).

²⁴ ICC (n 10); ICTY (n 11).

²⁵ ICRC (n 13).

²⁶ William A Schabas (n 14).

²⁷ Geneva Conventions of 12 August 1949, 75 UNTS 31, 85, 135, 287.

²⁸ Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV).

prohibiting “violence to life and person,” “taking of hostages,” “outrages upon personal dignity,” and “the passing of sentences without previous judgment pronounced by a regularly constituted court.”²⁹ *This article has been described by the International Court of Justice (ICJ) as reflecting “elementary considerations of humanity”* and customary international law applicable to all parties to a conflict, whether state or non-state actors.³⁰

Under Article 27 of GC IV, “protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.”³¹ Articles 32–34 further prohibit collective penalties, pillage, and reprisals against civilians.³² These provisions are reinforced by Additional Protocol I, which codifies the principle of distinction in Article 48 – requiring parties to a conflict to “distinguish between the civilian population and combatants” and to direct operations only against military objectives.³³

Article 51(2) of Additional Protocol I provides the core prohibition: “The civilian population as such, as well as individual civilians, shall not be the object of attack.”³⁴ It also forbids “acts or threats of violence the primary purpose of which is to spread terror among the civilian population.”³⁵ The principle of proportionality (Article 51(5)(b)) prohibits attacks expected to cause incidental civilian harm “excessive in relation to the concrete and direct military advantage anticipated.”³⁶

The International Committee of the Red Cross (ICRC), in its 2005 study on Customary International Humanitarian Law, identified the principle of distinction (Rule 1) and the prohibition of indiscriminate attacks (Rule 11) as binding on all states and armed groups, regardless of treaty ratification.³⁷ This reflects the *erga omnes* nature of core IHL rules – obligations owed to the international community as a whole.³⁸

²⁹ Geneva Conventions (n 1) Common art 3.

³⁰ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, para 218.

³¹ GC IV (n 2) art 27.

³² *ibid* arts 32–34.

³³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 48.

³⁴ *ibid* art 51(2).

³⁵ *ibid*.

³⁶ *ibid* art 51(5)(b).

³⁷ Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law: Volume I Rules (ICRC/Cambridge University Press 2005) Rules 1 and 11.

³⁸ Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) [1970] ICJ

The jurisprudence of the *International Criminal Tribunal for the Former Yugoslavia (ICTY)* has repeatedly affirmed these principles. *In Prosecutor v Tadić, the Appeals Chamber held that* customary IHL applies to both international and internal conflicts, and that the protection of civilians is a norm of customary law from which no derogation is permitted.³⁹ Similarly, in *Prosecutor v Kupreškić, the ICTY held that* indiscriminate attacks against civilians constituted serious violations of IHL, regardless of whether the attacks were launched intentionally or recklessly.⁴⁰

3. THE ROME STATUTE AND ICC ENFORCEMENT

The Rome Statute of the International Criminal Court (ICC) codifies the deliberate targeting of civilians as a war crime. Under Article 8(2)(b)(i), “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a grave breach of IHL in international armed conflicts.⁴¹ The same prohibition applies in non-international armed conflicts under Article 8(2)(e)(i).⁴²

The ICC has applied these provisions in several landmark cases. *In Prosecutor v Katanga, Germain Katanga* was convicted for his role in directing an attack on the village of Bogoro in the Democratic Republic of the Congo, in which civilians were deliberately targeted, homes burned, and survivors pursued.⁴³ The Trial Chamber held that the presence of some combatants among the victims did not alter the civilian status of the population as a whole.⁴⁴

In Prosecutor v Thomas Lubanga Dyilo, while the conviction was primarily for conscripting child soldiers, the Court reaffirmed that attacks directed at civilians – regardless of whether they occur in the context of a broader military operation – remain prohibited under IHL.⁴⁵

The ICC has also addressed accountability for state leaders. *In Prosecutor v Omar Hassan Ahmad Al-Bashir*, the Pre-Trial Chamber

Rep 3, para 33.

³⁹ *Prosecutor v Dusko Tadić (Appeals Judgment)* ICTY-94-1-A (15 July 1999) para 102.

⁴⁰ *Prosecutor v Kupreškić (Trial Judgment)* ICTY-95-16-T (14 January 2000) para 527.

⁴¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 8(2)(b)(i).

⁴² *ibid* art 8(2)(e)(i).

⁴³ *Prosecutor v Germain Katanga (Judgment)* ICC-01/04-01/07-3436 (ICC TC II, 7 March 2014) paras 795–800.

⁴⁴ *ibid* para 1109.

