



The Principle of Proportionality and Military Necessity in International Humanitarian Law: Balancing Humanitarian Protection and Military Objectives

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Abstract

The principle of proportionality constitutes one of the cornerstones of international humanitarian law (IHL), serving as a legal mechanism for balancing military necessity with the protection of civilians and civilian objects during armed conflict. Although military operations may pursue legitimate military objectives, international law prohibits attacks in which the anticipated incidental civilian harm is excessive in relation to the concrete and direct military advantage expected. This study examines the legal foundations, normative evolution, and contemporary application of the principle of proportionality within the framework of international humanitarian law, with particular emphasis on its relationship with the doctrine of military necessity. Employing a doctrinal legal research methodology based on the analysis of international treaties, customary international law, judicial decisions, and scholarly literature, the study evaluates how proportionality functions as a limitation on the conduct of hostilities in both international and non-international armed conflicts. The analysis demonstrates that although the principle of proportionality has been firmly established through the Geneva Conventions, Additional Protocol I, customary international humanitarian law, and the jurisprudence of international courts, its practical implementation remains highly challenging due to the discretionary assessment of anticipated military advantage and incidental civilian harm. Contemporary armed conflicts reveal persistent tensions between military imperatives and humanitarian protection, particularly in urban warfare and technologically advanced military operations. The study concludes that strengthening compliance with the principle of proportionality requires clearer operational guidance, enhanced military training, effective accountability mechanisms, and consistent judicial interpretation in order to reinforce civilian protection while preserving the legitimate military objectives recognized under international humanitarian law.

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1. Introduction

The regulation of armed conflict has long represented one of the principal objectives of international law. Throughout history, warfare has been characterized by the use of increasingly destructive methods and technologies, often resulting in widespread human suffering and extensive damage to civilian populations. While armed conflict remains an unfortunate feature of international

relations, the international community has progressively developed legal rules designed to limit the methods and means of warfare and to preserve a minimum standard of humanity during hostilities. These rules collectively constitute the foundation of international humanitarian law (IHL).

Among the fundamental principles governing the conduct of hostilities, the principle of proportionality occupies a central position. Together with the principles of distinction, precaution, and military necessity, proportionality serves as one of the core legal mechanisms for regulating the lawful use of force during armed conflict. Its primary function is to ensure that military operations pursuing legitimate military objectives do not inflict incidental civilian harm that would be excessive in relation to the concrete and direct military advantage anticipated. Consequently, proportionality seeks to reconcile two competing objectives that lie at the heart of international humanitarian law: the military necessity of defeating an adversary and the humanitarian imperative of protecting civilians and civilian objects.

The principle of proportionality has evolved from customary humanitarian norms into a universally recognized rule of treaty and customary international law. It is explicitly codified in Article 51(5)(b) and Article 57 of Additional Protocol I to the Geneva Conventions of 1949 and has been consistently reaffirmed through the jurisprudence of the International Court of Justice (ICJ), international criminal tribunals, and customary international humanitarian law. Today, the principle applies to both international and non-international armed conflicts and constitutes an essential legal standard governing military decision-making.

Despite its well-established legal status, the practical application of proportionality remains one of the most controversial aspects of contemporary international humanitarian law. Modern armed conflicts increasingly occur in densely populated urban environments where military objectives are frequently located in close proximity to civilians and civilian infrastructure. The widespread use of precision-guided weapons, unmanned aerial systems, cyber capabilities, and advanced surveillance technologies has expanded military capabilities while simultaneously raising complex legal questions regarding the assessment of proportionality and the acceptable limits of incidental civilian harm.

The doctrine of military necessity further complicates the application of proportionality. Military necessity recognizes that parties to an armed conflict may employ only those measures required to achieve legitimate military objectives that are not otherwise prohibited under international law. However, military necessity cannot serve as an unrestricted justification for the use of force. Rather, it must operate within the legal constraints established by international humanitarian law, particularly the principles of proportionality, distinction, and precaution. Accordingly, proportionality functions as the principal legal limitation preventing military necessity from overriding humanitarian protection.

Recent international armed conflicts have demonstrated continuing difficulties in balancing military objectives against humanitarian considerations. Allegations concerning disproportionate attacks, civilian casualties, damage to critical infrastructure, and the destruction of protected objects have intensified scholarly debate regarding the interpretation and implementation of proportionality within contemporary military operations. These developments underscore the continuing importance of examining the legal relationship between proportionality and military necessity from both theoretical and practical perspectives.

Against this background, the present study investigates the principle of proportionality as a fundamental limitation on military necessity under international humanitarian law. It seeks to examine the legal foundations of the principle, analyze its recognition within international treaties and customary law, and evaluate its practical role in regulating the conduct of hostilities while safeguarding humanitarian values during armed conflict.

