

The Principle of Proportionality in Armed Conflict under International Law and Islam

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Abstract

Proportionality plays a critical role in limiting the harms caused by armed conflict, particularly those affecting civilians and public infrastructure. However, the implementation of this principle can be challenging due to the uncertainties in customary international law status. This leads to differences in legal interpretation and the lack of transparency in military decision-making. This study investigates the principle of proportionality in armed conflict, focusing on its interpretation and application in international law and Islamic jurisprudence. The research examines the similarities and differences between Islamic jurisprudence and international humanitarian law on targeting, use of force, and treatment of non-combatants and detainees. The paper uses normative legal research methodology to explore the legal foundations and practical implications of proportionality in armed conflict, comparing legal frameworks like the Geneva Conventions, Additional Protocols, the Rome Statute, and Islamic legal literature. The study reveals commonalities and differences between International Humanitarian Law and Islamic law. The findings highlight the crucial role in reducing the impact of armed conflicts on civilians and infrastructure. The study advocates for ongoing dialogue and cooperation to improve global adherence to proportionality in armed conflicts.

Abstrak

Prinsip proporsionalitas berperan penting dalam membatasi dampak yang ditimbulkan oleh konflik bersenjata, khususnya terhadap warga sipil dan infrastruktur publik. Namun, penerapan prinsip ini menghadapi berbagai tantangan akibat ketidakpastian statusnya dalam hukum kebiasaan internasional. Hal ini menyebabkan perbedaan dalam interpretasi hukum serta kurangnya transparansi dalam pengambilan keputusan militer. Penelitian ini mengkaji prinsip proporsionalitas dalam konflik bersenjata, dengan fokus pada interpretasi dan penerapannya dalam hukum internasional dan yurisprudensi Islam. Selanjutnya, studi ini menganalisis persamaan dan perbedaan antara yurisprudensi Islam dan hukum humaniter internasional dalam hal penargetan, penggunaan kekuatan, serta perlakuan terhadap non-kombatan dan tahanan. Dengan menggunakan metode penelitian hukum normatif, studi ini mengeksplorasi landasan hukum serta implikasi praktis dari prinsip proporsionalitas dalam konflik bersenjata, melalui perbandingan berbagai kerangka hukum seperti Konvensi Jenewa, Protokol Tambahan, Statuta Roma, dan literatur hukum Islam. Penelitian menunjukkan adanya titik temu dan perbedaan antara Hukum Humaniter Internasional dan hukum Islam. Temuan ini menekankan pentingnya prinsip proporsionalitas dalam mengurangi dampak konflik bersenjata terhadap warga sipil dan infrastruktur. Studi ini mendorong adanya dialog dan kerja sama berkelanjutan untuk meningkatkan kepatuhan global terhadap prinsip proporsionalitas dalam konflik bersenjata.

Keywords:

The principle of proportionality; armed conflict; international law; Islamic jurisprudence; international humanitarian law.

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Introduction

Over the past ten years, the world has observed numerous wars and armed conflicts across different regions, with one of the most severe and significant being the conflict in the Middle East. The Syrian conflict began in 2011, and over 500,000 people have been killed, including around 227,000 civilians, with significant damage to homes, schools, hospitals, markets, and water systems (World Bank Group, 2017). In Yemen, since the Saudi-led intervention in 2015, over 100,000 people have died, including at least 18,000 civilians from airstrikes. The UN reports 233,000 dead and that fifty percent of health facilities are non-functional, with nearly two million children acutely malnourished (Almahbashi, 2020; Center for Preventive Action, 2024). The Libyan conflict in 2014 resulted in thousands of deaths, with 356 civilian deaths only in 2020 and significant displacement (Department of Political and Peacebuilding Affairs, 2023). In Gaza, by May 2024, approximately 35,000 people had died, including a large number of women and children, with many deaths occurring in residential areas. Various instruments in international law have been formulated to ensure that conflicting parties adhere to the rules of warfare during armed conflicts based on conventions, resolutions, and other documents. Among these instruments are the four Geneva Conventions of 1949, Additional Protocols I and II to these conventions, several provisions concerning war crimes outlined in the Rome Statute, which underpin the establishment of the International Criminal Court, and rules codified in customary international law. The emergence of numerous civilian casualties, severe damage to essential public facilities and infrastructure, and the use of weapons and military targets disproportionate to the intended military objectives all indicate a potential failure to adhere to the principle of proportionality by the conflicting parties (Schindler, 2004).

The principle of proportionality in International Humanitarian Law (IHL) is a subject of ongoing debate regarding its status as customary international law. While scholars argue that IHL's proportionality rules have achieved customary international law status since 1977, ambiguity persists due to a lack of consensus among legal scholars, international court judges, and states on methodologies for identifying customary international legal principles. Similarly, in Islamic law (sharia), proportionality is significant in armed conflict, emphasizing the minimization of harm to non-combatants and prohibiting excessive force, aligning with IHL's proportionality principle. (Fatwa, 2012; Arsyad et al., 2025) Islam prescribes basic principles and tenets for the conduct of hostilities and warfare, encapsulated in an independent scholarly field known as *siyār*. This area examines the life of the Prophet Muhammad and the battles he participated in, while technically incorporating the rules and standards that must be observed in these conflicts (Riyanto & Muhammadin, 2019).

