



CIVILIAN VULNERABILITIES AMID GEOPOLITICAL RIVALRIES: REASSESSING INTERNATIONAL LAW'S ENFORCEMENT THROUGH POSITIVIST CRITIQUE

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ABSTRACT

Civilians have historically been tormented in times of conflicts, whether international or non-international, despite the protections offered under several international instruments, including the Fourth Geneva Convention, Additional Protocol I, and the Rome Statute of the International Criminal Court. Customary International Humanitarian Law further reinforces these norms for the protection of civilians. These norms have been interpreted and applied by international tribunals such as the ICTY and the ICTR. Despite these well-developed norms, contemporary conflicts continue to demonstrate the vulnerability of civilian populations. Ongoing hostilities in regions such as Ukraine, Gaza and Sudan illustrate how civilians remain disproportionately affected by military operations, raising renewed concerns regarding the effectiveness of international criminal law in ensuring accountability. This paper examines the enforcement gap between the normative protections available and the limited enforcement of those protections in practice. Drawing from Austin's command theory and Holland's characterisation of international law, it critiques the absence of a unified sovereign and the unenforceability of sanctions. The paper attempts to assess whether the enforcement challenges faced by the international criminal law reflect deeper structural limitations of the international legal order. By connecting doctrinal analysis with contemporary conflict situations, the paper argues that the persistent enforcement gap in civilian protection is not merely the result of institutional inefficiency but reflects the decentralised and politically contingent nature of international law itself. Ultimately, the paper suggests that navigating geopolitical friction demands bridging normative aspirations with effective legislative safeguards in international organisations.

KEYWORDS: *International Humanitarian Law, Civilian Protection, Positivist Critique, Geopolitical Friction, Enforcement Gaps*

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1. INTRODUCTION

Civilians have historically borne the brunt of armed conflicts, despite the existence of comprehensive legal and institutional frameworks guaranteeing their protection under international law. Contemporary geopolitical rivalries in Gaza, Ukraine, Sudan and Syria demonstrate this drawback of the international legal order. They also illustrate how civilians are no more the incidental victims of warfare but the primary targets or merely a collateral damage in the modern warfare. This raises fundamental questions about the effectiveness of international law in the face of geopolitical rivalries.

This paper firstly analyses the patterns of civilian harm in contemporary conflicts and proceeds with an examination of the existing normative frameworks of international humanitarian law and international criminal law. It then evaluates this enforcement gap of international law in light of legal positivism. Drawing primarily, from John Austin's command theory, Holland's theory on the nature of international law, Stephen Hall's criticism of legal positivism, and theories of modern positivists, the paper argues that this lacuna of international law is not merely an institutional deficiency but a structural feature of the international legal order itself. The paper attempts to analyse the origin of this structural gap. Ultimately, it suggests a balanced approach between reformist jurisprudence and realism to bridge this gap between normative aspirations and the structural realities of internal law.

2. CIVILIAN VULNERABILITIES IN CONTEMPORARY ARMED CONFLICTS

2.1 Who are Civilians?

Civilians are the non-combatant humans, who are not to be considered the object of an attack. The Additional Protocol I to the Geneva Conventions describes civilian objects as those which by their nature, location, purpose or use do not make an effective contribution to military action and whose destruction does not offer a military advantage.

2.2 Historical Evolution and Rising Civilian Casualties

The proportion of civilian casualties have increased dramatically over time. Table 1.1* showcases the increase in the per centage of civilian casualties from the 19th century to the 1990s:

Time Period	Before 19 th CE	World War I	World War II	1990s
% of Civilian Casualties	5%	15%	65%	90%

*Table 1.1: Civilian casualty trends in modern warfare (Khorram-Manesh et al., 2021)

This shift reflects a transformation in the character of warfare, where civilians are no longer the incidental victims but the intentional targets of the conflict. These figures are alarming up to the 1990s, however, the subsequent evolution of warfare from conventional military forces to a hybrid model where military forces are coupled with irregular tactics of terrorism, cyber warfare and propaganda wars, renders the trend even more concerning.

2.3 Patterns of Civilian Harm in Contemporary Conflicts

The use of digital and data-driven technologies for precision attacks, surveillance, informational warfare gives the aggressors an upper hand in undermining civilian security and complicating accountability mechanisms (Fitz-Gerald & Hennebry, 2025). The practical implications of these developments become evident when examining recent conflicts in Gaza Strip, Ukraine, Sudan, and Syria, where the scale of civilian harm underscores the limitations of existing legal protections.