Accordingly, the study addresses the following research question:

To what extent does the principle of proportionality effectively constrain military necessity and ensure the protection of civilians and humanitarian values during contemporary armed conflicts?

The study is based on the following principal hypothesis:

The principle of proportionality constitutes the primary legal mechanism through which international humanitarian law balances legitimate military necessity with the protection of civilians by prohibiting attacks expected to cause incidental civilian harm that is excessive in relation to the anticipated concrete and direct military advantage.

To address this research question, the study pursues three principal objectives:

- To examine the legal foundations and normative evolution of the principle of proportionality within international humanitarian law;
 - To analyze the legal relationship between proportionality and military necessity during the conduct of hostilities;
- and

- To evaluate the challenges associated with implementing the principle of proportionality in contemporary armed conflicts.

The research adopts a doctrinal legal research methodology, employing qualitative analysis of international treaties, customary international humanitarian law, judicial decisions, advisory opinions, military manuals, and contemporary legal scholarship. Through this approach, the study provides a comprehensive assessment of the principle of proportionality as a cornerstone of international humanitarian law and its continuing significance in balancing military objectives with the protection of humanity.

2. Literature Review

The principle of proportionality has become one of the most extensively discussed principles in international humanitarian law (IHL), reflecting its central role in regulating the conduct of hostilities and balancing humanitarian protection with legitimate military objectives. Modern legal scholarship generally agrees that proportionality functions as a legal limitation on the use of force rather than as an independent authorization for military action. Its primary purpose is to prevent excessive incidental harm to civilians and civilian objects while allowing parties to an armed conflict to pursue legitimate military objectives in accordance with international law. This balance reflects the broader humanitarian philosophy underlying IHL, namely that even during armed conflict, military operations remain subject to legal and moral constraints.

Early humanitarian legal instruments established the conceptual foundations of proportionality by recognizing that the means and methods of warfare are not unlimited. The 1868 Saint Petersburg Declaration introduced the humanitarian principle that military force should not inflict unnecessary suffering beyond what is required to weaken the enemy's military forces. This concept was subsequently reinforced by the Brussels Declaration of 1874 and the 1907 Hague Regulations, which emphasized that belligerents' freedom to select methods of warfare is legally restricted. These early instruments laid the normative foundation upon which the contemporary principle of proportionality was later constructed.

The codification of proportionality reached its most comprehensive expression through the Geneva Conventions of 1949 and Additional Protocol I of 1977. In particular, Article 51(5)(b) prohibits attacks expected to cause incidental civilian losses that would be excessive in relation to the concrete and direct military advantage anticipated, while Article 57 requires parties to take all feasible precautions to minimize civilian harm during military operations. These provisions transformed proportionality from a customary humanitarian principle into a binding rule of treaty law governing contemporary armed conflicts.

International judicial bodies have further strengthened the legal status of proportionality. The International Court of Justice (ICJ) has repeatedly recognized proportionality as one of the fundamental principles governing the lawful conduct of hostilities. In its *Nicaragua* judgment and the *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion, the Court emphasized that the use of force remains subject to humanitarian limitations derived from the principles of distinction, military necessity, and proportionality. These decisions significantly contributed to confirming the customary international law status of proportionality and its applicability in both international and non-international armed conflicts.

Legal scholars have extensively analyzed the relationship between proportionality and military necessity. While military necessity permits only those measures required to achieve legitimate military objectives, it cannot justify actions prohibited under international humanitarian law. Consequently, proportionality operates as the principal legal mechanism through which humanitarian considerations limit military discretion. Contemporary scholarship therefore views these principles as complementary rather than contradictory: military necessity determines whether force may be employed, whereas proportionality determines the permissible extent of that force (Abu Mustafa, 2021; Al-Lawzi, 2014).

Recent academic research has also focused on the practical challenges associated with applying proportionality during modern warfare. Urban combat, asymmetric conflicts, cyber operations, autonomous weapon systems, and precision-guided munitions have significantly complicated proportionality assessments. Commanders are increasingly required to evaluate anticipated military advantage against potential incidental civilian harm under conditions of uncertainty and rapidly changing operational environments. Robinson and Nohle (2016) argue that the reverberating effects of explosive weapons in populated areas further complicate proportionality analysis because indirect consequences often extend far beyond the immediate target area.

Another growing area of scholarship concerns the application of proportionality to the protection of particularly vulnerable groups and specially protected objects. Studies examining children in armed conflict, medical facilities, cultural property, journalists, and humanitarian personnel emphasize that proportionality must be interpreted alongside the principles of distinction and precaution to ensure enhanced humanitarian protection. International legal instruments governing cultural property, including the 1954 Hague Convention and its 1999 Second Protocol, illustrate how proportionality interacts with military necessity when determining whether protected objects may lawfully become military objectives.