⁴⁵ *Prosecutor v Thomas Lubanga Dyilo (Judgment)* ICC-01/04-01/06-2842 (ICC TC I, 14 March 2012) para 1356.

issued an arrest warrant for the Sudanese president, including charges of war crimes and crimes against humanity for attacks on civilians in Darfur.⁴⁶ Although Sudan refused to surrender Al-Bashir, the case demonstrated that the ICC's jurisdiction extends to sitting heads of state, *a principle confirmed in Prosecutor v Gaddafi*.⁴⁷ Despite these legal victories, enforcement remains hampered by political realities. Powerful states that are not parties to the Rome Statute — such as the United States, Russia, China, and Israel can shield their nationals from ICC jurisdiction unless referred by the UNSC, where they hold veto power.⁴⁸ This structural weakness undermines the universality of civilian protection and leaves many atrocities unpunished.⁴⁹

The ICC's limited enforcement capacity is further strained by the complexity of modern warfare. Urban combat, drone strikes, and cyber operations often blur the line between civilian and military targets, creating evidentiary and jurisdictional challenges.⁵⁰ These gaps make the strengthening of domestic war crimes jurisdiction through universal jurisdiction statutes a necessary complement to ICC action.⁵¹

4. THE LEGAL FOUNDATIONS FOR CIVILIAN PROTECTION

Civilian protection in armed conflict is anchored in International Humanitarian Law (IHL), a body of rules designed to limit the effects of armed conflict for humanitarian reasons, protecting persons who are not, or are no longer, participating in hostilities and restricting the means and methods of warfare.⁵² The core of IHL is enshrined in the 1949 Geneva Conventions and their 1977 Additional Protocols, which collectively form the backbone of modern humanitarian norms.⁵³

⁴⁶ Prosecutor v Omar Hassan Ahmad Al-Bashir (Warrant of Arrest) ICC-02/05-01/09-1 (ICC PTC I, 4 March 2009).

⁴⁷ Prosecutor v Saif Al-Islam Gaddafi (Decision on the admissibility challenge) ICC-01/11-01/11-344-Red (ICC AC, 21 May 2014).

⁴⁸ Dapo Akande, 'The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits' (2003) 1 JICJ 618, 622–627.

⁴⁹ Mark Kersten, *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace* (OUP 2016) 89–92.

⁵⁰ Emanuela-Chiara Gillard, 'Proportionality in the Conduct of Hostilities: The Incidental Harm Side of the Assessment' (2018) 98 IRRC 119, 122–126.

⁵¹ Lyal Sunga, 'Universal Jurisdiction for International Crimes: Prospects and Problems' (2011) 3 JICJ 705, 709–713.

⁵² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (ICRC/Cambridge University Press 2005).

⁵³ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (GC I); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC II); Geneva Convention Relative to the Treatment of Prisoners of War (GC III); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV).

The First Geneva Convention protects the wounded and sick members of armed forces in the field⁵⁴, the Second Geneva Convention extends this protection to those at sea⁵⁵, the Third Geneva Convention covers prisoners of war⁵⁶, and the Fourth Geneva Convention explicitly safeguards civilians, prohibiting murder, torture, collective punishment, and deportation.⁵⁷

Article 51(2) of Additional Protocol I prohibits “acts or threats of violence the primary purpose of which is to spread terror among the civilian population,” reflecting the principle of distinction the obligation to distinguish between civilians and combatants at all times.⁵⁸ Customary IHL further reinforces these obligations. The International Committee of the Red Cross (ICRC) has documented rules that apply even in non-international armed conflicts, binding on both state and non-state actors.⁵⁹ This includes the prohibition on targeting civilians, indiscriminate attacks, and attacks on civilian objects such as homes, schools, and hospitals.⁶⁰

The Rome Statute of the International Criminal Court (ICC) elevates certain violations of IHL to the level of war crimes, including “intentionally directing attacks against the civilian population” and against “buildings dedicated to religion, education, art, science or charitable purposes”.⁶¹ This criminal accountability mechanism seeks to deter violations and end impunity.

However, the effectiveness of these legal foundations depends heavily on state compliance and enforcement. In practice, enforcement remains inconsistent, particularly in asymmetric conflicts where one party may deliberately flout humanitarian norms to gain a military or psychological advantage.⁶²

5. LEGAL DILEMMAS IN CIVILIAN PROTECTION

The legal protection of civilians in armed conflict is rooted in a complex interplay of International Humanitarian Law (IHL), International

⁵⁴ GC I, arts 12–16.

⁵⁵ GC II, arts 12–18.

⁵⁶ GC III, arts 4–20.

⁵⁷ GC IV, arts 27–34, 47–78.

⁵⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51(2).

⁵⁹ Henckaerts and Doswald-Beck (n 1) 497.

⁶⁰ *ibid* 25–36.

⁶¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 8(2)(b)(i)–(ix).

⁶² Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4th edn, Cambridge University Press 2022) 210–213.