2.3.1 Gaza Strip (2023 – Present)

The Israel-Hamas war, ongoing since October 2023, has produced unprecedented civilian casualties amidst dense urban warfare. Being one of the most densely populated areas in the world (UNICEF, 2012), the Gaza strip has seen strikes frequently hitting residential areas and shelters. Gaza Health Ministry has reported the death of over 70,000 Palestinians in the ongoing conflict, with a high proportion of women and children being the victims (Burke, 2026). Furthermore, the restrictions on humanitarian aid have further intensified this damage by displacement of over 1.9 million residents (UNICEF, 2025). Israeli strikes have further disrupted the access to clean water and healthcare leading to long-term suffering and contributing to diseases (The Guardian, Deadly Israeli Attacks, 2026). These patterns highlight the challenge of applying IHL principles of proportionality in asymmetric urban conflicts involving non-state actors.

2.3.2 Ukraine (2022 – Present)

The Russia-Ukraine conflict illustrates the impact of infrastructural targeting on the civilian population, where harm extends beyond the battlefield. The systematic targeting of power grids to disrupt heat, water, electricity and healthcare has been an integral tactic in this warfare. According to the UN Human Rights Monitoring Mission in Ukraine, conflict related violence has led to 31% more civilian casualties in 2025 than in 2024 and 70% more than 2023 (UN HRMMU, 2026). This reflects the shift in strategies of geopolitical warfare where disrupting the civilian protection plays an important role in asserting dominance during conflicts and the attacks keep on reaching the urban areas far from the frontlines.

2.3.3 Sudan (2023 – Present)

The ongoing conflict in Sudan demonstrates the consequences of internal armed conflict on civilian populations, expanding the idea of geopolitical rivalries being limited to international armed conflicts. Clashes between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) have led to one of the world's largest displacement crises where almost 13 million people have been displaced – 8.9 million internally and 3.7 million to neighbouring host countries (Hussein et al., 2025). This impact on the civilian population is further intensified due to the limited international interventions and absence of effective enforcement mechanisms, showcasing the need for mitigating civilian harm even in non-international armed conflicts.

2.3.4 Syria (2011 – Present)

Similar patterns of civilian vulnerability have also been reflected in the conflict of Syria, where civilian harm has been aggravated by systemic harm and widespread displacement (Cecilia Jacob, 2024). The widespread destruction of urban centres, attack on civilian infrastructure has led to the economic collapse in Syria and further limited the access to essential services. Studies analysing patterns of violence have identified almost 2689 attacks on civilian infrastructure, including healthcare centres, schools, residential areas, private property, etc. (Muzzall, 2021).

This pattern of increasing civilian harm in contemporary geopolitical conflicts, coupled with hybrid warfare tactics and urban asymmetric conflicts reveal a disturbing reality, i.e., civilians have become the primary victims of warfare rather than incidental casualties.

3. NORMATIVE FRAMEWORK OF CIVILIAN PROTECTION

The modern normative framework for civilian protection owes its origin to the Lieber Code (1863), which is considered as the first comprehensive attempt to systematize rules of war in times of hostilities by limiting the military necessity. Furthermore, the St. Petersburg Declaration (1868), the first multilateral agreement to prevent superfluous injuries, also lays an early foundation to the principle that the methods of warfare adopted by belligerents can be limited by laws. Building on these developments, the contemporary international law addresses civilian protection through a comprehensive normative framework which spans from International Criminal Law to International Humanitarian Law.

3.1 International Humanitarian Law

3.1.1 *Treaty Law: Geneva Conventions and Additional Protocols*

The Fourth Geneva Convention, 1949, is the centrepiece of conventional humanitarian law with aims at civilian protection in international armed conflicts. It defines civilian protected persons in terms of nationality and being “under the control of power in question” (Jean Pictet, 1952). This convention primarily concerns civilians of the “enemy nation” and distinguishes between civilians in enemy territories from population of occupied territories. It provides rules for their protection including the respect for person, honour, convictions, religious protection and the prohibition against torture, cruel, inhuman treatment, hostage-taking, etc.

Additional Protocol I to the Geneva conventions, 1977, defines a civilian as any person who does not fall into the category of either, prisoner of war status under the Third Geneva Convention or, member of armed forces under Article 43 of the Protocol. It codifies the core principles of distinction, proportionality and precaution in attacks. However, these provisions stay limited to international armed conflicts. When it comes to non-international armed articles, Common Article 3 to the Geneva Conventions establishes minimum humanitarian standards, while the Additional Protocol II, 1977 extends protection to civilians in high-intensity internal conflicts.