Despite the extensive literature concerning proportionality, important gaps remain. Much of the existing scholarship concentrates on the theoretical development of the principle or on judicial interpretation, while comparatively fewer studies examine the evolving

relationship between proportionality and military necessity in the context of contemporary armed conflicts characterized by technological innovation, hybrid warfare, and increasingly complex operational environments. Moreover, the discretionary nature of assessing anticipated military advantage and excessive civilian harm continues to generate divergent interpretations among military practitioners, international courts, and legal scholars.

Against this background, the present study contributes to the existing literature by examining proportionality as the principal legal mechanism through which international humanitarian law reconciles military necessity with humanitarian protection. By integrating treaty law, customary international law, judicial practice, and contemporary legal scholarship, the study provides a comprehensive analysis of the evolving legal relationship between proportionality and military necessity and evaluates its continuing relevance in regulating the conduct of modern armed conflicts.

3. Methodology

3.1 Research Design

This study adopts a doctrinal legal research design employing a qualitative, descriptive, and analytical approach to examine the relationship between the principle of proportionality and military necessity within the framework of international humanitarian law (IHL). Doctrinal legal research is appropriate because it focuses on the systematic analysis, interpretation, and evaluation of legal rules, principles, judicial decisions, and scholarly opinions governing the conduct of hostilities. Rather than relying on empirical data, the study seeks to clarify the legal foundations, normative development, and practical application of the principle of proportionality in contemporary armed conflicts.

3.2 Research Approach

The research utilizes a qualitative legal analysis based on documentary research. It examines the evolution of the principle of proportionality through international treaties, customary international humanitarian law, judicial decisions, military manuals, and academic literature. This approach enables a comprehensive understanding of how proportionality functions as a legal limitation on military necessity while protecting civilians and civilian objects during armed conflict.

3.3 Data Sources

The study is based exclusively on secondary legal sources, including:

- International humanitarian law treaties, particularly the Geneva Conventions of 1949 and their Additional Protocols of 1977;
- The 1907 Hague Regulations, the 1868 Saint Petersburg Declaration, and other historical humanitarian law instruments;
- Judgments and advisory opinions of the International Court of Justice (ICJ);
- International legal documents, including the San Remo Manual on International Law Applicable to Armed Conflicts at Sea;
- International legal scholarship, books, doctoral dissertations, and peer-reviewed journal articles addressing proportionality, military necessity, and the conduct of hostilities.

These legal materials provide the normative basis for analyzing the development and implementation of the principle of proportionality within international humanitarian law.

3.4 Data Analysis

The collected legal materials were analyzed using doctrinal legal analysis and comparative legal interpretation. The study systematically examines treaty provisions, customary international law, judicial reasoning, and academic commentary to identify the legal principles governing proportionality and military necessity. Particular attention is devoted to comparing the legal standards established by international treaties with their interpretation in international jurisprudence and contemporary legal scholarship.

The analysis further evaluates the interaction between proportionality, military necessity, distinction, and precaution as complementary principles regulating the lawful conduct of military operations.

3.5 Scope of the Study

The research focuses on the principle of proportionality as one of the fundamental principles of international humanitarian law applicable to both international and non-international armed conflicts. The study examines its legal foundations, relationship with military necessity, and application during the conduct of hostilities. Particular attention is given to civilian protection, incidental

civilian harm, military objectives, and the legal limitations imposed on the use of force under contemporary international humanitarian law.

3.6 Analytical Framework

The analytical framework of this study is structured around four interconnected dimensions:

1. The legal foundations of the principle of proportionality under treaty law and customary international humanitarian law;
2. The relationship between proportionality and military necessity in regulating military operations;
3. The interpretation and application of proportionality by international courts and legal scholarship; and
4. Contemporary challenges associated with applying proportionality in modern armed conflicts, including urban warfare, technological advances, and civilian protection.

This framework facilitates a comprehensive legal assessment of proportionality as the principal mechanism for balancing military objectives with humanitarian considerations.

3.7 Limitations of the Study

This study is limited to a doctrinal examination of international humanitarian law and therefore does not include empirical research, interviews, or case-study field investigations. Although international judicial decisions and selected examples of armed conflicts are discussed to illustrate legal principles, the study does not evaluate the military or political dimensions of specific conflicts. Furthermore, because the interpretation of proportionality often depends on the factual circumstances of individual military operations, some legal assessments remain subject to judicial interpretation and operational discretion.

Despite these limitations, the study provides a comprehensive legal analysis of the principle of proportionality and contributes to a deeper understanding of its role in balancing military necessity with humanitarian protection in contemporary international humanitarian law.