Most studies on Islamic Law of nations concentrate on the duties and conduct expected of Muslim combatants during armed conflict. Notably, there are striking and substantial similarities between the rules in *siyār* and those codified within the modern law of armed conflict. Islamic laws are progressive, influenced by current circumstances and requirements, which necessitates careful consideration of how Islam addresses war, its justifications, and consequences. Therefore, it is crucial to interpret Islamic law to adopt progressive regulations and incorporate them into contemporary practices. Understanding the main determinants and dynamics of Islamic law is essential to offering insights into how a modern version of the Islamic law of armed conflict may respond to contemporary atrocities and wartime violations.

In Islamic law, the principle of proportionality is rooted in the ethical and legal framework regulating conduct in armed conflict. This is in line with IHL, aiming at protecting human dignity. Several authors compare conduct in armed conflict within Islamic and humanitarian law, showing the alignment (Badawi, 2020; Boisard, 1980; Çakmak & Güneysu, 2020). To some extent, both legal traditions emphasize justice and moderation, prioritizing the importance of avoiding unnecessary harm to civilians and ensuring military actions are

proportionate to the threat. Thus, IHL and Islamic law uphold the principle of proportionality as a fundamental guideline in warfare (Al-Dawoody, 2015; Hayward, 2012).

This research aims to examine the principles and application of proportionality in armed conflict under international and Islamic law, exploring their alignment and divergences. This research also considers previous studies pertaining to the relationship between international and Islamic law, particularly in the context of *fiqh al-siyār*, by highlighting both similarities and differences in existing paradigms. It contrasts with Abdullahi Ahmed An-Na'im's advocacy for a complete overhaul of Islamic law to align with contemporary international law, prioritizing secularization (An-Na'im, 1996, 2009). Additionally, it diverges from Muhammad Hamidullah's perspective that Islamic law already includes a comprehensive set of international norms, advising scholars to reference this established tradition. This view aligns with Sayyid Abul A'la Maududi's textualist approach (Hamidullah, 1953, 2017). Positioning itself as an intermediary between textualist and contextualist approaches, this study complements the perspectives of Majid Khadduri and Mashood A. Baderin by recognizing both convergences and divergences between international and Islamic law and promoting methodologies that minimize normative conflicts (Baderin, 2005; Khadduri, 2006).

Just war theory is employed as an analytical tool to explore the gap between '*das sein*' (what is) and '*das sollen*' (what ought to be) in adherence to the principle of proportionality in armed conflict. This theory distinguishes between the normative expectations of proportionality and its implementation, showing in the actual policies of military targeting decisions (Hensel, 2008; Langan, 1984). The theory determines the main criteria: externalist and internalist criteria to help clarify the expectations of the legal norms of proportionality *vis-à-vis* the actual conduct of states in armed conflicts. The externalist criteria encompass just cause, legitimate authority, last resort, proportionality, likelihood of success, necessity, and distinction. On the other hand, the internalist criteria include just intention, moral responsibility, and moral integrity.

Method

This is a normative legal research, investigating legal norms in armed conflict, specifically the principle of proportionality. Additionally, this research employs a comparative theoretical approach, examining the principle of proportionality in international law and Islamic legal literature. This is intended to identify similarities and differences of the legal frameworks in constructing the principle of proportionality from the perspectives of international humanitarian law, international customary law, and Islamic law.

This research focuses on the examination of various legal materials, including the four Geneva Conventions of 1949 (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, August 12, 1949, 1949; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, August 12, 1949, 1949; Convention (III) Relative to the Treatment of Prisoners of War. Geneva, August 12, 1949, 1949; Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, August 12 1949, 1949), Additional Protocols (Additional Protocol I to the Geneva Conventions of August 12 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977; Additional Protocol II to the Geneva Conventions of August 12 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8 1977, 1977), The Rome Statute of the International Criminal Court 1998 (Rome Statute of the International Criminal Court, 1998), customary international law (International Committee of the Red Cross, 2024a, 2024b), Islamic legal sources such as Quranic verses, Hadiths, and the opinions of different legal schools. It also incorporates the views of international legal scholars on proportionality (Gardezi, 2021).

Defining the Principle of Proportionality

The term "proportionality," derived from the Latin "*proportio*," meaning "equal part," refers to the comparison of components or interests among different entities, aiming for equitable balance. In the context of law as a societal regulatory mechanism, proportionality ensures the fair distribution of components or individual interests, making it a fundamental aspect of justice across all legal systems (Christoffersen, 2009, 2010; Van den Boogaard, 2023). As a cornerstone in standards and moral guidelines, proportionality gauges the relationship between rights and duties, preventing extremes and advocating for a balanced reconciliation of conflicting interests. Aristotle's concept of "distributive justice" intersects with proportionality, emphasizing the allocation of communal resources based on merit to maintain equilibrium between benefits and entitlements (Neff, 2005; Van den Boogaard, 2019). Cicero considered proportionality in assessing the legitimacy of warfare by emphasizing that war could only be justified if all peaceful options had been attempted, while maintaining peace and reducing harm should be the priority (Coppieters, 2020; Neff, 2005).