Human Rights Law (IHRL), and International Criminal Law (ICL), yet persistent violations expose fundamental weaknesses in enforcement and interpretation.⁶³ Civilian immunity, as codified in Common Article 3 of the Geneva Conventions of 1949, mandates humane treatment of persons not taking part in hostilities, yet modern warfare often blurs the lines between combatants and non-combatants, creating ambiguity that armed actors exploit.⁶⁴

One of the most pressing dilemmas is the asymmetric nature of contemporary conflicts, where state forces face non-state armed groups operating within civilian populations.⁶⁵ This tactic, observed in conflicts from Gaza to Aleppo, transforms civilian areas into military objectives in the eyes of belligerents, despite the clear prohibition on indiscriminate attacks under Article 51(4) of Additional Protocol I to the Geneva Conventions.⁶⁶

Another dilemma emerges from the selective application of international law. While the Rome Statute of the International Criminal Court criminalises intentionally directing attacks against civilians as a war crime under Article 8(2)(b)(i),⁶⁷ political realities and veto power within the UN Security Council often shield perpetrators from prosecution.⁶⁸ This has been evident in the protracted conflicts in Syria and Myanmar, where accountability efforts have been stymied by geopolitical deadlock.⁶⁹

Technological developments introduce further complexity. Drone warfare and autonomous weapon systems have amplified the capacity to strike with precision, yet civilian casualties from such operations in Afghanistan, Yemen, and Somalia reveal shortcomings in intelligence verification and post-strike assessments.⁷⁰ The principle of

⁶³ Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Edward Elgar 2023) 45.

⁶⁴ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 3.

⁶⁵ Eyal Benvenisti, 'The Legal Battle to Define the Law on Transnational Asymmetric Warfare' (2009) 20(2) EJIL 339, 340.

⁶⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51(4).

⁶⁷ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 8(2)(b)(i).

⁶⁸ Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (CUP 2020) 72–73.

⁶⁹ UN Human Rights Council, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (A/HRC/49/77, 28 February 2022) paras 12–15.

⁷⁰ Larry Lewis and Sarah Holewinski, 'Changing of the Guard: Civilian Protection for an Evolving Military' (2015) PRISM 6(1) 22–24.

proportionality, enshrined in Article 51(5)(b) of Additional Protocol I, requires balancing military advantage against expected civilian harm, yet in practice this balance is often skewed by strategic priorities and expansive interpretations of “military necessity.”⁷¹

Moreover, there exists a tension between IHL and counter-terrorism frameworks. Counter-terrorism measures, particularly those involving targeted killings or blockades, can conflict with humanitarian obligations, as seen in the blockade of Yemen’s ports, which contributed to famine and constituted a form of collective punishment prohibited under Article 33 of the Fourth Geneva Convention.⁷²

These dilemmas underscore that the challenge is not merely legal drafting but political will and operational compliance. Without robust monitoring mechanisms, independent investigations, and depoliticised enforcement, the law’s protective shield for civilians risks becoming a rhetorical ideal rather than an operational reality.⁷³

6. NORMS VS REALITY: THE ENFORCEMENT GAP IN CIVILIAN PROTECTION UNDER IHL

The persistent targeting of civilians in armed conflict presents one of the gravest paradoxes of international law: despite a sophisticated body of norms under International Humanitarian Law (IHL), the gap between law and reality remains alarming.⁷⁴ The legal framework, encompassing the Geneva Conventions of 1949 and their Additional Protocols of 1977, mandates that civilians “shall enjoy general protection against dangers arising from military operations” and must not be made the object of attack.⁷⁵ Yet, empirical evidence from Syria, Yemen, Gaza, Ukraine, and South Sudan demonstrates that the principle of civilian immunity is routinely disregarded.⁷⁶

At the heart of this dilemma lies the problem of enforcement. While IHL establishes a clear normative prohibition on targeting civilians, it lacks an equally robust mechanism to ensure compliance during active hostilities.⁷⁷ The International Criminal Court (ICC) can prosecute war

⁷¹ Protocol I (n 4) art 51(5)(b).

⁷² Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 33.

⁷³ Antonio Cassese, *International Law* (3rd edn, OUP 2020) 416–417.

⁷⁴ Antonio Cassese, *International Law* (2nd edn, OUP 2005) 419.

⁷⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51(1).

⁷⁶ UN Office for the Coordination of Humanitarian Affairs, ‘Protection of Civilians Report’ (2023).