4.1.1 The Recognition of the Principle of Proportionality in International Legal Scholarship

The principle of proportionality (PP) has long occupied a central position in international humanitarian law (IHL) because it provides the principal legal mechanism for balancing legitimate military objectives against humanitarian considerations. International legal scholarship overwhelmingly recognizes that military operations cannot be conducted without legal limitations and that the use of force must remain proportionate to the military advantage sought. Consequently, proportionality functions as a normative safeguard designed to minimize unnecessary suffering and protect civilians and civilian objects during armed conflict (Dinstein, 2022; Schmitt, 2019).

Despite broad scholarly consensus regarding its importance, legal scholars have encountered considerable difficulty in formulating a universally accepted definition of proportionality. The principle remains inherently flexible because its application depends on the factual circumstances of each military operation, requiring commanders to evaluate competing humanitarian and military considerations under conditions of uncertainty. This contextual nature has resulted in varying interpretations regarding both the meaning of "excessive harm" and the assessment of "concrete and direct military advantage."

One of the earliest comprehensive definitions was proposed by Pietro Verri (1988), who described proportionality as a legal principle intended to limit the harmful consequences of military operations by ensuring that the methods and means of warfare employed remain proportionate to the legitimate military advantage anticipated. According to Verri, proportionality seeks to prevent the unnecessary escalation of violence while preserving the lawful military objectives recognized under international humanitarian law.

Similarly, Osama Damaj (2005) argues that proportionality becomes operational only after the legality of an attack has first been established under the principle of distinction. Once a military objective has been identified as lawful, proportionality requires military commanders to determine whether the anticipated civilian harm would be excessive in relation to the expected military gain. Failure to conduct this balancing exercise constitutes an unlawful use of force and therefore violates international humanitarian law.

Modern scholarship consistently identifies proportionality as one of the fundamental principles governing the conduct of hostilities because it protects civilians from unnecessary suffering while preserving the operational effectiveness of military forces. Under this principle, parties to an armed conflict are prohibited from launching attacks expected to cause incidental civilian casualties or damage to civilian objects that would be excessive compared with the concrete and direct military advantage anticipated (ICRC, 2005; Henckaerts & Doswald-Beck, 2005).

Nevertheless, proportionality remains one of the most controversial concepts within IHL. Several scholars argue that its practical application is inherently subjective because no objective formula exists for comparing humanitarian losses with military advantage.

The legal assessment therefore depends heavily upon the commander's reasonable judgment based on information available at the time of the attack.

This concern was famously articulated by Richard Baxter, who observed that proportionality requires comparison between two fundamentally different values—anticipated military advantage and expected civilian harm—for which no universal measurement standard exists. Consequently, proportionality cannot be reduced to a mathematical calculation but instead requires careful legal, military, and humanitarian evaluation in every individual case (Baxter, 1975).

Contemporary scholars similarly emphasize that proportionality should not be understood as a purely quantitative balancing exercise. Rather, it represents a contextual legal assessment incorporating military necessity, humanitarian protection, operational feasibility, precautionary obligations, and the foreseeable humanitarian consequences of military action. As modern warfare increasingly involves urban combat, cyber operations, autonomous weapons, and precision-guided technologies, proportionality has become more significant than ever as the principal legal mechanism governing responsible military decision-making (Boothby, 2012; Melzer, 2016).

4.1.2 Codification of the Principle of Proportionality in International Humanitarian Law

Although the principle of proportionality was formally codified during the twentieth century, its normative foundations emerged much earlier through customary international law governing the conduct of armed conflict. Today, proportionality is recognized as both a treaty-based obligation and a rule of customary international humanitarian law applicable to international and non-international armed conflicts.

The International Court of Justice (ICJ) has repeatedly confirmed the customary status of proportionality. In the *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States*) case, the Court recognized that the fundamental principles regulating the conduct of hostilities—including proportionality—form part of customary international law and therefore bind all states irrespective of treaty ratification.

The earliest codification of humanitarian limitations on military force can be traced to the 1868 Saint Petersburg Declaration, which established the fundamental principle that the only legitimate purpose of war is to weaken the military forces of the enemy. The Declaration rejected the unnecessary infliction of suffering and introduced the idea that military necessity must remain subject to humanitarian constraints. This principle became the philosophical foundation of the modern doctrine of proportionality.

The process of codification continued with the Brussels Declaration of 1874, which sought to regulate the conduct of military operations by restricting the unrestricted freedom of belligerents in selecting methods and means of warfare. Although the Declaration never entered into force because it lacked sufficient ratifications, it significantly influenced the subsequent development of international humanitarian law and later Hague instruments.