As civilizations progressed, legal luminaries like Saint Augustine, Thomas Aquinas, and Hugo Grotius refined the notion of proportionality, particularly within just war theory. Integrating theological and philosophical insights, Aquinas argued that the means employed should match the objective. At the same time, Grotius, the father of international law, expanded on this by grounding proportionality in Natural Law principles. He asserted that both the initiation and conduct of war must adhere to proportionality, ensuring that the use of force aligns to uphold rights and justice during hostilities (Scobbie, 2014).

In contemporary international law, proportionality is interpreted and applied in various ways, influenced by the complex interplay of legal principles governing the actions of states, international organizations, and individuals. Due to this complexity, applying proportionality requires careful and flexible approaches, especially when facing conflicting interests and different points of view. International humanitarian law encapsulates the principle of proportionality through provisions in the First Additional Protocol to the 1949 Geneva Conventions. Article 51(5)(b) of the Additional Protocol I prohibits attacks resulting in disproportionate damage, such as excessive incidental loss of civilian life, injury to civilians, or damage to civilian objects relative to the anticipated military advantage. Article 57(2) mandates that attackers take precautionary measures before launching an attack and refrain from attacks expected to cause disproportionate loss, requiring them to abort or postpone such attacks if disproportionate harm becomes evident. Launching a disproportionate attack that results in "death or serious injury to the body or health" constitutes a severe violation (Cohen and Zlotogorski, 2021).

Principles Associated with Proportionality: Distinction, Precaution, Necessity, and Suitability

The principle of distinction, also referred to as the principle of differentiation, classifies a population during wartime into combatants—those who actively participate in hostilities—and non-combatants, including civilians who refrain from involvement in the conflict. This classification is essential for identifying legitimate military targets and ensuring the protection of non-combatants (Palupi & Rosra, 2023). Clear and ongoing differentiation between combatants and non-combatants is necessary to safeguard civilian populations and assets.

The principles of distinction and proportionality hinge on narratives that expose dehumanizing actions and unjust circumstances. During the First World War, international humanitarian law's failure to distinguish civilians from combatants resulted in insufficient civilian protection. The rise of aerial warfare increased conflict intensity and led to tactics targeting civilians, often perceived as supporting the enemy's war efforts (Alexander, 2007).

Larry May contends that the principle of differentiation is morally and conceptually sound, suggesting civilian vulnerability may be overstated compared to their alleged support for the enemy (May, 2007; Newton, 2014). International humanitarian law aims to elevate global standards by granting immunity to non-combatants and those no longer engaged in combat, with the International Court of Justice advocating for civilian protection to prevent unnecessary suffering (Schmitt 2010; 2012; Watkin 2010). Distinguishing military targets from civilians is vital within the principle of distinction and closely linked to proportionality in protecting civilians, as proportionality cannot be achieved without applying the principle of distinction (Kalshoven 1973; Vanhullebusch 2015).

The principle of precautions is a mandatory preventive measure that warring parties must undertake when planning a military attack (Van den Boogaard, 2015). Attacks must be aborted if they target civilians (Lopes, 2015), and early warnings should be issued for attacks that might affect civilian populations, if feasible. Military actions that pose the least risk to civilians must be prioritized when selecting targets. International humanitarian law requires those planning and authorizing attacks to take precautionary measures, including refraining from attacks where expected civilian harm would outweigh the anticipated military advantage (Desgagné, 2000; Henderson, 2011). During hostilities, parties are required to follow vigilance and prevention rules to protect civilians, complementing the general obligations of distinguishing between civilians and combatants and between military and civilian objects (Cohen & Zlotogorski, 2021; Cohen et al., 2009; Shany & Cohen, 2007). Preventive measures ensure that civilians are not overlooked, obligating parties to minimize civilian harm. Both attackers and those under attack must consider civilian safety, with attackers adjusting strategies to avoid civilian harm and defenders ensuring military objects are not placed near civilian areas (Corn, 2015; Crawford, 2015). These precautions are fundamental to humanitarian norms, as outlined in Articles 57 and 58 of Additional Protocol I of the Geneva Conventions, requiring warring states to protect civilian populations and objects from military attack impacts (Gill 2021).

The principles of necessity are often used interchangeably to describe the same practice as the principle of proportionality (Dolgopol & Gardam, 2006; Gardam, 2009). When an action is deemed unnecessary, it is sometimes labeled as disproportionate. However, while closely related, these principles have distinct meanings (Pouw, 2021; Shany & Cohen, 2007; Van den Boogaard, 2015). The principle of necessity explains that specific actions cannot be avoided and are the only viable options. These assessments are crucial for balancing the objectives of the action against its impacts (Boothby, 2018).

The principle of suitability explains the appropriate measure to achieve its goal. In other words, the measure and its goal must have a specific cause-and-effect relationship. Therefore, some authors use the term "proportionality *stricto sensu*" to distinguish it from the principle of necessity and the principle of suitability, intending to elucidate a more quantitative comparison between the impact of an action and its objective. Proportionality *stricto sensu* ensures that an action's impact is not disproportionate or excessive compared to the intended purpose of that action (Van den Boogaard, 2019; 2023).

