

**ORIGINAL ARTICLE**

## **Who is a Civilian in Gaza? Reflection on the Loss of Protection of Civilian Persons: An Interdisciplinary Treatise Focused on IHL with Military Strategy Aspects**

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### **Abstract**

The demand for significantly increased protection of civilians in the Gaza Strip from the consequences of Israeli military operations, together with reports of high civilian casualties, has resonated in public discourse for more than 18 months. The Gaza war, including its second phase involving ground operations, is regarded as an international armed conflict between the State of Israel and Palestine, particularly Hamas, which is considered the officially and legally elected authority in part of the Palestinian territory, the Gaza Strip, though not of Palestine as a whole. Civilian protection is thus assessed under the 1977 Additional Protocol I and international customary law. This paper explores the intersection of international humanitarian law and military strategy. Within these frameworks, and concerning military rules adopted by the State of Israel, it examines the issue of civilians losing protection from military attack. Focus is placed on distinguishing between civilians in Gaza who directly or indirectly participate in hostilities. The paper analyses the specifics of urban warfare, the obligation to minimise collateral damage, precautions in favour of civilians, and the challenges posed by the voluntary presence of civilians at military objectives. It aims to determine whether, and under what conditions, the IDF may lawfully launch a justifiable attack that also results in civilian casualties.

### **Keywords**

Gaza conflict; civilian protection; international humanitarian law; direct participation in hostilities; Israeli military operations; urban warfare; proportionality; Additional Protocol I; Hamas.

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## Introduction

In response to a large-scale terrorist attack on October 7, 2023, carried out from the Gaza Strip (hereinafter “GS”) by Hamas, with the participation of the Palestinian Islamic Jihad (hereinafter “PIJ”) and other groups, the State of Israel (hereinafter “Sol”) launched military operations to free the hostages and disable the combat capability of these terrorist organisations. The GS, the territory from which the terrorists operate, is specific in several respects. For this paper, the aspects of international humanitarian law (hereinafter “IHL”) are of primary importance. Attention is also paid to examining these issues from the military strategy perspective, specifically with military operations concerning civilians in urban areas. Closely related to these aspects are other characteristics, some of which are briefly mentioned in the introduction. These factors must be considered when applying the relevant legal norms and examining the actions of the Israeli Defence Forces (hereinafter “IDF”).

From a demographic point of view, Gaza is an area with a high population density, averaging almost 6,000 inhabitants per square kilometre (Yisachar 2023). From a political perspective, Gaza is a Palestinian territory controlled by Hamas, based on the results of the 2005 elections. This movement subsequently distanced itself from the Palestinian Authority (hereinafter “PA”) government in the West Bank (hereinafter “WB”) because it refused to recognise the Sol and negotiate with it. The more radical part of Hamas rejected the existence of the Sol in its doctrine (Hamas 2017; Doctrine of Hamas 2023). The PA government in the WB has long declared that it distances itself from the actions of Hamas and that it has lost control over it (Toameh 2024). However, in 2024, Hamas reached an agreement with Fatah and other Palestinian factions to restore a joint government after the war (McCarthy 2024). In terms of international relations, there has been strong criticism of the Sol due to the impact of the war on the civilian population of Gaza. The Sol has been ordered to respect the human rights of Palestinians to a much greater extent (United Nations 2025).

The paper is intended as a treatise from the perspective of IHL for use primarily in a professional military and academic environment. It focuses on the protection of civilians, depending on whether they engage in hostilities, concerning the impacts of ground military operations, i.e. the second stage of the Gaza war (from the end of October 2023 until the ceasefire in January 2025). The paper does not address the accusations and arrest warrants against the representatives of the Sol raised and issued by the ICC Prosecutor. Aspects of international criminal law, including the use of human shields, are not the subject of this paper either.

This paper aims to define the legal framework applicable to the war in Gaza and to determine whether, and under what circumstances, the IDF can lawfully, considering military strategy, carry out a justifiable attack that also results in civilian victims. The research question was defined as follows:

*What recommendations could be made to the Sol in terms of protecting the civilian population of Gaza in connection with conducting ground operations according to IHL and from the perspective of military strategy?*

Various areas in which the Sol is already active have been described, and several new areas for the Sol to focus on have been identified. A detailed answer to the research question is provided in the conclusion.