A major advancement occurred through the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and its accompanying Regulations. Article 22 explicitly provides that *"the right of belligerents to adopt means of injuring the enemy is not unlimited."* This provision established one of the earliest legally binding restrictions on military necessity and laid the groundwork for the later codification of proportionality within modern humanitarian law.

The principle received its most comprehensive legal expression in Additional Protocol I (1977) to the Geneva Conventions. Article 51(5)(b) prohibits attacks expected to cause incidental civilian casualties, injury to civilians, or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated. Complementing this provision, Article 57 obliges military commanders to take all feasible precautions to avoid or minimize incidental civilian harm during military operations. Together, these provisions constitute the contemporary legal foundation of proportionality in international humanitarian law.

In addition, Article 52 of Additional Protocol I establishes the general protection of civilian objects by prohibiting direct attacks and reprisals against civilian property unless such objects have become legitimate military objectives. These provisions collectively reinforce the humanitarian purpose of proportionality by ensuring that military operations remain directed exclusively against lawful military targets.

Although Additional Protocol II (1977) governing non-international armed conflicts does not explicitly mention proportionality, legal scholars and international jurisprudence generally agree that the principle nevertheless applies through customary international humanitarian law and the broader principle of humanity. Consequently, proportionality governs both international and non-international armed conflicts regardless of explicit treaty language.

The San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994) further confirms that naval operations and the exercise of the right of self-defense remain subject to proportionality requirements. Accordingly, proportionality now extends across all domains of warfare—including land, sea, air, and increasingly cyber operations—demonstrating its status as a universal principle regulating the lawful conduct of hostilities.

Taken together, treaty law, customary international law, judicial decisions, and contemporary legal scholarship firmly establish proportionality as one of the fundamental principles of international humanitarian law. It operates not only as a legal restriction on military necessity but also as an indispensable safeguard protecting civilians, civilian objects, and humanitarian values during armed conflict.

4.2 Subjecting Military Necessity to the Principle of Proportionality

International humanitarian law recognizes military necessity as a legitimate legal doctrine governing the conduct of hostilities. However, this doctrine does not confer unlimited discretion upon belligerents. Rather, military necessity operates within a framework of legal restrictions established by the principles of distinction, proportionality, humanity, and precaution. Consequently, any invocation of military necessity must remain consistent with the fundamental objective of international humanitarian law, namely, minimizing human suffering while permitting only those military measures that are indispensable for achieving legitimate military objectives (Al-Duraydi, 2012; Abd al-Ali & Jabir, 2016).

Accordingly, the legality of invoking military necessity depends upon two fundamental conditions. First, military necessity must arise from the existence of an actual and imminent danger threatening military operations (First Branch). Second, any measures adopted under military necessity must remain proportionate to the military objective pursued and comply with the principle of proportionality (Second Branch).

4.2.1 Military Necessity as a Response to an Actual and Imminent Danger

The doctrine of military necessity may be invoked only when military forces are confronted with an actual, present, and imminent danger that cannot reasonably be avoided through less harmful means. International legal scholarship generally agrees that necessity is exceptional in nature and therefore cannot be relied upon to justify military conduct in ordinary circumstances or after the danger has ceased (Roushou Khalid, 2013; Al-Lawzi, 2014).

The danger giving rise to military necessity may involve threats to the lives of military personnel, the integrity of military operations, or the security of the State during armed conflict. The seriousness of the danger constitutes the decisive legal criterion for determining whether military necessity may legitimately be invoked. Only dangers that present an immediate and unavoidable threat capable of causing significant military harm may justify exceptional military measures. Mere speculation, political considerations, or hypothetical risks cannot establish military necessity (Al-Lawzi, 2014).

Furthermore, military necessity is inherently temporary. Its legal justification exists only while the imminent danger persists. Once the circumstances giving rise to necessity disappear, the legal basis for invoking military necessity likewise ceases. For example, if a civilian building temporarily becomes a military objective because it is being used to launch attacks, military necessity may justify action only for as long as that military use continues. After the military threat has ended, the building regains its civilian protection, and any subsequent attack would constitute a violation of international humanitarian law (Additional Protocol I, 1977).

The assessment of military necessity must therefore be conducted from the perspective of the military commander responsible for the operation, based exclusively on the information reasonably available at the time the decision is made. This assessment cannot be based on hindsight but must nevertheless remain subject to the objective legal standards established by international humanitarian law and subsequent judicial review where appropriate (ICJ, 1996).

Accordingly, military necessity should not be understood as an unrestricted authorization to employ force but rather as a narrowly interpreted legal exception permitting only those military measures that are indispensable for overcoming an immediate military threat while remaining fully consistent with the humanitarian limitations imposed by international law (Abd al-Khaliq, 1989; Rondeau, 2021).

