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Civilian Protection in Urban Warfare: Is the Proportionality Rule Fit for Purpose?

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Abstract

Urban warfare has become the dominant theatre of contemporary armed conflict. From Mosul and Raqqa to Aleppo and Gaza, the most severe concentrations of civilian harm in recent decades have occurred not in open fields but in densely populated cities. Yet international humanitarian law continues to regulate this reality through the proportionality rule codified in Article 51(5)(b) of Additional Protocol I to the Geneva Conventions—a framework designed against the assumptions of conventional, open-field, interstate warfare. This article argues that the proportionality rule, as presently formulated and applied, is structurally inadequate for the conditions of 21st-century urban warfare, and that this inadequacy cannot be resolved through improved compliance alone but requires both interpretive reform and institutional innovation. The argument proceeds in four stages. First, the article identifies the orthodox operation of the proportionality rule and exposes the three foundational assumptions embedded within its architecture: that civilian harm is identifiable in advance, that military advantage is concretely calculable, and that a competent reviewing authority exists. Second, it characterises urban warfare as a distinct operational environment that systematically negates each of these assumptions. Third, it delivers a structural critique of the rule's four principal failures in urban conditions: the undefined and expansively interpreted military advantage term; the failure to capture reverberating and long-term harm; the collapse of the dual-use infrastructure test; and the total absence of independent accountability. Finally, the article proposes a program of interpretive and institutional reform aimed at making the rule fit for the battlespace in which it is most urgently needed.

Keywords: Urban warfare, International Humanitarian Law, Proportionality rule, civilian harm, Geneva Convention

1. Introduction

When a modern city becomes a battlefield, the landscape itself becomes a weapon against its inhabitants. The contemporary battlespace is no longer defined by distant frontlines, open terrain, or clearly separated civilian and military spaces. It is increasingly urban, densely populated, and structurally entangled with civilian life. From Aleppo and Mosul to Gaza, Khartoum, and Mariupol, armed conflict has shifted decisively into cities, transforming apartment blocks, hospitals, schools, water systems, and markets into theatres of military engagement. The human cost of military operations is overwhelmingly borne by those who do not fight.

This disparity is not merely a consequence of poor operational discipline; it reflects a fundamental shift in the geography of warfare. The United Nations documented over 37,000 civilian deaths across major armed conflicts in a single year, with a significant concentration occurring in densely populated environments such as Gaza, Ukraine, and Sudan. [1] According to the United Nations, approximately ninety per cent of casualties from the use of explosive weapons in populated areas are civilians. [2] Urban warfare today produces not merely incidental civilian suffering but systemic civilian collapse: destruction of housing, interruption of medical care, contamination of water systems, mass displacement, and the disintegration of social infrastructure necessary for civilian survival.

Yet international humanitarian law continues to regulate these realities through doctrinal structures developed for a fundamentally different battlespace. Among the most significant of these is the proportionality rule codified in

Article 51(5)(b) of Additional Protocol I to the Geneva Conventions, which prohibits attacks expected to cause incidental civilian harm excessive in relation to the concrete and direct military advantage anticipated. Historically, the rule emerged within the operational assumptions of conventional interstate warfare: identifiable military objectives, relatively distinguishable civilian zones, and temporally bounded attacks capable of ex ante legal evaluation.

The difficulty is not simply that proportionality is challenging to apply in urban warfare. The deeper problem is structural. The legal architecture of the proportionality rule presumes conditions that urban warfare systematically negates that civilian harm can be sufficiently identified and quantified prior to attack; that anticipated military advantage is concrete enough to permit meaningful balancing; and that institutional mechanisms exist capable of reviewing proportionality determinations against reasonably ascertainable factual baselines. In contemporary urban conflict, each of these premises is profoundly destabilised.

This article argues that the proportionality rule, as presently formulated and interpreted, is structurally inadequate for the realities of 21st-century urban warfare. Its ambiguities are not merely products of inconsistent state practice or operational failure. Rather, they are architectural consequences arising from the mismatch between a legal rule designed for open-field warfare and a battlespace defined by civilian entanglement, infrastructural dependency, informational uncertainty, and continuous combat environments. Crucially, however, this inadequacy is not permanent. The article argues that targeted interpretive and institutional reforms can align the rule with the environment in which it is most urgently applied.

