
Collateral Legitimacy: Human Shields, Asymmetrical Warfare, and the Crisis of International Humanitarian Law

Avalyn Kwai Pun

School of Political Studies, University of Ottawa

Email: akwai103@uottawa.ca

Received: 8 February 2026 | Revised: 16 May 2026 | Published: 29 May 2026

Résumé

L'objectif de cet article est d'examiner comment la guerre asymétrique contemporaine — en particulier les combats urbains impliquant des acteurs non étatiques, les technologies de ciblage algorithmique et la figure contestée du bouclier humain — a engendré une profonde crise pour le droit international humanitaire (DIH). Comment ces évolutions de la guerre asymétrique façonnent, fragilisent et transforment la protection des civils dans les conflits modernes? En mobilisant une méthodologie qualitative et interprétative, l'article analyse la doctrine juridique, la théorie politique et des sources empiriques, notamment le rapport Goldstone de 2009 ainsi que des études portant sur la stratégie médiatique des Forces de défense israéliennes, afin de démontrer que si les conflits asymétriques intensifient effectivement les difficultés pratiques et militaires liées au respect du DIH, ils ne diminuent en rien les obligations juridiques et éthiques. Au contraire, la rhétorique du bouclier humain, les évaluations de proportionnalité et le ciblage algorithmique fonctionnent souvent comme des mécanismes de légitimation a posteriori qui occultent la responsabilité étatique à l'égard de dommages civils prévisibles, renforçant ainsi la nécessité de réaffirmer l'immunité des civils et de réorienter l'analyse vers ce que Roznai et Rubinstein qualifient de « proportionnalité proportionnée ». Les résultats démontrent que le respect du DIH dans les guerres asymétriques ne constitue pas seulement une exigence juridique, mais également un impératif politique et moral essentiel à la préservation des principes humanitaires et de la légitimité du pouvoir étatique.

Mots-clés: Guerre asymétrique, combat urbain, éthique contemporaine de la guerre, droit international humanitaire, protection des civils, ciblage algorithmique.

Abstract

The purpose of this paper is to investigate how contemporary asymmetrical warfare — particularly urban combat involving non-state actors, algorithmic targeting technologies, and the contested figure of the human shield — has generated a profound crisis for International Humanitarian Law (IHL). How do these developments in asymmetrical warfare shape, undermine, and transform the protection of civilians in modern conflict? Using a qualitative, interpretive methodology, the paper analyzes legal scholarship, political theory, and empirical sources including the 2009 Goldstone Report and studies of the Israeli Defense Forces' media strategy to argue that while asymmetrical conflict does intensify the practical and military difficulties of upholding IHL, it does not diminish the legal or ethical obligations. Instead, the human-shield rhetoric, proportionality assessments, and algorithmic targeting often function as post-hoc legitimations that obscure state responsibility for predictable civilian harm, heightening the need for a reaffirmation of civilian immunity and a reorientation toward what Roznai and Rubinstein describe as “proportionate proportionality.” The findings demonstrate that upholding IHL in asymmetrical warfare is therefore not merely a legal expectation but a political and moral imperative essential to preserving humanitarian principles and the legitimacy of state power.

Keywords: Asymmetrical warfare, urban combat, contemporary war ethics, International Humanitarian Law, civilian protection, algorithmic targeting.

Pour citer l'article / To cite this article: Kwai Pun, A. (2026). Collateral Legitimacy: Human Shields, Asymmetrical Warfare, and the Crisis of International Humanitarian Law. *Politika: Undergraduate Journal of International Affairs, Politics and Policy*, 3(1), 29-37. 10.18192/politika.7878

Introduction

The modern battlefield has increasingly unfolded not in open fields but in refugee camps, urban centers, and densely populated residential neighborhoods, with Gaza offering a clear contemporary example of how civilian space becomes militarized in asymmetrical war. Asymmetrical warfare, understood as conflict between actors who differ significantly in power, strategy, and organizational form (Arreguín-Toft, 2005), renders the traditional laws of war both operationally difficult and conceptually unstable, especially in a context of powerful state militaries and decentralized non-state actors. Amongst the most extreme implications of this shift in asymmetrical warfare is the erosion of the foundational distinction in International Humanitarian Law (IHL) between combatants and non-combatants. Since IHL continues to assert the sanctity and immunity of civilian life, its principles are routinely challenged by real-world military strategies and legal narratives that present civilian harm as an inevitable consequence of war and by-product of modern conflict.