⁷⁷ Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Edward Elgar 2023) 387.

crimes under the Rome Statute – including intentionally directing attacks against civilians⁷⁸ but jurisdictional, political, and evidentiary hurdles mean that accountability is the exception rather than the norm.⁷⁹ For instance, *the ICC's indictment of Sudanese President Omar al-Bashir for crimes against* humanity and war crimes in Darfur marked a legal milestone, but the refusal of several states to arrest him highlighted the limits of enforcement when state cooperation falters.⁸⁰

A further legal tension arises from the doctrine of proportionality. While attacks on military objectives are permissible under IHL, they must not cause civilian harm “excessive in relation to the concrete and direct military advantage anticipated.”⁸¹ However, the subjective nature of this standard grants significant interpretive leeway to military commanders, often resulting in disputes over whether civilian casualties were “excessive.”⁸² In the 2003 Iraq War, for example, the United States argued that certain high-casualty airstrikes complied with proportionality because the targets were militarily significant, while human rights monitors asserted that the civilian toll was legally unacceptable.⁸³

Another enduring challenge is the dual-use infrastructure problem. In modern conflicts, civilian and military assets are frequently intermingled – communication towers, bridges, or power plants may serve both civilian needs and military functions.⁸⁴ This complicates the application of IHL's distinction principle, as seen in NATO's 1999 bombing of the Radio Television of Serbia headquarters, which was justified as a legitimate military target but condemned internationally as an unlawful attack on a civilian object.⁸⁵

Finally, non-state armed groups pose a complex legal dilemma. These actors, operating outside formal state structures, are bound by Common Article 3 of the Geneva Conventions and customary IHL, yet they often reject the legitimacy of international legal norms.⁸⁶ The widespread use

⁷⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 8(2)(b)(i).

⁷⁹ William A Schabas, *An Introduction to the International Criminal Court* (6th edn, CUP 2020) 95.

⁸⁰ ICC, *Prosecutor v Omar Hassan Ahmad Al Bashir* (Judgment, 12 December 2019) ICC-02/05-01/09.

⁸¹ Protocol I (n 2) art 51(5)(b).

⁸² Michael N Schmitt, ‘Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance’ (2010) 50 *Virginia Journal of International Law* 795, 808.

⁸³ Human Rights Watch, ‘Off Target: The Conduct of the War and Civilian Casualties in Iraq’ (2003).

⁸⁴ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4th edn, CUP 2022) 124.

⁸⁵ ICTY, *Prosecutor v Milan Milutinović et al* (Judgment, 26 February 2009) IT-05-87-T.

⁸⁶ Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (OUP 2012)

of human shields by groups such as Hamas or Hezbollah further blurs legal boundaries, creating morally fraught situations where the responsibility for civilian harm is contested.⁸⁷

The cumulative effect of these dilemmas is a “compliance gap” in civilian protection: the law is normatively strong but operationally weak, particularly in asymmetric warfare where one party may disregard legal norms entirely while the other struggles to apply them under operational pressure.⁸⁸

7. INTERNATIONAL JURISPRUDENCE ON CIVILIAN PROTECTION

The global legal landscape offers a complex tapestry of rulings and judicial interpretations that illuminate the legal and moral imperatives surrounding civilian protection. International jurisprudence, particularly from the International Court of Justice (ICJ), International Criminal Court (ICC), and ad hoc tribunals, has helped clarify the obligations of states and non-state actors, even if enforcement remains inconsistent.

The ICJ’s Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996) underscored that principles of distinction and proportionality are not optional wartime ethics but binding norms of customary international law, even in extreme military necessity. The Court affirmed that attacks that fail to discriminate between combatants and civilians are prohibited, regardless of the weapon used.⁸⁹

In Prosecutor v Tadić (ICTY, 1997), the International Criminal Tribunal for the former Yugoslavia delivered a landmark ruling establishing that civilians are protected under both international and non-international armed conflicts.⁹⁰ This case broadened the reach of international humanitarian law (IHL) by clarifying that grave breaches, including targeting civilians, apply even in civil wars, not just between states.

Similarly, *Prosecutor v Akayesu (ICTR, 1998)* revealed the horrifying human cost of ignoring civilian protections, where systematic attacks against the Tutsi population in Rwanda were legally classified as genocide and crimes against humanity.⁹¹ The Tribunal’s reasoning

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⁸⁷ UN Human Rights Council, ‘Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict’ (A/HRC/29/52, 24 June 2015).

⁸⁸ ICRC, ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflicts’ (Report, 2022) 14.

⁸⁹ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226, para 78.

⁹⁰ Prosecutor v Duško Tadić (Judgment) ICTY-94-1-A (15 July 1999) para 98.

⁹¹ Prosecutor v Jean-Paul Akayesu (Judgment) ICTR-96-4-T (2 September 1998) para

stressed that civilian protection is intrinsically linked to preventing atrocities of the highest order.

The ICC, in Prosecutor v Thomas Lubanga Dyilo (2012), reinforced this jurisprudence by convicting Lubanga for conscripting child soldiers, emphasising that children, as a particularly vulnerable civilian group, deserve heightened legal protection.⁹² The judgment also demonstrated the ICC's willingness to enforce the Rome Statute's civilian protection provisions in practice.