Section II establishes the proportionality rule within international humanitarian law and identifies the battlefield assumptions embedded within its architecture. Section III characterises urban warfare as a distinct operational environment. Section IV advances the article's structural critique across four dimensions. Section V proposes interpretive and institutional reforms. Section VI concludes.

This article employs a doctrinal and normative methodology. It analyses treaty law, customary international humanitarian law, international criminal law, state practice, and selected urban conflicts to evaluate whether the proportionality rule remains capable of achieving its protective purpose under contemporary urban warfare conditions.

2. The Proportionality Rule: Design, Assumptions, and Orthodox Operation

A. The Rule as Written

The proportionality rule occupies a central position within the architecture of international humanitarian law governing the conduct of hostilities. Its modern codification appears in Article 51(5)(b) of Additional Protocol I to the Geneva Conventions, which defines as indiscriminate:

"an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

The provision does not prohibit civilian harm per se. Rather, it establishes a conditional balancing framework in which incidental civilian damage may be legally permissible so long as it is not "excessive" when weighed against the anticipated military advantage. The legality of an attack therefore depends not upon whether civilians are harmed, but upon the proportional relationship between the expected harm and the projected military gain.

This balancing obligation is reinforced by Article 57(2)(a)(iii) of Additional Protocol I, which requires those who plan or decide upon attacks to refrain from deciding to launch any attack expected to cause incidental civilian harm excessive in relation to the concrete and direct military advantage anticipated. The language is explicitly forward-looking. Proportionality is assessed ex ante, based upon information reasonably available to commanders at the time of decision-making. The rule therefore operates not merely as a post hoc standard of responsibility, but as a procedural restraint governing military judgment before force is employed.

Although codified treaty law binds only parties to Additional Protocol I, the proportionality principle is now widely recognised as customary international law. Rule 14 of the ICRC Customary International Humanitarian Law Study states that launching an attack expected to cause incidental civilian harm excessive in relation to the concrete and direct military advantage anticipated is prohibited. The rule is thus understood to bind all parties to armed conflict, including states not party to Additional Protocol I.

The criminalisation of disproportionate attacks appears in Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court, which classifies as a war crime intentionally launching an attack with knowledge that it will cause excessive civilian harm relative to the anticipated military advantage. Notably, however, the provision is confined to international armed conflicts. This jurisdictional limitation exposes a significant normative gap given that much of contemporary urban warfare occurs within non-international armed conflicts. That gap is revisited in Section IV.D.

B. The "Reasonable Military Commander" Standard and Its Problems

The operational application of proportionality depends heavily upon the judgment of military decision-makers. International humanitarian law does not establish a mathematical formula for determining what level of civilian harm becomes "excessive," nor does it prescribe an objective hierarchy between civilian interests and military objectives. Instead, the rule has traditionally been interpreted through the perspective of the hypothetical "reasonable military commander," assessing the legality of an attack based on the information available at the time. This lack of an objective metric renders the proportionality calculus deeply ambiguous, granting military decision-makers an expansive zone of discretion while making subsequent accountability notoriously difficult to establish.

The boundaries of this discretion are contested in legal scholarship. Schmitt argues that the anticipated military advantage cannot be hypothetical or speculative, but must offer a tangible, identifiable operational return that is proximate in time and space. [3] Dinstein asserts that military advantage must be assessed in relation to the "attack as a whole," rather than isolated, minute components of a tactical action. [4] This tension manifested acutely before the Eritrea–Ethiopia Claims Commission (2005), which grappled with whether advantage should be evaluated within the narrow confines of an immediate strike or across the broader horizon of the armed conflict itself—a reading that Dinstein argues expands the concept so widely as to hollow out the rule's protective purpose.

The dangers of this subjectivity are not merely theoretical. States have actively sought to institutionalise it through the deployment of Non-combatant Casualty Cut-off Values (NCVs): rigid numeric thresholds representing the maximum number of civilian deaths a commander is authorised to inflict for a specific target before requiring higher-level political clearance. The catastrophic limits of this approach were demonstrated during the siege of Mosul (2016–17) and subsequent operations in Raqqa—urban campaigns described as "death by a thousand proportional strikes"—capturing the cumulative brutality that individually assessed, formally lawful strikes may collectively produce. The United States military quietly removed NCV mandates from its joint doctrine by 2018, acknowledging that when artificial numerical thresholds are tested against mass civilian casualties, they are exposed as legally and morally untenable. [5] The episode reveals how the indeterminacy of proportionality encourages states to develop internal metrics that rationalise civilian harm, while shielding the underlying balancing process from meaningful public scrutiny.