This paper asks: How do States use human-shield discourse to justify civilian casualties in asymmetrical warfare, and what does it reveal about the fragility of IHL? Foundational to this dilemma is the contested figure of the ‘human shield,’ which functions as both a legal category and a rhetorical tool. Under IHL, the use of civilians to shield military objectives is prohibited, but the presence of human shields does not automatically erase civilian protection or absolve attacking forces of their obligations. While asymmetrical conflict undeniably strains IHL, this paper argues that such strain does not dissolve legal or

ethical responsibility; rather, the use of human shields and the procedural rationalization of civilian deaths serve as a post hoc legitimation that obscure the continued responsibility of state actors to uphold humanitarian norms, even if it disadvantages them strategically.

Methodologically, this paper conducts a qualitative, interpretive analysis of legal scholarship, philosophical texts, and empirical fact-finding reports, treating them as normative and discursive evidence of how IHL is applied and rationalized in asymmetrical warfare. The analysis draws on philosophical and legal debates about proportionality, restraint, and self-defence, alongside empirical and media-focused sources such as the Goldstone Report and Shavit’s (2017) analysis of the Israeli Defense Forces’ media strategy. Through this combined theoretical and empirical approach, this paper argues that the discourse of human shielding and proportionality, as currently utilized, often functions not as a framework of restraint but as a license to kill with bureaucratic impunity.

Ultimately, this paper contends that IHL must be understood as a foundational constraint rooted in humanity, dignity, and civilian immunity. The challenge is not to adapt International Humanitarian Law to asymmetrical war by loosening its constraints but to enforce it more intensely, especially when it is inconvenient for militant state actors.

Strains on International Humanitarian Law in Asymmetrical Warfare

Contemporary asymmetrical conflicts, particularly those between state militaries and non-state actors such as Hamas or Hezbollah, have placed traditional

laws of war under pressure. Yet this pressure should not be mistaken for the obsolescence of IHL. As Roznai and Rubinstein (2011) highlight in their essay "Human Shields in Modern Armed Conflict," the adjustment of IHL principles is necessary precisely to achieve greater protection for civilians. They argue that the current application of proportionality can shift responsibility from the shielding party to the impeded party, increasing civilian danger rather than reducing it.

Rather than declaring the principles of IHL outdated, Roznai and Rubinstein propose a reorientation of it that still preserves or realigns it back to its core commitments, suggesting that "we need a "proportionate proportionality." Thus [they] propose that when the use of involuntary or unknowing human shields is part of a widespread or systematic policy, the measure of proportionality must be adjusted" (p.121). Their concept critiques conventional proportionality assessments that reduce moral judgment to a calculation of whether anticipated military advantage outweighs expected civilian harm. The authors argue that these traditional calculations and the reliance on them ignore how much more cumulatively vulnerable civilians are, especially those trapped in urban combat. This failure is more than procedural; when talking about war, it becomes moral. The roots of IHL are found in a Cold War era where nuclear deterrence and interstate war assume an equal grounding for military objectives and civilian costs, but this simply does not hold up in discussions of modern conflicts. According to Roznai and Rubinstein, proportionality must account not only for quantifiable outcomes but also for the structural vulnerability of the populations trapped in