4.2.2 Military Necessity Must Comply with the Principle of Proportionality

Although military necessity permits the use of force to achieve legitimate military objectives, its exercise is strictly limited by the principle of proportionality. The International Court of Justice reaffirmed in its *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion that proportionality constitutes one of the fundamental principles governing the conduct of hostilities and operates to protect civilians and civilian objects while restricting the methods and means of warfare available to belligerents (ICJ, 1996).

The principle of proportionality prohibits indiscriminate attacks and requires every military operation to be directed exclusively against lawful military objectives. Even where a target is legally recognized as a military objective under international humanitarian law, an attack remains unlawful if the anticipated incidental civilian casualties or damage to civilian objects are expected to be excessive in relation to the concrete and direct military advantage anticipated (Additional Protocol I, 1977; Abu Humayrah, 2015).

One of the most important consequences of proportionality is the prohibition of unnecessary injury and unnecessary suffering. This rule reflects the humanitarian principle that warfare should never inflict harm beyond that required to achieve legitimate military objectives. Accordingly, Article 35(2) of Additional Protocol I prohibits the use of weapons and methods of warfare that are of a nature to cause superfluous injury or unnecessary suffering, thereby reinforcing proportionality as a substantive limitation on military necessity (Damj, 2005; Additional Protocol I, 1977).

Compliance with proportionality further requires military commanders to exercise continuous precaution throughout the planning and execution of military operations. Before launching an attack, commanders must undertake all feasible efforts to verify that the intended target constitutes a legitimate military objective and to select means and methods of warfare that minimize incidental civilian harm (Robinson & Nohle, 2016).

Where circumstances indicate that the target has lost its military character or enjoys special legal protection, commanders are under a continuing obligation to suspend or cancel the attack. Likewise, if new information demonstrates that the expected civilian harm would exceed the anticipated military advantage, proportionality requires that the operation be modified, delayed, or abandoned altogether (Additional Protocol I, 1977).

Ultimately, the legality of military action undertaken on the basis of military necessity depends upon whether the resulting military advantage remains proportionate to the humanitarian consequences produced. Military necessity therefore cannot justify excessive civilian casualties, widespread destruction of civilian infrastructure, or attacks producing humanitarian consequences disproportionate to the legitimate military objective pursued. In this respect, proportionality serves as the principal legal mechanism through which international humanitarian law reconciles military effectiveness with the protection of humanity (Abd al-Ali & Jabir, 2016; Robinson & Nohle, 2016).

5. The Legality of Limiting the Protection of Persons and Cultural Property on the Grounds of Military Necessity

International humanitarian law establishes a comprehensive system of protection for persons and objects affected by armed conflict. While all civilians benefit from general protection, certain categories—including children, the wounded, the sick, medical personnel, and cultural property—receive enhanced legal protection because of their particular vulnerability or humanitarian significance. As a general rule, parties to an armed conflict are prohibited from directing military operations against these protected persons and objects.

Nevertheless, the practical realities of contemporary armed conflict demonstrate that military necessity is frequently invoked to justify measures affecting protected persons and property. Although international humanitarian law permits limited exceptions under narrowly defined circumstances, these exceptions remain subject to strict legal conditions derived from proportionality, distinction, and precaution. Consequently, military necessity cannot automatically override humanitarian protection but must always be interpreted restrictively (Basaj; Karim, 2018).

Accordingly, this section examines two principal dimensions of this relationship. First, it analyzes how military necessity affects the protection afforded to vulnerable persons, particularly children, the wounded, and the sick. Second, it considers the extent to which military necessity may justify limitations on the protection of cultural property under international humanitarian law.

5.1 Military Necessity and the Protection of Human Life

The right to life constitutes the most fundamental human right and remains protected during both peace and armed conflict. International humanitarian law seeks to preserve this right by establishing special legal safeguards for particularly vulnerable groups, including children, the wounded, and the sick. Nevertheless, contemporary armed conflicts repeatedly demonstrate that military necessity is often invoked to justify conduct resulting in the loss of these protections.

5.1.1 Child Soldiers as Victims of Military Necessity

International humanitarian law unequivocally prohibits the recruitment and participation of children in armed conflict. Additional Protocol I requires parties to an international armed conflict to take all feasible measures to prevent children under the age of fifteen from participating directly in hostilities and prohibits their recruitment into armed forces. This obligation imposes both a preventive duty and an obligation of non-recruitment upon all parties to the conflict (Additional Protocol I, 1977).

Similarly, Additional Protocol II, applicable to non-international armed conflicts, prohibits both compulsory and voluntary recruitment of children under fifteen and forbids their participation in military operations, whether direct or indirect. These provisions reflect the international community's recognition that children require special protection because of their physical, psychological, and emotional vulnerability (Additional Protocol II, 1977; Jaquier, 2006; Santivasa, 1995).