C. What the Rule Assumes

The operational integrity of the proportionality rule rests upon an unwritten infrastructure. While not explicitly stated in Article 51(5)(b), the orthodox application of the rule depends entirely on three foundational assumptions. The first is the *identifiability assumption*: the framework presumes that an attacker can accurately distinguish, isolate, and count civilian persons and objects within a defined zone of danger prior to an attack, rendering civilian harm an *ex-ante* knowable and predictable variable. The second is the *commensurability assumption*: the rule holds that military necessity, and humanitarian risk can be translated into a shared legal currency, enabling a commander to meaningfully weigh intangible tactical advantages against tangible human casualties within a structured calculus. The third is the *review assumption*: the system takes for granted the existence of a competent, informed, and institutionalised reviewing authority—whether internal military legal advisors or external courts—capable of retrospectively evaluating proportionality decisions against reasonably ascertainable facts.

These assumptions are nowhere expressly stated within Article 51(5)(b). Yet without them, the proportionality framework cannot meaningfully operate. They represent the baseline conditions against which the rule was designed to function. As Section IV demonstrates, these are precisely the conditions that urban warfare systematically destroys.

3. Urban Warfare as a Distinct Legal and Operational Environment

A. Defining Urban Warfare under IHL

International humanitarian law does not formally recognise urban warfare as a separate legal category. The same framework governing hostilities in deserts, maritime zones, or open battlefields applies equally within cities. The closest treaty-based approximation of the urban environment is found in the prohibition against "area bombardment" under Article 51(5)(a) of Additional Protocol I, which forbids treating as a single military objective a number of clearly separated and distinct military objectives located in a city, town, or village containing a similar concentration of civilians or civilian objects.

The significance of this provision lies not merely in its prohibition, but in its recognition that urban environments are legally distinguished by concentrated civilian presence and the close spatial coexistence of civilian objects with military objectives. In open-field warfare, military objectives are often geographically distinguishable from civilian populations. In cities, residential buildings, hospitals, schools, roads, telecommunications systems, electricity grids, and military positions frequently coexist within the same operational area. Urban warfare therefore compresses civilian life and military action into the same physical terrain. The legal framework nonetheless continues to apply identical proportionality standards across both environments—an assumption that becomes increasingly difficult to sustain in contemporary urban conflict.

B. Population Density and Civilian Presence

The operational reality of the modern city is defined by the absolute density and structural immovability of its civilian population. In contemporary urban siege operations, the traditional military assumption that civilians will flee the zone of active hostilities often collapses. Extreme poverty, physical infirmity, the breakdown of transportation corridors, and the rapid encirclement of urban enclaves mean that hundreds of thousands of non-combatants frequently remain trapped within the active battlespace.

Importantly, this demographic reality cannot be bypassed by operational shortcuts. Legal obligations under the proportionality principle are not satisfied simply because an attacking force issues an advance evacuation warning. [6] While Article 57(2)(c) of Additional Protocol I mandates the issuance of "effective advance warning… unless circumstances do not permit," this is an independent, additive precautionary requirement. [7] It operates alongside, and never replaces, the strict duty to conduct an independent proportionality assessment before every strike. Advance warning, whether or not heeded, cannot transform remaining civilians into lawful targets. The presence of millions of co-located non-combatants therefore exponentially amplifies proportionality concerns: every kinetic action launched into a high-density urban area carries an inherently elevated risk of collateral damage that scales upward with population density. [8]

C. The Dual-Use Infrastructure Problem

Urban warfare is further distinguished by the centrality of dual-use infrastructure—objects that simultaneously serve civilian and military functions. Modern cities depend upon interconnected systems of electricity, water distribution, sanitation, telecommunications, transportation, and healthcare. These systems sustain civilian life while also possessing undeniable military utility. Their destruction, therefore, produces consequences extending far beyond immediate tactical objectives.

International humanitarian law seeks to regulate this issue by defining military objectives in Article 52(2) of Additional Protocol I. An object may only qualify as a military objective where, by its nature, location, purpose, or use, it makes an effective contribution to military action and where its destruction offers a definite military advantage. The test is cumulative. Mere utility to military operations does not automatically convert civilian infrastructure into a lawful target.