The Principle of Proportionality in Customary International Law

The principle of proportionality within International Humanitarian Law (IHL) raises ongoing debates about its status as a customary norm of international law due to the lack of consensus among legal scholars, international court judges, and states on identifying customary international law principles (Greenwood, 2024). Legal analysis of how customary international law develops around proportionality focuses on whether nations adopt regulations in wartime conduct that later gain recognition as customary standards, exploring wartime actions that might qualify (Bothe et al., 2013). Some scholars argue that only concrete actions, such as

targeting decisions, attack continuation or cessation, and adherence to precaution and differentiation, can be classified as state practice, which is determined by factors like duration, consistency, and frequency of actions during wartime (Shaw, 2021).

Compliance in customary law is primarily achieved through *opinio juris*, the belief that an action is legally obligatory, which involves various indications of state practice or *opinio juris*, such as adherence to military guidelines. A study by the International Committee of the Red Cross (ICRC) (2005) on International Customary Law highlighted that proportionality embodies customary international behavior, as stated in Rule 14, which prohibits attacks expected to cause excessive incidental civilian harm compared to the anticipated military advantage. Rules 14, 15, 17, and 18, emphasizing precautionary measures, are part of Additional Protocol I. The ICRC's examination of wartime practices, including treaty texts, military guidelines, national laws, and official state statements, supports the argument that proportionality is part of customary international law. The states examined by the ICRC include parties and non-parties to Additional Protocol I, with 30 states incorporating proportionality into their military protocols. This suggests broader acceptance of the principle despite some states not explicitly including it in their directives post-ratification of Additional Protocol I.

Customary International Law serves as the primary legal standard for many military operations worldwide, with the International Committee of the Red Cross (ICRC) asserting that the proportionality definition from Additional Protocol I is applicable as customary law. However, this view is not universally accepted (International Committee of the Red Cross, 2024a, 2024b). Major nations like India, China, the United States, and Russia, which have not signed either treaty, are still bound by customary international law. Some scholars prefer the Rome Statute's proportionality framework over Additional Protocol I due to its stricter criteria, including explicit requirements for intent and knowledge. The Rome Statute defines proportionality violations as attacks carried out with the knowledge that they would cause civilian harm that is "clearly excessive" compared to the expected direct military advantage. This represents a narrower criterion than the "excessive" standard of Additional Protocol I, aligning more closely with historical and modern perspectives of customary international law (Rogers, 2016). While 123 nations have adopted the Rome Statute and 174 have signed Additional Protocol I, with 40 qualifying their endorsement, scholars like Goldsmith and Posner argue that Customary International Law often reflects the interests of powerful states that resist norms limiting their actions (Goldsmith & Posner, 1999).

The broader wording of Additional Protocol I could impose wider constraints on military operations compared to the more definitive boundaries of the Rome Statute, influencing military conduct and limiting tactical options (Luban, 2010). The differences between these instruments are crucial, as they shape how proportionality and liability in conflicts are interpreted and enforced, with the Rome Statute's stricter interpretation better aligning with customary law (Kilcup 2016).

The Principle of Proportionality in International Humanitarian Law

Progress in developing laws to protect civilians during armed conflicts has been slower compared to advancements in other areas of international humanitarian law. This slow progress is largely due to the primary objective of armed conflicts: the destruction of enemy military forces rather than the protection of civilians and their property. The 1863 Lieber Code's Article 22, enacted during the American Civil War, aimed to reduce civilian casualties but did not effectively balance military objectives with civilian protection, resulting in civilian suffering (Van den Boogaard, 2023). The 1868 St. Petersburg Declaration sought to align military goals with humanitarian values but failed to address the issue of collateral damage (International Committee of the Red Cross, 2024a, 2024b).

The Hague Conventions of 1899 and 1907 aimed to regulate new warfare technologies; however, the 1907 convention fell short due to the outbreak of World War I. In 1923, a draft Hague Convention on aerial warfare incorporated the principle of proportionality, establishing guidelines to ensure military necessity while minimizing civilian harm, although it was never ratified. The 1925 Geneva Protocol banned chemical and biological weapons to protect civilians. In 1938, the League of Nations passed a resolution to safeguard civilians from aerial bombardment, though it lacked explicit prohibitions. World War II's significant civilian casualties led to an expansion of International Law to better protect civilians during armed conflicts. The 1949 Fourth Geneva Convention was established to safeguard civilians, which included in the Red Cross Draft Rules to limit civilian dangers, developed by the ICRC with experts from various national Red Cross and Red Crescent societies after meetings in Geneva in 1954 (Fenrick, 2009; Rogers, 2016; Shafie et al. 2021; Van den Boogaard, 2019).

The 1956 Draft Regulation on Limiting the Dangers of War to Civilian Populations marked progress toward the First Additional Protocol to the Geneva Conventions, including clauses forbidding military activities causing "disproportionate harm compared to the military benefits obtained." In 1973, the ICRC formulated the First Additional Protocol (Additional Protocol I), incorporating proportionality, and it was ratified on June 8, 1977, with specific clauses in Articles 51(5)(b) and 57(2)(a)(iii). Over time, proportionality evolved to include a logical correlation between attack objectives and military benefits and the careful selection of attack methods to minimize harm. The International Criminal Court Statute explicitly prohibits attacks, knowing they will cause excessive civilian harm relative to military advantage. It sparks debate whether the proportionality rule in Additional Protocol I aligns with customary international law or if the ICC Statute's wording should prevail (Kilcup, 2016; Velásquez-Ruiz & Alberto, 2009).