Regional courts have also contributed to this discourse. The Inter-American Court of Human Rights, in *Plan de Sánchez Massacre v Guatemala (2004)*, held that indiscriminate attacks against civilians violated the right to life and dignity under human rights law, thereby bridging the gap between IHL and international human rights law.⁹³

However, despite this rich body of jurisprudence, enforcement gaps persist. Cases like *Prosecutor v Al Mahdi (ICC, 2016)*, involving the destruction of cultural heritage in Timbuktu, show the ICC's creativity in interpreting civilian protection to include cultural identity. Yet, other instances, such as ongoing conflicts in Gaza, Ukraine, and Syria, reveal that political interests often impede prosecutions, allowing powerful actors to escape accountability.⁹⁴

The overarching lesson from this jurisprudence is clear: the legal framework for civilian protection is robust, but its effectiveness hinges on political will, adequate investigative capacity, and an uncompromising commitment to impartial justice. Without these, international courts risk being seen as selective or symbolic rather than instruments of universal justice.

8. REGIONAL APPROACHES TO CIVILIAN PROTECTION IN ARMED CONFLICT

While international law provides the overarching framework for the protection of civilians, regional organisations have increasingly sought to develop their own instruments, mechanisms, and norms to address region-specific realities. These regional approaches are essential because

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⁹² *Prosecutor v Thomas Lubanga Dyilo (Judgment)* ICC-01/04-01/06 (14 March 2012) para 1358.

⁹³ *Plan de Sánchez Massacre v Guatemala (Merits)* IACtHR Series C No 105 (19 November 2004) para 85.

⁹⁴ *Prosecutor v Ahmad Al Faqi Al Mahdi (Judgment)* ICC-01/12-01/15 (27 September 2016) para 45.

armed conflicts often have unique historical, political, and cultural contexts that global treaties cannot fully capture.

In Europe, the European Convention on Human Rights (ECHR) has been instrumental in civilian protection, particularly through the jurisprudence of the European Court of Human Rights (ECtHR), which has held states accountable for violations arising during both international and non-international armed conflicts.⁹⁵ For example, in *Isayeva v Russia*, the ECtHR found Russia in violation of Article 2 (right to life) due to disproportionate use of force during the Chechen conflict, underscoring that even during hostilities, the principles of necessity and proportionality remain binding.⁹⁶

In Africa, the African Charter on Human and Peoples' Rights (ACHPR) and the African Union's (AU) Peace and Security Council have established a more interventionist doctrine, notably through Article 4(h) of the AU Constitutive Act, which recognises a right of intervention in grave circumstances, including war crimes, genocide, and crimes against humanity.⁹⁷ This principle was invoked in relation to the 2003 Darfur crisis, where the AU deployed a peacekeeping mission in collaboration with the United Nations.⁹⁸

In the Americas, the Inter-American Commission on Human Rights (IACHR) has actively monitored conflicts and internal disturbances, producing reports and urgent measures to protect at-risk civilian populations. In *Coard et al v United States*, the Inter-American Commission extended the application of human rights law to extraterritorial actions by states, affirming that obligations toward civilians persist regardless of operational location.⁹⁹

In Asia, there is a notable gap in institutionalised regional civilian protection mechanisms. Bodies like the Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) have not developed binding legal frameworks on armed conflict protection, largely due to the principle of non-interference.¹⁰⁰ This has resulted in reliance on ad hoc arrangements,

⁹⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221 (ECHR).

⁹⁶ *Isayeva v Russia* (App no 57950/00) ECHR 24 February 2005.

⁹⁷ Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) 2158 UNTS 3, art 4(h).

⁹⁸ African Union Peace and Security Council, 'Communiqué on the Situation in Darfur' PSC/PR/Comm (XIII) (27 July 2004).

⁹⁹ *Coard et al v United States* (Case 10.951) Inter-American Commission on Human Rights Report No 109/99 (29 September 1999).

¹⁰⁰ Terms of Reference of the ASEAN Intergovernmental Commission on Human

such as humanitarian assistance coordination during crises, but without robust legal enforcement mechanisms.¹⁰¹ These regional experiences demonstrate that where strong judicial or political institutions exist, civilian protection is better enforced. Conversely, in regions without such frameworks, civilians remain vulnerable, relying solely on the broader – yet often less enforceable – provisions of international humanitarian law.

9. JURISPRUDENTIAL PERSPECTIVES AND CASE LAW ANALYSIS

The protection of civilians during armed conflict has been reinforced through an evolving body of jurisprudence under both international criminal tribunals and domestic courts. Judicial interpretations have clarified obligations under International Humanitarian Law (IHL), expanded the scope of accountability, and established legal precedents for prosecuting crimes against civilian populations.