In practice, however, the category of *dual-use* infrastructure has often expanded beyond these doctrinal limits. During the 1991 Gulf War, coalition operations targeted Iraq's electrical grids and water treatment facilities on the basis that they indirectly supported Iraqi military capability, contributing to severe public health consequences. [9] Similar patterns emerged during the Syrian conflict, particularly during the sieges of Aleppo and Eastern Ghouta, where repeated strikes on hospitals, bakeries, and water infrastructure became part of broader military pressure campaigns against opposition-held areas. [10] The "dual-use" label has consequently evolved into a flexible justificatory category capable of expanding the scope of lawful targeting, weakening the distinction principle, and obscuring the cumulative civilian consequences of infrastructural destruction.

D. Asymmetric Actors and Human Shielding

Modern urban conflict is almost exclusively asymmetric, pitting conventional state militaries against agile non-state armed groups that intentionally operate within civilian populations. Insurgent factions routinely exploit urban density—using residential buildings as fire positions, subterranean tunnels as logistics routes, and civilian facilities as command centres, shattering the traditional geographic separation of forces.

This integration raises the complex legal challenge of human shielding. Under Article 51(7) of Additional Protocol I, the use of civilians to shield military objectives from attack is strictly prohibited. However, as the ICRC Customary IHL Study affirms under Rule 97, even when a defending force is in flagrant violation of this prohibition, the attacking commander remains fully bound by the proportionality rule. [11] Nevertheless, because the defending force's assets are deliberately integrated into the civilian fabric, the factual baseline required to perform an accurate pre-attack proportionality calculus is deeply compromised. The resulting civilian casualties trigger deeply contested international disputes over legal attribution—the attacking state attributing civilian deaths to unlawful shielding, the defending faction labelling them as disproportionate state violations—a contest that exposes the limits of a proportionality framework dependent on stable, verifiable factual premises.

4. Why the Proportionality Rule Fails in Urban Warfare

A. The "Military Advantage" Term: Undefined, Elastic, and Systematically Exploited

The foundational term of the proportionality rule—"concrete and direct military advantage"—is not defined in any international humanitarian law treaty, remains uninterpreted by any binding international court, and has been systematically stretched by state practice to authorise operations whose predictable result is mass civilian harm. This definitional void was not an accidental oversight. During the diplomatic negotiations leading to the adoption of the 1977 Additional Protocols, state delegations deliberately resisted precise formulations in order to preserve operational flexibility for field commanders. [12]

This historical ambiguity has created a significant discord between international humanitarian law and international criminal law. Article 51(5)(b) of Additional Protocol I requires an advantage that is "concrete and direct," implying a proximate, tangible tactical gain. The Rome Statute of the International Criminal Court, however, utilises the term "overall military advantage" under Article 8(2)(b)(iv). This broader criminal standard permits defence arguments that an isolated, highly destructive urban strike is justified by the macro-strategic goals of an entire campaign, widening the gap between battlefield regulation and criminal accountability.

Academic authorities are divided over the permissible scope of the military advantage concept. Schmitt emphasises that the advantage cannot be hypothetical or speculative but must provide a tangible operational return. Dinstein further asserts that advantage must be assessed in relation to the attack as a whole, rather than its isolated components. However, state military manuals frequently depart from narrow tactical interpretations. In urban operations, state forces routinely aggregate the perceived advantage of an entire siege or isolation campaign to justify the immediate destruction of specific residential blocks. Because the law leaves "excessive" undefined, the balancing test depends entirely on the subjective judgment of the military interpreter. [13]

The real-world consequences of this subjectivism are significant. Following the Hamas attacks of October 2023, the Israeli military reportedly adjusted its targeting protocols to permit strikes on low-to-mid-level militant commanders where the expected civilian casualty threshold was expanded to double digits. IDF officials publicly stated that elevated civilian tolls were legally justifiable under international humanitarian law given the strategic stakes of dismantling non-state military infrastructure. Such state practice does not represent a good-faith application of the proportionality rule; it is a structural reinterpretation that effectively nullifies the rule's core purpose. In an urban environment where combatants are embedded within high-density populations, targets are constantly contested, and states self-assess their own compliance without external review, the undefined nature of military advantage allows the balancing test to function not as a legal constraint but as a legal permission slip.