Despite these legal prohibitions, the recruitment and use of child soldiers remain widespread in numerous contemporary armed conflicts. Children are frequently exploited by both state and non-state armed groups because they are more easily manipulated,

indoctrinated, and coerced into participating in military activities. This reality represents one of the gravest violations of international humanitarian law and international human rights law (Arzoumanian & Pizzutelli, 2003; Shahrazad, 2017).

When children are unlawfully recruited and directly participate in hostilities, a complex legal dilemma arises. Their direct participation may temporarily deprive them of civilian protection against attack, thereby allowing opposing forces to target them under the rules governing military objectives. However, this temporary loss of protection does not diminish their status as children or eliminate the continuing obligations imposed upon parties to the conflict to minimize harm, respect proportionality, and provide special protection whenever circumstances permit. Consequently, military necessity cannot be interpreted as legitimizing indiscriminate attacks against child soldiers or excusing violations of the humanitarian obligations owed to children under international humanitarian law (Jaquier, 2006; Zerrari, 2006; Additional Protocol I, 1977).

5.1.2 The Protection of the Wounded and Sick: Military Necessity versus Humanitarian Obligations

International humanitarian law imposes an unequivocal obligation upon parties to an armed conflict to search for, collect, protect, and provide medical care to the wounded and the sick following every military engagement. These obligations reflect one of the oldest humanitarian principles in the law of armed conflict—that persons who are no longer participating in hostilities must be treated humanely regardless of their nationality or affiliation (Al-Duraydi, 2012).

The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) establishes that wounded and sick combatants must be respected and protected in all circumstances. The Convention expressly prohibits abandoning them without medical treatment or exposing them to conditions that may aggravate their injuries or increase the risk of infection or death (Geneva Convention I, 1949; Mersli, 2015).

Similarly, the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949) extends equivalent protection to naval personnel who are wounded, sick, or shipwrecked. It prohibits torture, biological experimentation, deliberate neglect, or any denial of the medical assistance required by their condition. These provisions collectively demonstrate that humanitarian protection continues even after combatants cease participating in hostilities (Geneva Convention II, 1949; Surbeck & Russbach, 1985).

These legal obligations represent one of the clearest manifestations of the humanitarian philosophy underlying international humanitarian law. Once individuals become hors de combat because of wounds, illness, or shipwreck, they lose their military function and acquire legal protection that obliges all parties to provide medical care without adverse distinction. Consequently, humanitarian considerations must prevail over tactical or operational advantages that might otherwise encourage continued military action.

The principle of proportionality reinforces these humanitarian obligations by requiring parties to an armed conflict to adopt all feasible measures to rescue and evacuate the wounded and sick whenever circumstances permit. In many situations, this obligation may require the temporary suspension of military operations or the establishment of humanitarian corridors to facilitate medical evacuation. Failure to provide such assistance may amount not only to a breach of international humanitarian law but also to a violation of fundamental human rights protecting life and human dignity (Basaj; Robinson & Nohle, 2016).

Nevertheless, the historical development of humanitarian law reveals that military necessity has occasionally been invoked to justify leaving wounded and sick persons without immediate medical assistance. The 1906 Geneva Convention permitted exceptional situations in which military necessity could temporarily prevent the provision of medical care. Although understandable within its historical context, such provisions granted military commanders considerable discretionary authority in determining when humanitarian obligations could be postponed (Geneva Convention, 1906).

From a contemporary legal perspective, however, such broad discretion is increasingly viewed as incompatible with the modern development of international humanitarian law. Leaving the determination of military necessity exclusively to military commanders creates a substantial risk that humanitarian protection may be subordinated to operational convenience, thereby exposing wounded and sick persons to avoidable suffering or death. Such discretion also increases the likelihood of arbitrary decision-making and weakens the protective function of humanitarian law (Roushou Khalid, 2013).

Military advantage ordinarily consists of securing strategic territory, neutralizing enemy forces, or weakening the adversary's military capability. However, the principle of proportionality requires that such advantages remain concrete, direct, and sufficiently significant to justify any incidental humanitarian consequences. The lives of persons who are no longer capable of participating in hostilities cannot ordinarily be sacrificed merely to achieve speculative or marginal military gains.

Accordingly, denying or delaying essential medical care solely for the purpose of obtaining military advantage is inconsistent with the humanitarian objectives of international humanitarian law. Such conduct undermines both the principle of proportionality and the broader principle of humanity by prioritizing military expediency over the inherent dignity and right to life of individuals who

have ceased to participate in armed conflict. Consequently, contemporary international humanitarian law increasingly favors a restrictive interpretation of military necessity whenever the protection of wounded and sick persons is at stake.