This paper is structured into three chapters. The first defines the IHL framework applicable to the war in Gaza. The second defines the legal rules on the protection of civilians according to IHL standards applicable to the Sol. It explains the loss of protection of civilians in armed conflict and the position of the Sol towards civilians who participate in hostilities. The third addresses the specifics of military operations in urban areas, with a closer focus on the civilians in Gaza, the requirement of the IDF to minimise collateral damage, precautions in favour of civilians, and the voluntary presence of civilians in the evacuated zones of Gaza that became military objectives. The conclusion summarises the paper, confirms the fulfilment of its objective, and provides answers to the research question by summarising the recommendations for the Sol.

### **Defining the IHL Framework**

This paper and the application of the relevant norms of international law (hereinafter “IL”) are based on the postulate that the war in Gaza is considered an international armed conflict between the Sol and Palestine, particularly Hamas, which is regarded as the official and regularly elected representative of the GS, but not of Palestine as a whole (cf. D’Evereux 2024, AUCI). The PA has not yet fully developed its statehood from the perspective of IL. It can be considered a state in the stage of birth (in statu nascendi) due to the non-fulfilment of one of the four constitutive criteria of statehood, namely the capability of the government to exercise public authority independently of other public authorities. Thus, the norms of customary international law (hereinafter “CIL”), which are also defined in the Additional Protocol I of 1977 (hereinafter “AP I”), are applied as the primary framework for this research.

The Sol has not ratified AP I. However, this does not preclude the application of its rules. The principle of distinction between civilians and combatants, as well as the prohibition of indiscriminate attacks, is established by state practice as a norm of CIL applicable in both international and non-international armed conflicts. This practice is supported by a large number of military manuals. Numerous states have adopted legislation making it an offence to disregard these rules. The fact that the majority of the rules stipulated in AP I are customary is supported by official statements and reported practice of states (Henckaerts 2005, 1–45).

### **Protection of Civilian Persons**

This chapter clarifies how AP I and CIL protect civilians. It explains whether, and under what conditions, military operations may be conducted against such persons per the practice of states.

The term “civilian” is defined negatively within IHL. During wartime, a civilian is considered anyone who is neither a member of the armed forces of a party to the conflict nor a participant in a *levée en masse*, i.e. anyone who spontaneously takes up arms to resist invading troops without having time to form themselves into an armed force. Such persons are considered combatants if they carry arms openly and respect the laws and customs of war. This is a long-standing rule of CIL, and it is reflected

in Article 50 of AP I. No reservations have been made concerning this provision (ICRC, IHL Databases, Rule 5, Civilians).

The protection of civilians is reflected in the rules of CIL. States have developed a consistent and widely representative practice, considering compliance with these rules as legally binding, in the sense that civilians are protected against attack unless, and for such time as, they take a direct part in hostilities (ICRC, IHL Databases, Customary IHL, Rule 6, Civilians' Loss of Protection from Attack). This position was expressed by states at the diplomatic conference in Geneva that led to the adoption of the Additional Protocols. Another example confirming this practice is the declaration of the United Kingdom upon ratification of the Convention on Certain Conventional Weapons. The British representative declared on behalf of the UK that "*civilians enjoyed the protection of the Convention unless and for such time as they take a direct part in hostilities.*" Multiple military manuals state that civilians lose protection against attack when they take a direct part in hostilities. Consent to this practice was expressed by Middle Eastern states, including the Sol, in 1973 upon an appeal by the ICRC before the adoption of AP I (ICRC 1973).

Article 51(1) of Additional Protocol I (AP I) stipulates that "*the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations*" and that the rules of such protection shall be observed in all circumstances. Article 51(2) prohibits attacks and threats of violence against the civilian population as well as civilian individuals. Article 51(3) states that the protection described above is granted "*unless and for such time as the civilians take a direct part in hostilities.*" Articles 51(4) and (5) prohibit indiscriminate attacks, which are attacks that are not directed at any specific military objective, that employ means and methods of warfare that cannot be directed at a specific military objective, or that have effects which cannot be limited.

### ***Civilians' loss of protection from military attack***

The protection of civilians under IHL is neither unconditional nor unlimited. IHL stipulates the circumstances under which protected persons lose their protection and may become lawful military objectives. Civilians may lose protection if they directly participate in hostilities (Sassòli 2025).

IHL does not define direct participation in hostilities. It can be said that the norms and rules of IHL are defined positively, as they specify the persons who are protected from military operations. Conversely, the rules under which persons lose protection, upon the cumulative fulfilment of certain conditions, arise from state practice. This can be seen as a reverse regime applicable when civilians do not behave in a manner expected of civilians. These rules represent a negative classification based on generally recognised and widespread practice.