3.1.2 *Fundamental Principles of Civilian Protection*

The International Humanitarian Law relies on three principles to ensure the protection of civilians, i.e., distinction, proportionality, and precaution. The principle of distinction requires the parties to differentiate between civilian and military objectives, prohibiting indiscriminate attacks. The principle of

proportionality prohibits incidental civilian harm and superfluous injuries by ensuring that the civilian harm is not disproportionate to the anticipated military advantage. Furthermore, the principle of precaution mandates the states to take feasible measures to verify targets and minimize civilian casualties. These principles are application equally to both, international and non-international armed conflicts.

3.1.3 Customary International Law

The ICRC's study on customary international humanitarian law identifies several key rules which aim at creating a distinction between civilians and combatants. These rules bind both states as well as non-state armed groups. For instance, Rule 16 obligates the states to verify their targets, further complementing it with Rule 17 which mandates the states to take all feasible measures to avoid or minimize any civilian loss or superfluous injuries. They also prohibit the use of civilians as human shields.

3.1.4 Responsibility to Protection (R2P)

In addition to the traditional IHL rules, R2P endorsed by the UN General Assembly in 2005, represents a political norm aimed at preventing and responding to mass atrocities against civilian population. As per Thomas Lee, R2P is a cluster of three key promises, i.e., firstly, responsibility of sovereign state to protect civilians within its borders; secondly, the responsibility of the entire world to keep the state accountable; and thirdly, responsibility of the entire state to protect the civilians in case the respective state fails to do so (Thomas Lee, 2014). In other words, it attempts at making the states responsible for their citizens.

3.2 International Criminal Law

The Rome Statute (1998), the foundational document of the International Criminal Court, enforces violations of IHL through individual criminal responsibility (Article 25). It criminalizes intentional grave violations against civilians as war crimes (Article 8), crimes against humanity (Article 7), when they are committed as part of a widespread or systemic attack against a civilian population.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have also significantly developed the jurisprudence on civilian protection. In the *Kunarac* case (2001), the ICTY simplified that definition of civilian population by stating that it “*comprises all persons who are civilians as opposed to members of the armed forces and other legitimate combatants.*” Furthermore, in the *Kupreskic* case (2000), the tribunal affirmed the customary nature of fundamental principles of IHL, particularly the

duty to take essential precautions to remove civilians from the vicinity of military areas. These decisions illustrate the role ad hoc tribunals play in civilian protection during armed conflicts.

This sophisticated normative framework of IHL and ICL, including the customary principles, treaties, conventions, judicial intervention, while comprehensive on paper, faces serious due to weak enforcement, lack of accountability and the global nature of conflicts.

4. ENFORCEMENT GAP IN INTERNATIONAL LAW: POSITIVIST CRITIQUE

The robust normative frameworks for civilian protection under IHL and ICL stand in contrast to the persistent suffering of civilians in contemporary conflicts. Despite the elaborate rules, judicial inquiries, civilian casualties are disproportionate and the perpetrators face limited accountability. A positivist analysis of this persistent enforcement gap reveals that this lacuna as the structural feature of the international legal order itself.

4.1 The Enforcement Gap – Evidence from Practice

Contemporary conflicts like warfare in Gaza Strip, Russia-Ukraine, Syria and the internal conflicts of Sudan, reflect the enforcement gap of the existing international humanitarian and criminal laws. This gap stems from multiple factors, i.e., principle of complementarity, soft-law nature of international law, heavy reliance on global cooperation, etc. For instance, the ICC operates under the principle of complementarity (Article 1, Rome Statute) and it relies heavily on state cooperation for investigations, arrests, and evidence collection. Major powers like USA, China, Russia are not parties to the Rome Statute, limited its reach. Furthermore, the power of deferral granted to the United Nations Security Council under Article 16 of the Rome Statute, grants an unlimited option to the members of the council to escalate and de-escalate complaints in accordance with their wishes. The involvement of non-state armed groups and hybrid warfare also complicate the attribution and effective enforcement of international laws.

These factors reflect a pattern of selective enforcement shaped by the geopolitical rivalries and domination of political will in law-making. In better words, international legal order is being shaped less by rule of law and more by timocracy, i.e., a system of governance where power is exercised by those the economically and politically dominant nations.

4.2 Structural Roots of the Gap – Positivist Critique

Legal positivism offers a practical explanation for this enforcement gap in the international law. John Austin has defined law as the command of sovereign which is backed by the threat of sanction (John Austin, 1832). When applied to domestic laws, this theory proves true where laws are defined by statutes framed by the legislature and when these laws are violated, sanctions or punishment can be granted by the judicial authorities.