conflict-torn zones. Gaza illustrates this problem because civilian harm cannot be treated as an abstract numerical cost when residents are constrained by physical borders, denied meaningful evacuation, and exposed to bombardment from the air, obscuring and distorting the original intent of the principle of proportionality in IHL. Michael Walzer (2013) complements this critique and observation by highlighting the importance of moral clarity and how it must not be eroded in asymmetrical contexts. Walzer's essay, "Can the Good Guys Win?" responds directly to the claim that obeying the IHL puts state militaries at an intolerable disadvantage, as is a common belief amongst militant actors and policymakers. Walzer acknowledges that restraint is difficult in asymmetrical warfare but rejects the idea that violating humanitarian norms can be justified by strategic necessity. If States abandon the rules in order to win, they erode the very moral and political legitimacy that distinguishes them from the actors they oppose.

This emphasis on restraint as strength reorients the ethical debate; as Walzer insists, truly liberal States cannot credibly claim moral superiority if they throw away humanitarian norms at the first sign of strategic inconvenience. The real asymmetry, in this case, is not only that of firepower but of the moral burden since the dominant force does have the capacity to choose differently, even when the weaker, subjugated forces violate or cannot follow those norms.

Human Shield Discourse and Civilian Legitimacy

The figure of the human shield occupies a unique position in asymmetrical warfare because it functions simultaneously

as a tactical accusation, a legal justification, and a form of moral absolution. Gordon and Perugini (2016) show that human-shield discourse does more than describe battlefield practices; it helps produce a political and legal framework in which civilian presence can be reinterpreted as enemy complicity. This process occurs through legal arguments, visual propaganda, and media framing, all of which can transform civilian proximity into a basis for suspicion rather than protection under IHL. For example, during Operation Protective Edge in 2014, Israel claimed that Hamas embedded military assets within schools, hospitals, and homes. Because these claims were contested, their significance lies not only in their factual status but in how they were used to retroactively frame attacks on civilian sites as legally and morally permissible. As Gordon and Perugini (2016) argue, this logic shifts moral culpability onto the enemy while also altering how civilians are perceived: no longer as protected non-combatants caught in the crossfire, but as bodies incorporated into the enemy's strategy. This strategy is not without precedent. The 2009 Goldstone Report, a UN fact-finding mission on Operation Cast Lead, provides an empirical example of how human-shield claims were used to justify force against civilian infrastructure. The report concluded that many of these justifications from Israel lacked evidence and that the State's conduct went against proportionality and distinction requirements, and rather than clarifying the legal status of civilian deaths, the human shield claims were purposefully utilized to obfuscate accountability. This obfuscation is reinforced by what Shavit (2017) describes as the mediatization of military operations: the integration of media

strategy into military planning itself. Her analysis reveals how the Israel Defence Force's (IDF) media strategy has been systematically integrated within their operational planning, highlighting how, from 2000 to 2014, the IDF evolved from a reactive media position to a proactive strategy where media acted as a central battlefield objective (Shavit, 2017, p.135). Human shield rhetoric now becomes not only a legal argument, but a public relations strategy and a narrative weapon deployed to secure legitimacy in the court of public and global opinion.

In this way, we can see how the figure of human shields operates less as an exception to humanitarian protections and more as a tool to systematically redefine civilian vulnerability as liability, paired with discursive transformations that undermine the ethical core of IHL. The legitimacy of state violence in asymmetrical warfare must not rest on narratives that obscure responsibility and are enabled by military strategy, legal reinterpretation, and media dissemination but on a truthful commitment to humanitarian constraints, even when inconvenient. This shows how the enduring power of IHL lies not in its tactical utilization but in its moral clarity; this is precisely the clarity that must be defended when in war.