The principle of humanitarian law is tasked with identifying breaches of the principle of proportionality. While numerous military experts contend that humanitarian law's proportionality lacks a universally applicable overarching principle in all armed conflicts, it nonetheless serves as the foundational concept guiding policies within specific regulations. This perspective seeks to confine the principle of proportionality within a more limited interpretation of military operations, thereby enhancing clarity in its application. The principle of proportionality functions as a tool to constrain armed conflicts. It governs the broader repercussions of military assaults on human life.

The Principle of Proportionality in Islamic Jurisprudence

The Quran outlines principles of proportionality in warfare, highlighting ethical considerations (Quran 2:190-194). It urges minimal force necessary for success, emphasizing restraint and moderation (Quran 5:8). This mirrors a broader ethical framework promoting justice and compassion during conflicts (Fenrick, 2009; Spoerl, 2010). The Quran condemns unethical warfare, stressing human dignity and just conduct (Quran 4:29). Its guidelines aim to uphold fairness and moral standards (Quran 2:190). Advocating proportional responses to prevent escalation and promote nonviolent conflict resolution (Quran 42:40, 8:61). These teachings guide ethical warfare, emphasizing justice, compassion, and humane treatment of non-combatants and prisoners. Several norms in Islam have relevance to the principle of proportionality in humanitarian law and armed conflict, including Distinction and Discrimination in Targeting, Avoidance of Excessive Force, Prohibition against Use of Indiscriminate Weapons, Prohibition against Indiscriminate Methods of Warfare, Prohibition against Destruction of Property, Treatment of Non-Combatants and Prisoners.

Table 1.
The Comparison of the Principle of Proportionality in International Humanitarian Law, Customary International Law, International Criminal Law, and Islam

Rules	Geneva Conv. & Additional Protocol (IHL)	Customary Int. Law (CIHL)	The Rome Statute (ICC)	Islamic Jurisprudence
Distinction in Targeting	Art. 3 GC Art. 48 AP I Art. 13 AP II	Rules: 1-10, 24-34, 87-105	Art. 8	Ṣaḥīḥ Bukhārī 3015 Sunan Abū Dāwūd : 2613, 2668, 3041
Avoidance of Excessive Force against Indiscriminate Weapons	Art. 35 AP I	Rule 17, Rules 70 - 86	Art. 8 (2) a. ii	Quran: 2: 190, 4:90, 9:6 Muwaṭṭa' Mālik: 959, 960 Ṣaḥīḥ Bukhārī: 2945 Jāmi' Tirmidhī: 1550
Avoidance of Excessive Force in Methods of War	Art. 51 AP I Art. 23 GC I Art. 28 GC IV	Rules: 11-24 46-48 53	Art. 8 (2) b.	Quran: 2: 190, 4:90, 9:6 Muwaṭṭa' Mālik, No: 959, 960 Ṣaḥīḥ Bukhārī: 2945 Jāmi' Tirmidhī: 1550
Avoidance of Excessive Force Against Property	Art. 12 – 14 AP I Art. 35 AP I Art. 52, 55 AP I Art. 19-23 GC IV	Rules: 1, 38, 45, 50, 51, 52, 54	Art. 8 (2) a. Art. 8 (2) b. Art. 8 (2) c.	Quran: 59: 5, 2:190-192. Muwaṭṭa' Mālik: 959 Sunan Abū Dāwūd: 2613, 2614
Treatment of Non-Combatants and Prisoners	GC III: Art. 12 - 16 Art. 130 Art. 3 GC I-IV Art. 4 AP II	Rules: 89, 94, 106-108, 128	Art. 8 (2) a.	Quran: 76: 7-8, 47: 4, 8: 67. Sunan Abū Dāwūd : 2685 - 2687 Ṣaḥīḥ Bukhārī: 3131 – 3132, 3044. Musnad Aḥmad: 2216 Jāmi' Tirmidhī: 1693

The distinction principle in Islam is deeply embedded in religious doctrines and customs, stemming from Allah's mandates and the teachings of the Prophet Muhammad, guiding ethical behavior and societal interactions among Muslims with a focus on justice, fairness, and moral integrity (Watr, 2011). Scholars and legal experts throughout Islamic history have explored and elaborated on this principle, highlighting its significance in faith, morality, and societal standards (Akhtar et al., 2021; Munir, 2014; Munir, 2012).

In the Islamic Law of War, conflict activities are confined to the battlefield, and civilians and non-combatants—including women, children, the elderly, individuals with disabilities, clergy, and those providing non-hostile services—are to be shielded from deliberate harm (Khan, 1997; al-Khaṭṭāb, 2008). This aligns with International Humanitarian Law (IHL), which prohibits attacks on civilians and non-combatants (Articles 48 and 51(2), AP-I, GC, 1949; Rule 1, CIHL)(International Committee of the Red Cross, 2024a, 2024b). Prophet Muhammad's actions exemplified this principle, as he avoided nighttime attacks to reduce harm to civilians, engaging in combat only after dawn (Khalīl, 2007; Khan, 1997).