When we apply this theory of Austin to the international arena, it disproves the validity of international laws. Stephen Hall observes, Austin's positivism "*expelled international law from the province of jurisprudence*" due to lack of a definite sovereign in the international system (Stephen Hall, 2001). At present, this lack of a supreme authority coupled with decentralised enforcement of sanctions render the entire system unreliable. Thomas Holland, famously described international law as "the vanishing point of jurisprudence." His idea was influenced by the lack of an institutional in international law. He viewed international law as a form of "positive morality" rather than true law (Holland, 1898).

Oppenheim's positivist framework further explains the failure of contemporary international law. According to Lassa Oppenheim, international law is only viable where a stable international society exists with a balance of power and, when this balance is disrupted, legal norms lose their efficiency (Benedict, 2002). When viewed from a practical lens, international law reflects the will of the superpowers, demonstrating how the command of the sovereign is just the command of the rich nations-states in the modern world. Moreover, this involvement of the superpowers in international law is not limited merely to law-making but also to enforcement, thereby corrupting the process. For instance, the deferral power of the UN Security Council creates a loophole for states with amicable relations with the members of security council to avoid sanctions guaranteed by international law. The complementary nature of these laws deepens the protectionary and enforceability gap further.

Customary International Law further complicates Austin's concept of law. Customs, considered to be the main source of law by Savigny, gain their binding nature not from any legislative enactment or codified sanctions but from consistent state practice accompanied by opinion juris. It rises from the belief that such legal practices are legally obligatory. The essence of customary law lies in free consent, which negates Austin's command theory of law, where legitimacy comes from forced consent and obligation to follow the command of the sovereign.

The modern positivists, including the German positivists like, Heinrich Triepel and Georg Jellinek proposed theories of "common will" and "self-limitation" in an

attempt to rescue the nature of international law but still failed to provide it validity. H.L.A. Hart also rejected Austin's positivism, yet he also characterised international law as a primitive legal system due to the absence of secondary rules and an enforcement mechanism (Hart, 1994).

This diagnosis reveals that the enforcement gap in civilian protection cannot be reformed through institutional reform alone. It demands a realist accommodation with the structural and political constraints of the contemporary international legal system.

5. BRIDGING THE GAP: REFORM OR REALISM?

In light of the structural constraints revealed through a positivist analysis, two competing approaches can be identified to bridge the enforcement gap in civilian protection under international law: reformist optimism and realist pragmatism.

Reformist scholars, Antonio Cassese and William Schabas, advocate for the strengthening of the existing institutions. Proposals include further institutionalization of individual criminal responsibility rather than ad hoc impunity, judicial reckoning running parallel to political mayhem, etc. (Cassese, 1998). Additional proposals introducing mandatory state reporting obligations and creating incentive-based compliance mechanisms. Some scholars also advocate limiting or suspending the deferral power of the UNSC and encouraging wider ratification of the laws (Ainley, 2015).

On the other hand, the realist perspective cautions against the optimism of the reformist scholars. As per this jurisprudential aspect, international legal law is characterized by geopolitical competition and sovereignty, therefore, as long as enforcement remains decentralized and contingent upon the interests of the politically dominant nations, institutional reforms are less likely to yield any optimistic result. According to this approach, civilian protection depends more on bilateral arrangements and balance of power dynamics, than on formal legal mechanisms alone.

A balanced approach appears to be the most appropriate, i.e., reform of institutional mechanisms coupled with realistic expectations and bilateral arrangements. While institutional reforms need to remain inspirational, they expectations must remain grounded in political reality. In an era of geopolitical friction, the structural constraints of international law need to be acknowledged for

effective civilian protection, and a reconciliation needs to be made between reformist aspirations with realistic expectations.

6. CONCLUSION

This paper has demonstrated that the persistent enforcement gap in civilian protection is not merely an institutional failure but a structural consequence of decentralized and soft-law nature of international law. A positivist critique, drawing on John Austin, Holland, Oppenheim and modern scholars reveals the absence of a central sovereign and an effective sanction mechanism in international legal order. Contemporary conflicts in Gaza, Ukraine, Sudan, and Syria illustrate how geopolitical rivalries intensify this weakness, disproportionately affecting civilians.

Notably, as nearly a century has passed since Holland's death, his characterization of international law as the "vanishing point of jurisprudence" remains strikingly relevant. This highlights the need for a reconciliation between normative aspirations with the political realities of the contemporary geopolitical order, where the consequences are borne acutely by civilians, framing them as the primary victims of modern conflict.

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