Technological and Procedural Rationalizations of Force

These discursive shifts are reinforced by technological systems that normalize civilian risk through bureaucratic tools of calculation. In modern warfare, algorithmic tools and legal procedures can sanitize acts of violence by making civilian harm appear technical, manageable, and administratively justified. Brian Smith's (2021) essay, "Civilian Casualty Mitigation and the

Rationalization of Killing," critiques the United States's targeting procedures as a prime example of the ethical dangers of this trend. Smith (2021) argues that U.S. targeting policy can become 'the perfect rationalization' of international law, creating greater tolerance for civilian casualties (p. 51). Predictive models such as 'Bugsplat,' which are designed to estimate collateral damage before a strike, appear to reduce civilian harm. Yet they can also depersonalize moral decision-making by converting ethical questions into technical variables.

Drawing on Hannah Arendt's concept of bureaucratic 'thoughtlessness,' Smith warns that pre-set criteria and simulations can replace moral judgment with procedural compliance. In this framework, targeting decisions are shaped less by moral reflection than by machine outputs that reflect the assumptions of their programmers. This produces moral evasion: civilian deaths are not directly intended, but they are rendered acceptable as calculated necessities. Rodin's *War and Self-Defence* deepens this critique by questioning the philosophical foundations of self-defence and the assumption that military necessity can override civilian immunity. International law does permit States to defend themselves militarily; Rodin argues that this right must be bounded by the rights of others, and that the rights of civilians must not be harmed by foreseeable or preventable violence. As Rodin writes, "National defence is conceived in the full sense of the word as right — a consideration capable of asserting normative force against the consequentialist requirements such as those of peace and security, and presumably sometimes overriding them" (p. 118). This framing reinforces the idea that

the justification for self-defence cannot be reduced to strategic advantage alone and must hold up a moral commitment to upholding human dignity, especially when deemed militarily necessary. Through Rodin and Arendt, then, a State's defence that commits acts that predictably violate non-combatant immunity cannot be morally justified as "self-defence." Together, Smith and Rodin reveal the central paradox of procedural warfare: the more refined its legal and technological systems become, the easier it becomes for legality to replace legitimacy and efficiency to replace morality.

Reassessing Proportionality as a Moral Constraint

The principle of proportionality in International Humanitarian Law is meant to ensure that military necessity is weighed against civilian harm. In practice, however, proportionality can become a mechanism for retroactively justifying civilian deaths rather than restraining them. What was meant to operate as a moral constraint can instead become a flexible standard shaped by the interests of powerful militaries. Roznai and Rubinstein's (2011) concept of "proportionate proportionality" challenges current interpretations of proportionality by insisting that legal assessments must account for civilian vulnerability, not only military advantage. They urge that the proportionality assessments conducted must also consider not only the tactical military advantages of a strike but the cumulative vulnerability of the civilian populations that cannot escape the battle zone, find shelter, and those who are denied humanitarian relief. This shifts proportionality away from abstract ratios and toward the lived conditions of civilians who cannot escape the battlefield.

These views are echoed by Walzer (2013), when he explains "proportionality turns out to be a highly elastic principle" (p.435). He argues that the traditional context of proportionality tests is insufficiently anchored in any kind of moral restraint. Walzer's point is that legality cannot replace moral judgment; intention, context, and civilian vulnerability must remain central to any assessment of legitimate force. Even if a State's opponent disregards the traditional laws of war, a State's own legitimacy hinges and relies on the maintenance of those constraints since there is no moral symmetry between restraint and retaliation, even in the face of asymmetry. The Goldstone Report illustrates how proportionality can function as a justificatory tool when operations are legally defended despite foreseeable civilian harm since its investigation found that many of Israel's operations, while legally defended through proportionality rhetoric, failed to meet authentic moral questioning and considerations. The report details various incidents where entire families were taken out in strikes on targets that yielded tactical gain; these attacks often occurred even when there were fewer harmful alternatives available. In these cases, the principle of proportionality was utilized but as an absolving framework instead of a moral limit, a way to claim legality despite foreseeable and predictable civilian deaths. This points to a deeper philosophical problem: the instrumentalization of International Humanitarian Law. Smith has shown how military institutions increasingly rely on algorithmic tools like "Bugsplat" and other predictive models to estimate acceptable and define what is the necessary collateral damage; these tools reduce the decision to kill to a program-based risk assessment,