B. Reverberating Effects: The Rule's Failure to Capture Indirect and Long-Term Harm

The architecture of the proportionality rule was designed to measure immediate, direct civilian casualties resulting from a discrete kinetic impact. Contemporary urban warfare, however, inflicts its most severe human costs through reverberating effects—the cascading, indirect, and long-term consequences of infrastructure damage that the rule's traditional framework fails to capture adequately. The legal obligation to evaluate these indirect consequences derives from Articles 51(5)(b) and 57(1) of Additional Protocol I. [14] Yet the text relies on the word "expected," raising an unresolved question: how far forward in time and down a causal chain must a targeting commander look?

In practice, states and military actors frequently interpret their obligations narrowly, prioritising immediate tactical gains over long-term indirect civilian costs. [15] States such as the United States and Israel have expressed operational concerns that overly stringent requirements to forecast remote reverberating effects would paralyse command decisions. [16]

This narrow interpretation creates a profound structural failure in urban environments. When a commander operates in a city where essential civilian infrastructure has already been degraded by a protracted conflict, it is entirely foreseeable that any additional damage to power grids or water networks will cause a non-linear spike in indirect civilian casualties. [17] In such conditions, even a minor tactical strike on a dual-use node can completely disable a city's sanitation system, leading to disease outbreaks and mass displacement months after active hostilities have concluded. [18]

A single kinetic strike on an electrical substation does not merely destroy that substation. It disables the water pumps that depend on it, collapses sewage treatment capacity, and within weeks can produce cholera outbreaks and displacement that kill far more civilians than the original explosion. The pre-attack proportionality assessment, conducted in isolation before the strike, captures none of these downstream consequences. This structural temporal limitation of the proportionality rule is demonstrated by empirical data from recent urban conflicts. During the first phase of the 2023–24 conflict in Gaza, analysis revealed that 60.8 per cent of health facilities, 68.2 per cent of education facilities, and 42.1 per cent of water treatment installations sustained extensive infrastructure damage. [19] Spatial statistical modelling confirmed that this widespread destruction systematically degraded the baseline conditions required for human survival. [20] The long-term civilian mortality resulting from the collapse of interconnected water, medical, and sanitation systems vastly exceeds the immediate casualties caused by individual explosions. Because proportionality is applied on an isolated, attack-by-attack basis, these systemic, long-term deaths are excluded from the pre-strike calculus.

C. Dual-Use Objects and the Collapse of the Military Objective Test

The legal category of "dual-use" objects, when combined with an elastic definition of military advantage, creates a systematic loophole through which attacks on civilian infrastructure are routinely authorised. Under Article 52(2) of Additional Protocol I, a structure can only be classified as a legitimate military objective if it satisfies a strict two-part test: it must make an "effective contribution to military action" by virtue of its nature, location, purpose, or use, and its total or partial destruction must offer a "definite military advantage." Both conditions must be satisfied independently. In contemporary urban combat, the expansive application of the dual-use label has collapsed this two-part statutory test into a single, unverified assertion of enemy utilisation.

This structural erosion inverts the traditional burden of proof regarding protected civilian structures. Under customary international law and treaty text, if a civilian facility—such as a hospital, school, or place of worship—is temporarily used by an adversary, it can lose its immune status only after a clear warning has been issued with a reasonable time limit, and after that warning has gone unheeded. According to authoritative ICRC guidance, if any doubt lingers regarding the status of a protected object, it must be presumed to be civilian and cannot be attacked.

In practice, however, state conduct in urban environments has inverted this presumption. Attacks are frequently launched against critical civilian infrastructure based on classified, unilateral intelligence assertions of dual use, placing the burden on international observers and humanitarian organisations to disprove the military characterisation after the fact. [21] Furthermore, modern military powers rarely acknowledge the direct targeting of civilian populations; instead, they frame the destruction of electrical grids, communication facilities, and dense residential zones as legitimate strikes against dual-use or war-sustaining assets, categorising the resulting human suffering as unavoidable "collateral damage." While international humanitarian law accepts that incidental harm may occur during a lawful operation, the collateral damage frame increasingly functions to mask the cumulative, systemic effects of deliberate infrastructural degradation. Because urban infrastructure is inherently networked, a strike on a single utility node inevitably degrades the entire systemic chain. The individuated, target-by-target assessment structure of the proportionality rule is incapable of capturing or regulating this form of systemic destruction.