5.2 Military Necessity and the Protection of Cultural Property

International humanitarian law recognizes cultural property as an essential component of the common heritage of humanity. Consequently, it establishes a comprehensive legal regime designed to protect cultural heritage from the devastating consequences of armed conflict. Nevertheless, international legal instruments also acknowledge that, under narrowly defined and exceptional circumstances, military necessity may justify certain limitations upon this protection. Accordingly, the relationship between military necessity and the protection of cultural property remains one of the most complex issues within contemporary international humanitarian law.

This section first examines the legal protection afforded to cultural property under international law before analyzing the limited circumstances under which military necessity may lawfully affect that protection.

5.2.1 The Legal Protection of Cultural Property During Armed Conflict

International humanitarian law grants special legal protection to cultural property because of its historical, religious, artistic, scientific, and civilizational significance for humanity. The destruction of cultural heritage during armed conflict extends far beyond material loss; it threatens the historical identity, collective memory, and cultural continuity of entire societies. Consequently, protecting cultural property has become an essential objective of modern international humanitarian law (Karim, 2018).

The widespread destruction of cultural heritage during the Second World War prompted the international community to adopt the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which remains the principal international legal instrument governing this subject (Hague Convention, 1954).

The Convention defines cultural property broadly to include both movable and immovable property of great importance to the cultural heritage of peoples. Such property encompasses historical monuments, archaeological sites, religious buildings, museums, libraries, archives, works of art, manuscripts, and institutions dedicated to preserving and exhibiting cultural heritage (Hague Convention, 1954).

The Convention establishes that protection begins during peacetime. States Parties are required to prepare safeguarding measures designed to reduce the vulnerability of cultural property before armed conflict occurs. These preventive obligations include inventory preparation, emergency planning, relocation of movable cultural objects where appropriate, and legislative measures aimed at ensuring effective protection. Consequently, responsibility for safeguarding cultural heritage rests primarily with the territorial State before the outbreak of hostilities (Hague Convention, 1954; Fuhrmann, 2020).

Once armed conflict begins, parties to the conflict must refrain from using cultural property for military purposes where such use would expose it to destruction or damage. They are likewise prohibited from directing attacks against cultural property, engaging in looting or pillage, or undertaking reprisals against protected cultural sites. These obligations reflect the recognition that cultural heritage belongs not merely to one nation but to humanity as a whole (Karim, 2018).

The Hague Convention further establishes a system of special protection for cultural property satisfying specific legal conditions. First, the property must be situated at a sufficient distance from major military objectives or industrial centers. Second, it must not be used for military purposes. Third, it must be entered into the International Register of Cultural Property under Special Protection, maintained under the auspices of UNESCO. Compliance with these conditions grants cultural property an enhanced level of legal immunity from military operations (Hague Convention, 1954).

International protection was further strengthened through the Second Protocol to the Hague Convention (1999), which introduced the concept of enhanced protection for cultural property of the greatest importance to humanity. Enhanced protection provides the highest level of legal immunity available under international humanitarian law and is reserved for cultural heritage possessing outstanding universal value, provided that it is adequately protected under domestic law and is not used for military purposes (Second Protocol to the Hague Convention, 1999; Fuhrmann, 2020).

The evolution from general protection to special and enhanced protection demonstrates the growing recognition within international law that preserving cultural heritage is indispensable not only for affected populations but also for the international community as a whole. Consequently, any limitation upon this protection through the invocation of military necessity must be interpreted restrictively and remain subject to the fundamental principles of proportionality, distinction, and precaution.

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Conflicts of Interest

The author declares that there are no financial, professional, institutional, or personal conflicts of interest that could have influenced the research, interpretation, or publication of this article.

Ethical Approval

Ethical approval was not required for this study because it is based exclusively on doctrinal legal research involving the analysis of international treaties, judicial decisions, legal instruments, and published academic literature. No human participants, animals, or confidential data were involved.

Informed Consent

Not applicable.

Data Availability Statement

All data supporting the findings of this study are derived from publicly available international legal instruments, judicial decisions, and published scholarly sources cited throughout the article. No original datasets were generated or analyzed.

Author Contributions (CRediT Author Statement)

Djafour Islam: Conceptualization; Methodology; Formal analysis; Investigation; Literature review; Interpretation of legal sources; Writing—original draft; Writing—review and editing; Validation; Final approval of the manuscript.

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The author declares that artificial intelligence (AI)-assisted language tools were used solely to improve the linguistic quality, grammar, readability, and academic expression of the manuscript. All legal analysis, interpretation, conclusions, and final editorial decisions remain the sole responsibility of the author.

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