rather than grappling with the ethical stakes it calculates harm in percentages. As Smith (2021) highlights, "the attention paid to casualty mitigation procedures should not be evaluated independent of the results they produce" , but the operator does not decide; the algorithm does, rendering the moral cost as externalized and inhumane (p. 51). Rodin (2002) adds a further philosophical critique, arguing that self-defence loses moral force when States knowingly produce civilian deaths that are not strictly necessary for survival. A model of proportionality cannot treat civilians as expendable variables or necessary collateral in an equation of strategic calculus. These tools and their use suggest that proportionality if it is to remain an authentic, viable ethical standard, must be reconceptualized as a constraint rather than a balance sheet rooted in the human dignity of civilians, not merely the tactical attempts of the State. "Proportionate proportionality" is not a mere legal formula; however accurate, it is a manifestation of a moral philosophy of restraint, a framework that demands that States reconsider the logic of harm from the perspective of those who bear its costs, especially in a context of asymmetrical warfare.

International Humanitarian Law as a Political and Ethical Imperative

Although International Humanitarian Law is often treated as a matter of legal compliance, it must also be understood as a political and ethical imperative. Misunderstanding the deeper role of IHL in liberal democratic societies can hinder the maintenance and respect of humanitarian norms, but even under the immense pressure of asymmetrical warfare, it is not simply a legal requirement but a crucial aspect of humanity.

Walzer's moral vision of warfare insists that legitimacy derives not from success but from restraint. In asymmetrical conflicts, this restraint becomes especially important when States face actors who disregard IHL. This connects directly to the earlier problems of proportionality and human-shield discourse: when States use those frameworks to excuse civilian harm, they weaken the moral distinction they claim to uphold. The political credibility of liberal States rests on their ability to constrain power, not merely to exercise it. Shavit (2017) also provides a case study of how this moral credibility is often subverted by strategic communication in her study of the IDF since she charts a transformation in military doctrine where media narratives became integrated into tactical planning. From 2000 onward, Shavit (2017) argues that the IDF developed a mediatized military strategy, meaning that public relations and legitimacy campaigns became integrated into military planning rather than remaining external to it. The convergence of media strategy and military logic poses serious risks for IHL because it allows States to shape public perception while distancing legal legitimacy from ethical practice. If legitimacy is a matter of image rather than substance, then IHL is reduced to an unutilized prop that is only used rhetorically rather than operationally.

Such strategies also risk corrupting the public sphere itself; if citizens of democratic States are consistently presented with sanitized ideas and versions of war with human shield justifications, borderline legal justifications, and emotionally compelling propaganda, they may come to see mass civilian deaths as morally neutral or necessary events. This normalization of suffering, combined with

algorithmic targeting and procedural thoughtlessness, threatens to erode the ethical foundations of liberal societies. Rodin's (2002) argument deepens this ethical claim: real moral judgment in warfare requires accepting disadvantage. A State must sometimes endure operational limits, suffer delays, or forego attacks because ethical legitimacy depends on restraint. As he notes, "when an attempt is made to justify the right of national defence, it is often done in consequentialist terms: namely, the right is given normative force through its role in deterring aggression and enhancing international peace and security" (p.116). This framing dangerously detaches state violence from its human costs; the State must be willing to lose ethically to win morally. This is not an easy position to sustain, but a necessary one. The collapse of IHL under pressure not only endangers civilians but also delegitimizes the State itself; what distinguishes a democracy from its illiberal counterparts is not only its laws but its commitment to them in moments of threats and stress. Upholding IHL is not a luxury afforded to stable times; it is the test through which moral and political values are tested. The moment a liberal democracy begins to use human shield arguments, targeting algorithms, and media narratives as shields for its own unrestrained violence, it steps into the very moral territory they are claiming to oppose.