D. The Accountability Vacuum: No Review, No Prosecution, No Deterrence

Even if the proportionality rule were conceptually adequate, it cannot protect civilians without a functioning enforcement architecture. In contemporary urban warfare, no such architecture exists. The initial proportionality assessment is performed entirely by the attacking party—specifically, by the military commander or targeting cell ordering the strike. International treaty law imposes no obligation for independent pre-attack review, establishes no neutral international body with authority to veto an operation, and provides no mandatory mechanism for transparent post-attack evaluation. This systemic insulation demonstrates a critical need to strengthen national and international judicial review of operational military decisions.

This structural deficit is compounded by the jurisdictional and political limitations of international courts. While the Rome Statute criminalises disproportionate attacks under Article 8(2)(b)(iv), it restricts this criminalisation exclusively to international armed conflicts, leaving the vast majority of modern urban conflicts—which are non-international or asymmetric in character—outside the scope of explicit treaty-based war crimes prosecution for disproportionality. Moreover, the International Criminal Court can only exercise jurisdiction if the relevant states are parties to the Rome Statute, or via a Security Council referral. As demonstrated by the repeated use of political vetoes to prevent referral of the Syrian conflict to the ICC, the state actors most likely to deploy heavy explosive weapons in densely populated cities are the least likely to face independent international scrutiny.

The practical consequence of this accountability vacuum is the phenomenon of "death by a thousand proportional strikes." During the 2016–17 siege of Mosul, the extensive use of Non-combatant Casualty Cut-off Values allowed thousands of individual coalition strikes to be cleared as technically proportionate in isolation, yet collectively these strikes demolished entire residential sectors and killed thousands of civilians. [22] Individual targeting assessments may be structurally compliant with internal military metrics while cumulatively producing a pattern of devastation that violates the fundamental object and purpose of international humanitarian law. Despite this widespread destruction, no domestic prosecutions or international trials have followed. In the absence of independent enforcement, the proportionality rule does not constrain military behaviour; it provides a sophisticated legal vocabulary for its justification, enabling states to invoke formal compliance as a shield against allegations of unlawful conduct.

5. Reforming the Rule: Toward Fitness for Purpose in Urban Warfare

A. Interpretive Reform: Toward a Mandatory Cumulative Proportionality Assessment

To counter the systemic fragmentation of "death by a thousand proportional strikes," international humanitarian law requires an interpretive shift: the transition from a strictly isolated, target-by-target assessment to a mandatory cumulative proportionality framework. Under this approach, when military forces launch a sequenced campaign within a high-density urban environment, they must evaluate the aggregate incidental civilian harm of the operation holistically, rather than evaluating individual strikes in isolation.

The statutory foundation for this cumulative interpretation resides in Article 57(1) of Additional Protocol I, which mandates that in the conduct of military operations, "constant care shall be taken to spare the civilian population, civilians and civilian objects." [23] The phrase "constant care" establishes a continuous, dynamic obligation that remains active throughout a campaign, not merely a checklist completed prior to an isolated launch. Properly interpreted, this duty requires targeting cells to recalibrate their proportionality assessments as the cumulative degradation of a city's infrastructure becomes apparent during an ongoing campaign.

The principal counterargument is that a cumulative standard is operationally unworkable, imposing an unrealistic burden on commanders to predict the non-linear collapse of interconnected urban systems. [24] However, this objection is significantly undermined by existing international frameworks. The ICRC's guidance on reverberating effects already requires states to factor in all indirect harms that are reasonably foreseeable. [25] Expanding this standard to encompass the foreseeable combined effects of an ongoing campaign does not introduce an unworkable metric; it applies established principles of causal foresight to the known realities of modern urban networks. The standard is one of reasonable foreseeability, not perfect prediction.

B. Substantive Reform: An Urban Warfare Manual for Civilian Infrastructure

Because the textual ambiguities of the 1977 Additional Protocols are systematically exploited in contemporary city campaigns, the international community requires a specialised, operationally specific instrument to regulate urban targeting: a San Remo-style Manual on Urban Warfare. This instrument would provide operationally specific guidance in three critical areas. First, it would establish a restrictive definition of military advantage in the context of attacks on networked civilian utilities, requiring demonstrable military utility beyond generalised strategic benefit. Second, it would set a mandatory temporal horizon for evaluating long-term reverberating effects, obliging planning authorities to model downstream health, disease, and displacement consequences as part of the pre-attack proportionality assessment. Third, it would establish a standardised procedural minimum for pre-strike proportionality review of dual-use targets, including mandatory consultation with technical experts on civilian infrastructure impacts.