The principle of avoiding excessive force is central to Islamic teachings, rooted in the Quran and the traditions of the Prophet Muhammad (Peace Be Upon Him). Islamic morality

emphasizes moderation (*wasatiyyah*) in all aspects of life, including warfare, advocating justice and restraint even in conflict. Proportionality developed not only to limit military force but also to assess the feasibility and social impact of legal-religious actions on civilian populations. (Amin et al., 2024; Kamaludin, 2022) This principle discourages unnecessary aggression and demands proportionality in military actions. Key elements include prohibiting indiscriminate weapons, methods of warfare, and property destruction (Distefano, 2014).

Islamic jurisprudence mandates that warfare methods must distinguish between combatants and civilians, aligning with ethical guidelines from the Prophet Muhammad's teachings, who avoided indiscriminate tactics (Hadith 8187; Al-Kafi, nd). This approach is consistent with contemporary International Humanitarian Law (IHL), which aims to protect civilians by restricting harmful warfare methods (Additional Protocol I to the Geneva Conventions of August 12 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977; El Fadl, 2009; Kelsay, 2007). Both legal systems aim to protect human life and minimize suffering during conflicts, ensuring accountability for actions (Quran 4:90 and 9:6; Hadith 959, 960; Muwaṭṭa' Imām Mālik; Hadith 2945, al-Bukhārī, Vol-4; Hadith 1550, Jāmi' al-Tirmidhī, Vol-3; Hadith 8188, 8189 and 8190, al-Kāfi, nd; Quran 2:190; Article 51(4); AP-I, GC, 1949; Rule 11, CIHL) (Khalīl, 2007; Al-Dawoody, 2011, 2013, 2015, 2017a, 2017c, 2017b; Mālik ibn Anas, 2016; Khan, 1997).

The intentional and unjust destruction of property is strictly forbidden in both Islamic Law and International Law of War, categorized as "disorder on land" (*fasad-fil-arḍ*) in the Quran. Attacks on property are permissible only to compel surrender or end hostilities necessitated by military needs, such as requisitioning enemy supplies. The Prophet emphasized sparing non-combatants and protecting resources, forbidding the destruction of trees and bees. In IHL, targeting civilian objects is prohibited, with specific protections for medical facilities, the environment, essential civilian objects, and cultural heritage. The principle of *jus angariae* (right of angary) allows the use of enemy and neutral property as a wartime necessity. Islamic Law and IHL emphasize protecting civilian property and minimizing unnecessary damage during conflicts (Quran 59:5 & 2:190-192; Hadith 8219 and 8191, al-Kāfi, Vol-5; Quran, 59:5; Hadith 959, Muwaṭṭa' Imām Mālik; Hadith 959, Muwaṭṭa' Imām Mālik; Hadith 2613, 2614, Sunan Abū Dāwūd, Vol-3; Hadith 8193, Al-Kāfi, Vol-5; Article 52, GC-IV, 1949; Article 52, AP-I, GC, 1949. Rule 7, CIHL; Rules 72, 75, 35(3), 55 and 55(2); AP-I, GC, 1949; Article 19 to 23, GC, 1949; Article 12 to 14, AP-I, GC, 1949).

Prisoners of War (POWs) are granted a range of protections, including respectful and compassionate treatment, along with the provision of food, water, and shelter from harsh environmental conditions. Prophet Muhammad (Peace Be Upon Him) instructed his companions to prioritize kindness towards POWs, motivating them to extend care to captives beyond what they would provide (Hadith 8211, 8212, & 8213; al-Kāfi, nd). Captors are obliged to ensure the well-being of prisoners, a principle praised in the Quran (Hadith 8211, 8212, & 8213 Al-Kafi, nd). This directive underscores the ethical responsibility of individuals engaged in armed conflict that reflects the moral principles inherent in Islamic teachings concerning the treatment of prisoners (Quran, 76:7-8; Hadith 2687, Sunan Abū Dāwūd, Vol-3; Abbou, 2020; Al-Khaṭṭāb, 2008). The Quran mandates treating POWs with kindness: "Set them free either graciously or by ransom" (Quran, 47:4 and 8:67).

After the Battle of Hunayn, Prophet Muhammad released many POWs from the Hawazin tribe without ransom as a goodwill gesture (al-Khaṭṭāb 2008; Khan 1997; Hadith 3131-3132, al-Bukhārī, Vol-4; Hadith 2688, Sunan Abū Dāwūd, Vol-3; Hadith 8175, Al-Kulaynī, nd). Following the conquest of Mecca, he declared a comprehensive amnesty with few exceptions (al-Khaṭṭāb, 2012; Khalīl, 2007; Hadith 2216, Musnad Imām Aḥmad ibn Ḥanbal, Vol-2; Hadith 1693, Jāmi' al-Tirmidhī, Vol-3; Hadith 3044, al-Bukhārī, Vol-4; Hadith 2685, Sunan Abū Dāwūd, Vol-3; Ramzan et al., 2021; Khdir, 2017). Under International Humanitarian Law,

POWs must be released and repatriated after active hostilities (Article 118, GC-III; Rule 128, CIHL). IHL also prohibits the enslavement or execution of POWs (Common Article 3, GC-I-IV. Article 130, GC-III; Article 4(2)(f), AP-II, GC, 1949; Rules 89 and 94, CIHL) (Bhuiyan & Khan 2020; Goldsmith & Posner 1999; Kelly, 2000; Kilcup, 2016).