Conclusion

As this paper has demonstrated, the rise of asymmetrical warfare has certainly not dulled or pacified the pertinence and relevance of International Humanitarian Law, rather it has only made ethical considerations around it more urgent. In contemporary conflicts, civilian immunity is

increasingly reinterpreted through discourses of human shielding, procedural targeting, and legal abstraction. In cases like Israel's ongoing genocide against Gaza, it is evident that the civilian body and urban areas like neighborhoods have been transformed into both a battlefield and a battleground for legitimacy through firepower and public perception. States confronting decentralized militant actors often invoke necessity and proportionality, yet these justifications can function less as constraints than as tools of absolution. Through critical analysis of legal theory, empirical records, and philosophical inquiry, this paper has argued that those rhetorical and strategic practices end up helping constitute a dangerous erosion of moral clarity and international accountability.

At the same time, a common counterargument claims that when non-state actors embed themselves within civilian populations, States cannot reasonably be expected to maintain rigid humanitarian constraints because national security may override ideal moral standards. This argument logic parallels what Michael Walzer identifies as the dominant complaint of contemporary militaries: "if we fight according to these principles/laws/rules, we cannot win" (Walzer, 2013, p.433). Under these viewpoints, adhering to IHL becomes a strategic liability, a self-imposed handicap in conflicts where the insurgent forces may disregard certain rules entirely. Yet Rodin and Walzer show that when ethical obligations are treated as conditional, responsibility becomes obscured even under conditions of extreme danger. Treating civilian protection as optional does

not resolve the asymmetry but rather entrenches it, enabling States to redeploy the vocabulary of necessity, proportionality, and human shielding to justify their expansive forces with minimal scrutiny.

Moreover, while the figure of human shields is often used as an excuse for civilian deaths, they instead end up revealing how States strategically can and will exploit their ambiguity in legal and ethical frameworks as attempts to legitimize their actions publicly and in court. As Rodin (2002), Walzer (2013), Roznai and Rubinstein (2011), Gordon and Perugini (2016), and Shavit (2017) suggest, legitimacy in warfare is not gained through tactical superiority but through moral consistency. The call for "proportionate proportionality" is therefore not a minor legal adjustment, but a moral reorientation toward humanity and dignity.

Upholding International Humanitarian Law cannot be seen as a strategic hindrance but rather as the very core of a truly liberal and democratic State's identity; to follow humanitarian law only when convenient is to abandon the essence of IHL altogether. In an era where legal discourse, strategic rhetoric, and media narratives are increasingly being deployed to rationalize rather than restrain violence, the enduring ethical powers of IHL lies in the collective refusal to normalize the treatment of human beings as a necessary collateral. The possibility of ethical conduct in asymmetrical war depends not on technological advantage, legal maneuvering, or narrative control, but on the refusal to abandon civilian life when protecting it becomes politically and militarily inconvenient.

References

- Arreguín-Toft, I. (2005). *How the weak win wars: A theory of asymmetric conflict*. Cambridge University Press.
- Gordon, N., & Perugini, N. (2016). The politics of human shielding: On the normalization of an anomalous practice. *American Journal of International Law*, 110(1), 133-175.
- Rodin, D. (2002). *War and self-defense*. Oxford University Press.
- Roznai, Y., & Rubinstein, A. (2011). Human shields in modern armed conflicts: The need for a proportionate proportionality. *Stanford Law & Policy Review*, 22(1), 93–123.
- Shavit, M. (2017). *Media strategy and military operations in the 21st century: Mediatizing the Israel Defence Forces*. Routledge.
- Smith, B. (2021). Civilian casualty mitigation and the rationalization of killing. *Critical Military Studies*, 7(1), 41–57.
- United Nations Human Rights Council. (2009). Report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48). <https://digitallibrary.un.org/record/665971?ln=en&v=pdf>
- Walzer, M. (2013). Can the good guys win? *Dissent*, 60(1), 33–37.