The legal precedent for this type of substantive codification is well established. When conventional treaty texts have proven inadequate for shifting operational environments, experts and states have convened to produce specialised manuals. [26] This process produced the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea, the Tallinn Manual on the International Law Applicable to Cyber Operations, and the HPCR Manual on Air and Missile Warfare. The development of an urban-focused manual is the logical next step in this evolution and has been repeatedly raised in the ICRC's periodic Challenges Reports.

States and military lawyers will predictably invoke military necessity against any effort to restrict or define the parameters of military advantage. While maintaining operational flexibility is a legitimate concern, the systemic destruction of modern cities demonstrates that legal indeterminacy has been actively weaponised. The total absence of standardised metrics has not created a fair balance between military necessity and humanitarian preservation; it has systematically favoured the former, turning open textual ambiguity into a legal shield for catastrophic civilian harm.

C. Institutional Reform: Independent Proportionality Review

Interpretive and substantive reforms remain functionally inert without an independent institutional mechanism to oversee them. The international community should therefore establish a standing, independent review body to evaluate the proportionality of attacks in active urban conflict zones. Rather than operating as a criminal court with binding jurisdiction, this panel would produce rapid, technically rigorous, and publicly accessible legal evaluations. By issuing expedited reports on ongoing urban operations, such a body would create powerful reputational, diplomatic, and political incentives for combatants to align their targeting practices with international standards.

This proposal does not require the creation of an entirely new international institution. The structural blueprint already exists in Article 90 of Additional Protocol I, which established the International Humanitarian Fact-Finding Commission (IHFFC). [27] However, the IHFFC has remained largely inactive because its treaty architecture requires the explicit, prior consent of both conflicting parties to launch an investigation, a condition that states engaged in urban bombardment campaigns are unlikely to satisfy. To overcome this structural paralysis, the activation mechanism should be reformed by linking it to the United Nations Secretary-General's established authority to convene commissions of inquiry independently. By combining the existing technical framework of the IHFFC with an expedited UN mandate, the international community can pierce the unilateral veil of military self-assessment, transforming the proportionality rule from an elastic vocabulary of military justification into a real, verifiable boundary capable of protecting civilians in the urban battlespace.

Conclusion

The proportionality rule is one of the most important norms of civilian protection in international humanitarian law. It is also, as this article has argued, structurally inadequate for the environment in which it is now most urgently needed. The rule was designed against three baseline assumptions that civilian harm is identifiable in advance, that military advantage is concretely calculable, and that a competent reviewing authority exists-each of which urban warfare systematically negates.

Section IV demonstrated the four principal structural failures that follow from this mismatch. The term 'military advantage' is undefined, expansively interpreted, and increasingly used to justify mass civilian harm under the cover of campaign-level necessity. The rule's attack-by-attack assessment architecture is temporally and spatially incapable of capturing reverberating effects-the cascading, long-term civilian mortality that constitutes the dominant form of harm in modern urban campaigns. The dual-use doctrine has collapsed the strict two-part military objective test into an unverified assertion of enemy presence, enabling the dismantling of civilian infrastructure under a legitimising legal label. And the total absence of independent pre-attack review, combined with the jurisdictional and political limitations of international criminal courts, has produced an accountability vacuum in which the proportionality rule functions not as a constraint but as a justificatory vocabulary.

These failures are not incidental; they are architectural. They cannot be resolved through improved compliance, better training, or greater institutional commitment alone. They require both interpretive reforms, specifically, the adoption of a cumulative proportionality assessment framework grounded in the "constant care" obligation of Article 57(1), and institutional innovation in the form of a dedicated Urban Warfare Manual and a reformed, independently activated fact-finding mechanism.

The stakes of inaction are not abstract. In 2024, over 37,000 civilians were killed across fourteen armed conflicts, the overwhelming majority in urban environments. So long as the proportionality rule's structural inadequacies remain unaddressed, civilian harm in urban warfare will continue to be legitimised rather than constrained by international humanitarian law. Reforming the rule is not merely a doctrinal exercise; it is a matter of whether international law retains any meaningful capacity to protect the people most exposed to the consequences of armed conflict.

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