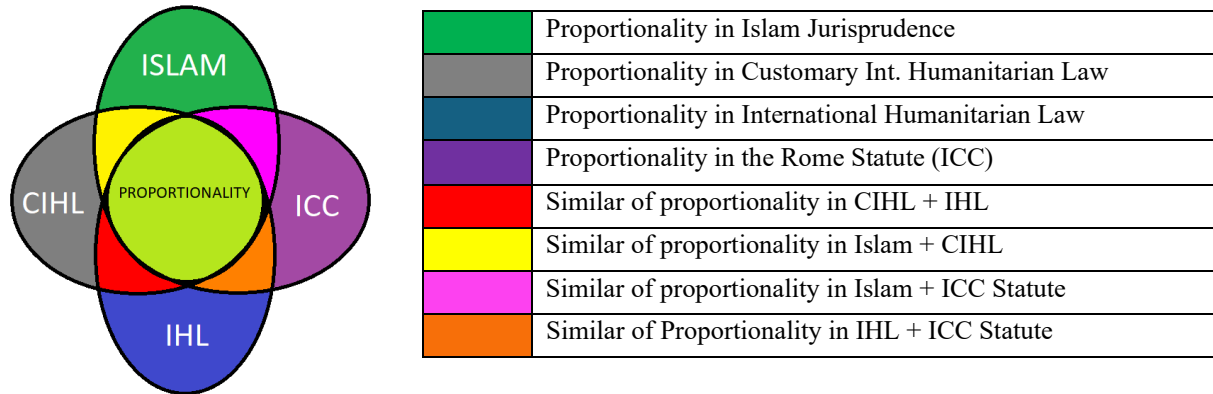


Figure 1.

Diagram of the Relations between Islamic Jurisprudence, Customary International Humanitarian Law (CIHL), International Humanitarian Law (IHL), and International Criminal Court Statute (ICC) concerning the Principle of Proportionality in Armed Conflict

The diagram demonstrates that the principle of proportionality in armed conflicts is deeply rooted in international norms, such as the four Geneva Conventions and their Additional Protocols, Customary International Law, and the Rome Statute, which forms the basis for the International Criminal Court. These key elements are also available in Islamic legal discourse as derived from the Quran and the Hadith. The colors in the diagram highlight the similarities, differences, and connections between the norms. Each color represents the regulation of proportionality within those legal frameworks: Islamic law, customary law, international humanitarian law, and the International Criminal Court.

Islamic scholars have different perspectives regarding the principle of proportionality in warfare, especially in the methods of war. Some examples include the use of weapons of mass destruction (WMDs), including nuclear, chemical, biological, and unconventional weapons. There are at least three opinions regarding this issue. First, some strictly prohibit the use of highly destructive weapons, arguing that Islamic legal and ethical principles prioritize minimizing harm, safeguarding non-combatants, and preserving the environment. Among the Quranic verses underlying this argument is "*do not spread corruption on earth*" (Quran 2:60). Furthermore, the prophetic traditions prohibit harm and destruction as central to upholding proportionality in conflict. Influential scholars like Imām Abū Zahrā argued that because Islam teaches and restrains, it forbids WMDs since they potentially cause extensive and indiscriminate devastation (al-Nawāwī, 1974; Zahrā, 1995).

Second, some scholars permit the use of such weapons only under urgent need or in response to similar attacks. They base this on Islamic jurisprudential maxims that allow for exceptions in life-threatening situations. This view refers to the Quranic verses that allow proportionate retaliation (e.g., Quran 2:194; 42:40) and the Prophet's action as reciprocation when Muslims were threatened with violence (al-Hasan, 1982). *Third*, the most permissive view, upheld by some Ḥanāfī and Shāfi'ī jurists. They argue that any method in war is allowed to defeat the enemy. They refer to the Quran 8:60 and take examples from prophetic practice,

emphasizing strategic harm for military advantage (al-Ṣāliḥīn, 2005; Zemam & Muslimah, 2023; Houba, 2020). However, the majority of scholars (*jumhur al-fuqaha*) believe that using WMDs should only be allowed in extreme cases. Conventional methods should be prioritized if the victory can be achieved. In turn, the use of WMDs should be avoided if their use violates treaties, harms innocents, or results in excessive destruction (Haykal, 1997; al-Sarakhsī, 1992).

Case Studies of Proportionality in Muslim-Majority State Conflicts

In armed conflicts involving Muslim-majority states, the application of the principle of proportionality can differ depending on their interpretation of Islamic legal frameworks (*fiqh*) or international humanitarian law. The principle of proportionality demands that military attacks should only be carried out if the expected military gain outweighs the potential harm to civilians and public infrastructure. This study uses the Saudi-led coalition's intervention in Yemen (2015), Turkey's military engagement in the Libyan civil conflict (2020), and the Iran-Israel confrontation (2024) to examine whether these countries have followed Islamic ethics of war and international humanitarian standards in war.