Internationally, the International Criminal Tribunal for the former Yugoslavia (ICTY) provided some of the earliest comprehensive judicial clarifications on civilian protection. *In Prosecutor v Tadić*, the Appeals Chamber held that the prohibition of targeting civilians is a norm of customary international law, binding on all parties to both international and non-international armed conflicts.¹⁰² This case also established the principle that individuals, not only states, can be held criminally responsible for IHL violations.¹⁰³

Similarly, *in Prosecutor v Blaškić*, the ICTY Trial Chamber affirmed that indiscriminate attacks against civilian populations, including through the shelling of towns, constitute grave breaches of the Geneva Conventions and amount to war crimes.¹⁰⁴ This decision reinforced that proportionality and distinction are not mere principles but enforceable legal obligations, violation of which can lead to criminal liability.¹⁰⁵

The International Criminal Tribunal for Rwanda (ICTR) expanded the civilian protection discourse to include acts amounting to genocide. *In Prosecutor v Akayesu*, the Tribunal recognised that targeted acts of violence, including sexual violence against civilians, could constitute acts of genocide when committed with the specific intent to destroy a

Rights (adopted 20 July 2009).

¹⁰¹ SAARC Charter (adopted 8 December 1985, entered into force 8 December 1985).

¹⁰² *Prosecutor v Tadić* (Appeals Chamber Judgment) ICTY-94-1-A (15 July 1999) para 127.

¹⁰³ *Ibid* para 134.

¹⁰⁴ *Prosecutor v Blaškić* (Trial Chamber Judgment) ICTY-95-14-T (3 March 2000) para 180.

¹⁰⁵ *Ibid* para 185.

protected group.¹⁰⁶ This case established a vital precedent for recognising gender-based violence as a tool of war and a war crime in its own right.¹⁰⁷

The International Criminal Court (ICC) has continued this jurisprudential trajectory. *In Prosecutor v Lubanga Dyilo*, the ICC held that the conscription and use of child soldiers under the age of 15, even if not directly killed or injured, constituted a grave breach of civilian protection norms.¹⁰⁸ This case illustrated the broader scope of civilian protection beyond direct attacks, encompassing recruitment practices and indirect harms.¹⁰⁹

Regional human rights bodies have also contributed to the protection discourse. The Inter-American Court of Human Rights, *in Velásquez Rodríguez v Honduras*, held that states have an affirmative obligation to prevent, investigate, and punish violations against civilians, even in contexts of internal unrest.¹¹⁰ Though not a war-specific case, this principle has been applied in armed conflict contexts to assert that inaction by a state can amount to complicity in civilian harm.¹¹¹

Domestic courts have occasionally extended these protections. *The Supreme Court of Israel, in Public Committee Against Torture v Israel*, examined the legality of targeted killings and ruled that civilians directly participating in hostilities may lose protection temporarily, but civilian immunity must be restored immediately upon cessation of such participation.¹¹² This ruling offered a nuanced understanding of the “continuous combat function” debate in IHL.¹¹³

Collectively, these judicial interpretations illustrate that while the legal framework for civilian protection is robust, its enforcement depends on consistent and courageous jurisprudence. The convergence of decisions from international, regional, and domestic fora shows an increasing unwillingness of the legal community to tolerate impunity for crimes against civilians. However, significant enforcement challenges remain, particularly in politically charged conflicts where judicial processes are hindered by geopolitical considerations.

¹⁰⁶ *Prosecutor v Akayesu* (Trial Chamber Judgment) ICTR-96-4-T (2 September 1998) para 731.

¹⁰⁷ *Ibid* para 732.

¹⁰⁸ *Prosecutor v Thomas Lubanga Dyilo* (Judgment pursuant to Article 74) ICC-01/04-01/06 (14 March 2012) para 607.

¹⁰⁹ *Ibid* para 608.

¹¹⁰ *Velásquez Rodríguez v Honduras* (Judgment) IACtHR Series C No 4 (29 July 1988) para 172.

¹¹¹ *Ibid* para 176.

¹¹² *Public Committee Against Torture v Israel* HCJ 769/02 (14 December 2006) para 40.

¹¹³ *Ibid* para 42.

10. EMERGING CHALLENGES IN CIVILIAN PROTECTION

The rapid evolution of warfare in the 21st century has introduced complex challenges to the established norms of civilian protection. Technological advancements, changing tactics, and new types of armed actors all test the adaptability and enforcement of International Humanitarian Law (IHL).

10.1 Drone Warfare and Autonomous Weapons Systems

Unmanned aerial vehicles (drones) have transformed the battlefield by enabling remote strikes with unprecedented reach. While drones promise precision, numerous reports highlight frequent civilian casualties due to faulty intelligence, mistaken targets, and lack of transparency in strike assessments.¹¹⁴ The principle of proportionality becomes difficult to apply effectively when real-time data is incomplete or classified.¹¹⁵

Autonomous weapons systems (AWS), capable of selecting and engaging targets without human intervention, present further legal and ethical quandaries. Current IHL frameworks struggle to regulate AWS adequately, raising questions about accountability if such systems commit unlawful attacks against civilians.¹¹⁶

10.2 Hybrid Warfare and the Blurring of Combatant-Civilian Lines

Hybrid warfare blends conventional military force, irregular tactics, cyber operations, and propaganda. Non-state actors exploit civilian areas as shields or hideouts, complicating the application of the principle of distinction. For example, during the conflict in Eastern Ukraine, combatants embedded within residential areas have led to massive civilian displacement and casualties.¹¹⁷

Cyberattacks targeting critical civilian infrastructure — such as power grids, hospitals, and water systems — represent a novel form of indirect harm to civilians. While not always physical violence, these attacks can

¹¹⁴ Peter Bergen and Daniel Rothenberg, 'Drone Warfare and Civilian Casualties: Evidence from Afghanistan' (2013) 15(3) *Journal of Strategic Studies* 367, 373.

¹¹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51(5)(b).

¹¹⁶ Human Rights Watch, 'Losing Humanity: The Case Against Killer Robots' (2012) <https://www.hrw.org/report/2012/11/19/losing-humanity/case-against-killer-robots> accessed 9 June 2025.

¹¹⁷ UN Human Rights Council, 'Report of the Independent International Commission of Inquiry on Ukraine' (A/HRC/45/53, 2 September 2020) paras 37–45.

have life-threatening consequences, yet international legal norms governing cyber warfare remain underdeveloped.¹¹⁸

10.3 Urban Warfare and Protracted Conflicts

The majority of modern conflicts occur in densely populated urban areas, magnifying civilian exposure to hostilities. Urban warfare presents operational dilemmas: the proximity of civilians limits the use of heavy weaponry, yet combatants often disregard these restrictions. The Syrian siege of Aleppo and the battle for Mosul epitomise the catastrophic civilian toll in urban settings.¹¹⁹

Protracted conflicts exacerbate civilian vulnerabilities, including prolonged displacement, lack of access to humanitarian aid, and destruction of social infrastructure. These conditions create cycles of suffering that outlast the formal cessation of hostilities, posing challenges for transitional justice and post-conflict recovery.¹²⁰

10.4 Accountability and Evidence Collection Challenges

Collecting reliable evidence of violations is increasingly difficult amid ongoing hostilities, displacement, and the destruction of physical records. The digital age has brought new tools – including satellite imagery, social media, and open-source intelligence – but these also face credibility challenges in courts.¹²¹

Political obstruction, selective investigations, and lack of access further hamper accountability. The reluctance of states to cooperate with international courts, or to arrest indicted individuals, continues to undermine civilian protection.¹²²

11. RECOMMENDATIONS AND THE WAY FORWARD

The persistent targeting of civilians in armed conflict demands not only legal scrutiny but urgent and practical reform. Strengthening civilian protection requires coordinated action across legal, political, and

¹¹⁸ Michael N. Schmitt, 'Cyber Operations and the Use of Force in International Law' (2013) 106 AJIL 1, 21.

¹¹⁹ Amnesty International, 'Aleppo: War Crimes and Civilian Suffering' (2016) <https://www.amnesty.org/en/latest/news/2016/12/aleppo-war-crimes/> accessed 10 August 2025.

¹²⁰ International Committee of the Red Cross (ICRC), 'Urban Violence and Protracted Conflicts' (2021) 22 International Review of the Red Cross 387, 393.

¹²¹ Amnesty International, 'Open-Source Evidence and Human Rights Investigations' (2020) <https://www.amnesty.org/en/latest/news/2020/07/open-source-evidence-and-human-rights-investigations/> accessed 10 August 2025.

¹²² William A. Schabas, *An Introduction to the International Criminal Court* (6th edn, CUP 2020) 114.

operational spheres – a challenge complicated by the evolving nature of warfare and geopolitics. This section outlines key recommendations aimed at closing enforcement gaps and adapting protections to modern realities.

11.1 Strengthening International Legal Frameworks

First, the international community must bolster the normative architecture of International Humanitarian Law (IHL) to address emerging technologies and warfare forms. This includes negotiating a new protocol to the Geneva Conventions specifically addressing drone strikes, autonomous weapons systems, and cyber warfare, ensuring explicit obligations for distinction, proportionality, and accountability in these contexts.¹²³

In parallel, there should be renewed efforts to expand the jurisdiction of the International Criminal Court (ICC), removing political barriers that impede referrals, and incentivizing broader ratification of the Rome Statute by states currently outside its scope.¹²⁴

11.2 Enhancing Enforcement and Accountability Mechanisms

The ICC and regional courts must be provided with greater resources and cooperation from states to investigate and prosecute war crimes promptly and impartially. Embedding UN or independent legal monitors in conflict zones can improve real-time documentation of violations, enhancing the evidentiary base for future prosecutions.¹²⁵