In Yemen, the Saudi-led coalition launched Operation Decisive Storm against the Houthi Government. This is considered to align with the just war principles of legitimate cause and proper authority. Unfortunately, the war has led to massive civilian casualties, destroyed strategic infrastructure, and reportedly involved the use of chemical weapons and cluster bombs. The outcomes raise serious concerns about whether the coalition respected the principle of distinction and precautions of proportionality (Jan & Haruna 2015; Tzimas 2018; Kazemi & Pourbehi, 2018; Arestizábal, 2020; Azeem Gul et al., 2021). Turkey's intervention in Libya in 2020, though authorized by the UN-backed Government of National Accord, presents complex ethical considerations on Turkey's deeper strategic goals and the damage caused due to the use of drones (Al-Fawwaz & Abualkanam, 2021; Süssler, 2022; Selján, 2020; Maalim, 2023; Yüksel, 2021).

The 2024 Iran-Israel military confrontation further complicates the proportionality debate. Iran's extensive missile response to an Israeli consulate airstrike, while framed as legitimate self-defense, appeared excessive in scope and raised concerns about civilian harm and strategic overreach. Though Iran's actions were conducted under its legitimate military authority and framed as deterrent retaliation, the minimal military gain juxtaposed with the risk posed to civilians suggests a failure to uphold the proportionality standard (Beres 2024; Karkazis et al., 2024; Velimirović, 2024).

While the principles of just cause—part of *jus ad bellum*—and legitimate authority are often invoked in these conflicts, they frequently clash with the norms of *jus in bello*, particularly the inconsistent application of proportionality. This discrepancy challenges the ethical legitimacy of such interventions under both Islamic and international legal frameworks.

Challenges in Applying Proportionality in Asymmetric Warfare

One of the most complex challenges in applying the principle of proportionality arises in asymmetric warfare, where non-state actors confront state military forces with unequal capabilities. An example is the recurrent hostilities between Israel and Hamas in the Gaza Strip. In the conflict, Israel uses advanced weapons, intelligence, and a well-organized military structure, while Hamas operates as a non-state group often based in civilian areas.

This imbalance complicates the assessment of proportionality as the military operation against the militants also cause significant civilian casualties. This raises debates whether the harm caused is too substantial compared to the military gain (Fahmi et al., 2024; Flamer, 2025). The use of human shields, civilian infrastructures for military purposes, and underground

networks blurs the line between combatants and non-combatants. As a result, it becomes harder for international law and humanitarian groups to evaluate the proportionality of the attack fairly.

The issue of *mens rea* (mental intent) further complicates the application of proportionality in such conflicts. Under international humanitarian law, the legality of an attack depends not only on its outcomes but also on its intention. However, determining whether civilian casualties were intended or incidental poses a major evidentiary challenge. For instance, if a military commander targets a valid military objective but unintentionally causes high civilian casualties, this does not automatically imply a disproportionate attack unless it is shown that the expected civilian harm was excessive (Petrila, 2024; Revkin, 2024). Establishing an unlawful intention or recklessness often hinges on the intelligence available during the attack, the nature of the weapons used, and whether feasible precautions were taken. The lack of a clear and universally accepted method for evaluating intent undermines accountability. It creates legal ambiguity, particularly in contexts where real-time battlefield decisions must be made under duress.

The international community has increasingly turned to legal accountability mechanisms such as international tribunals, fact-finding commissions, and hybrid courts to address these challenges. These mechanisms ensure compliance with the principle of proportionality by investigating alleged violations and adjudicating responsibility. For example, the role of the International Criminal Court has been significant in evaluating the implementation of the legal standards set by the Rome Statute in military actions. Furthermore, the non-judicial mechanism, such as UN investigations and human rights fact-finding missions, helps enforce the rules when judicial processes face political constraints and other barriers (Heinze, 2024; Steenberghe, 2024). Although these mechanisms often face challenges, such as limited authority or political pressure, they are still essential to uphold accountability and encourage respect for international humanitarian law. This is especially important in conflicts involving unequal powers, where the traditional legal system may not be sufficient to ensure justice.

Conclusion

The principle of proportionality in International Humanitarian Law (IHL), customary international law, and Islamic law reveals a complex interplay of legal rules, ethical values, and practical challenges. Proportionality is essential in limiting the harms caused by armed conflict, especially to civilians and public infrastructure. However, it is uneasy putting this principle into practice because of the uncertainties in customary international law status, leading to differences in legal interpretation and the lack of transparency in military decision-making.

Core principles, such as distinction, precaution, necessity, and suitability, help the application of proportionality. These require combatants to distinguish civilians from military targets to avoid unnecessary casualties, justify their actions, and use appropriate methods in warfare. These principles can create a legal and moral foundation for more humane conduct in war.

In Islamic law, the concept of proportionality is reflected in teachings on targeting the use of force and the treatment of non-combatants and prisoners. While both Islamic law and IHL align in protecting civilians and humane treatment, their interpretation may vary depending on religious and cultural contexts. These similarities offer chances for mutual reinforcement, while their differences highlight the importance of dialogue to strengthen global commitment to humanitarian norms.

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