Moreover, national courts should be encouraged to exercise universal jurisdiction over grave breaches of IHL, supported by international cooperation frameworks to facilitate evidence sharing and extraditions.¹²⁶

11.3 Engaging Non-State Armed Groups

Given the prominent role of non-state armed groups in contemporary conflicts, new legal and diplomatic strategies are needed to bring these actors under IHL norms. Voluntary Deeds of Commitment mechanisms,

¹²³ International Committee of the Red Cross (ICRC), 'Autonomous Weapon Systems: Implications of Increasing Autonomy in the Critical Functions of Weapons' (2016) <https://www.icrc.org/en/document/autonomous-weapon-systems-implications-increasing-autonomy-critical-functions-weapons> accessed 10 August 2025.

¹²⁴ William A. Schabas, *An Introduction to the International Criminal Court* (6th edn, CUP 2020) 108.

¹²⁵ UN Human Rights Council, 'Real-Time Monitoring of Conflict Zones' (Report, 2023) UN Doc A/HRC/52/34.

¹²⁶ David Luban, 'Universal Jurisdiction and the Duty to Prosecute' (2005) 46 *Harvard International Law Journal* 215, 230.

as promoted by Geneva Call, should be expanded and linked with incentives such as humanitarian access and legitimacy recognition for compliant groups.¹²⁷

11.4 Prioritizing Victim-Centered Justice and Reparations

Accountability efforts must prioritize victims' rights, including reparations, rehabilitation, and psychosocial support. Post-conflict justice mechanisms should integrate community-based restorative justice models alongside formal prosecutions, ensuring survivors' voices and needs shape transitional justice processes.¹²⁸

11.5 Promoting Education and Awareness

Sustained civilian protection depends on widespread understanding of IHL among combatants, policymakers, and civilians. Expanded training programs for armed forces and security personnel, alongside public awareness campaigns in conflict-affected regions, can strengthen respect for the laws of war.¹²⁹

12. CONCLUSION

The deliberate targeting of civilians in armed conflict represents a profound violation of humanity's collective conscience and a grave breach of International Humanitarian Law (IHL). Despite a comprehensive legal framework established through the Geneva Conventions, the Rome Statute, and robust jurisprudence from international tribunals, the protection of innocent civilians remains an urgent and unresolved challenge.¹³⁰ Modern warfare's evolving tactics – from drone strikes and cyberattacks to urban sieges and hybrid conflicts strain the traditional legal paradigms designed to safeguard non-combatants.¹³¹ This disconnect between law and practice results in

¹²⁷ Geneva Call, 'Deeds of Commitment for the Protection of Civilians' <https://www.genevacall.org/resources/deeds-of-commitment/> accessed 10 August 2025.

¹²⁸ International Center for Transitional Justice, 'Victim-Centered Justice in Post-Conflict Societies' (2019) <https://www.ictj.org/publication/victim-centered-justice-post-conflict-societies> accessed 10 August 2025.

¹²⁹ ICRC, 'Training and Education in International Humanitarian Law' (2024) <https://www.icrc.org/en/ihl-training-and-education> accessed 10 August 2025.

¹³⁰ Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV).

¹³¹ Human Rights Watch, 'Losing Humanity: The Case Against Killer Robots' (2012) <https://www.hrw.org/report/2012/11/19/losing-humanity/case-against-killer-robots> accessed 10 August 2025.

catastrophic human suffering, illustrated tragically in Gaza, Sudan, Ukraine, and beyond.¹³²

The international community must therefore reaffirm its commitment to civilian protection through strengthening legal norms, improving enforcement mechanisms, and innovating accountability frameworks that reflect today's realities.¹³³

Equally essential is the inclusion of victims' voices in justice processes, ensuring that reparations and rehabilitation accompany legal remedies.¹³⁴ Ultimately, while war itself may be inevitable in a fractured world, the war against civilians is not. Upholding the dignity of the innocent in conflict is a moral and legal imperative one that demands unyielding political will, vigilant enforcement, and a shared resolve to end impunity.¹³⁵

¹³² UN Human Rights Council, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory' (18 March 2024) UN Doc A/HRC/55/20.

¹³³ William A. Schabas, *An Introduction to the International Criminal Court* (6th edn, CUP 2020) 108.

¹³⁴ International Center for Transitional Justice, 'Victim-Centered Justice in Post-Conflict Societies' (2019) <https://www.ictj.org/publication/victim-centered-justice-post-conflict-societies> accessed 10 August 2025.

¹³⁵ International Committee of the Red Cross, 'Autonomous Weapon Systems: Implications of Increasing Autonomy in the Critical Functions of Weapons' (2016) <https://www.icrc.org/en/document/autonomous-weapon-systems-implications-increasing-autonomy-critical-functions-weapons> accessed 10 August 2025.