The ICRC issued Interpretive Guidance, which provides recommendations concerning the interpretation of this term. This concept is generally understood as conduct which, if carried out by civilians, suspends their protection against dangers arising from military operations. During their direct participation in hostilities, civilians may be lawfully targeted as if they were combatants. The definition in the Interpretive Guidance neither changes customary international law nor IHL treaties. Rather, it reflects the ICRC's institutional position on this issue, as well as its suggestion

for how existing IHL should be applied in light of circumstances relevant to contemporary armed conflicts (ICRC 2009, 995–996).

The absence of a legally binding definition of the term “direct participation in hostilities” in IHL allows room for the development of doctrinal interpretations. As an example, the Inter-American Commission on Human Rights classified this term as generally referring to *“the acts which, by their nature or purpose, are intended to cause actual harm to enemy personnel and matériel”* (Inter-American Commission on Human Rights 1999). While the loss of protection is uncontested when a civilian uses weapons or other means to commit acts of violence against human or material enemy forces, the assessment of direct participation must be made on a case-by-case basis (cf. Definition, Customary IHL, Rule 6, Civilians’ Loss of Protection from Attack). The Inter-American Commission on Human Rights also sought to distinguish between “direct” and “indirect” participation of civilians in hostilities and stated that

*“The civilians, whose activities merely support the adverse party’s war or military effort or otherwise only indirectly participate in hostilities, cannot on these grounds alone be considered combatants” (Inter-American Commission on Human Rights 1999).*

In armed conflicts, it is often unclear whether a person is a civilian, and doubts may arise in this regard. To address this issue, a rule was formulated in AP I, which states in Article 50(1) that *“in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”* It is important to note that this particular provision is not considered a rule of CIL. This approach could be seen as rejected by states that have adopted their own rules in their military manuals (examples given below). The statement of the UN mission UNAMA provides another example of such rejection. It was noted that they were

*“against those who do not behave as civilians, who are armed or have armed persons with them. ... if the mentioned persons - who you refer to as civilians - are armed, then they cannot be called civilians” (UNAMA 2020).*

Several states<sup>3</sup> have expressed the position that the rule stating that, in case of doubt, a person shall be presumed or considered to be a civilian is not superior to a commander’s duty to protect the safety of their troops and to preserve their military advantage, following other provisions of AP I. This approach is reflected in the military manuals of several states, such as those of the United States (U.S. Navy 2022; U.S. Department of Defense 2023) and Canada (Canada 2009). It demonstrates support for and confidence in the combatant’s ability to make a good-faith determination as to whether a person is subject to deliberate attack, based on that person’s behaviour, location, attire, and all other information available at the time the decision must be made (cf. van Collier 2024).

This section may be concluded by noting that compliance with this rule is binding only on states that have ratified AP I and have not entered a reservation concerning this article. Consequently, the Sol is not bound by this provision and, like many other states, is entitled to depart from it and establish its

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<sup>3</sup> E.g. declarations and reservations of France and the United Kingdom regarding this provision upon the ratification of the AP I.

approach in its military doctrine and manuals. The strategy adopted by the Sol is examined in the following section.

### ***Insights into the position of the Sol towards the issue of civilians participating in hostilities***

The above-mentioned concept of the necessity to distinguish between direct and indirect participation of civilians in hostilities, as expressed by the Inter-American Commission on Human Rights, is particularly relevant to the specific security challenges faced by the Sol since its establishment.

To illustrate the Palestinian political preferences, it is relevant to briefly note the decline in support for the two-state solution, as well as the loss of confidence in its viability. Support for Hamas among the residents of the GS was not limited to the results of the 2006 elections. According to the authors' opinion, the widely recognised attitude among Palestinians, namely, that the Sol is primarily responsible for their distressing to hopeless situation, might be a relevant standpoint (cf. Pollock, Cleveland 2021). By the end of 2024, support for Hamas had intensified. Polls indicated that approximately 67% of Palestinians approved of the terrorist attack on 7 October 2023, and approximately 60% expressed interest in Hamas maintaining control over Gaza. This support persisted even in scenarios where Hamas would continue hostilities against the Sol to the extent of destroying it, thereby enabling the creation of a Palestinian state extending from the right bank of the Jordan River to the Mediterranean Sea. Approximately 40% of Palestinians in both the GS and WB preferred a Hamas-led government over the current administration dominated by Fatah (Aziz 2024; Stern 2024).

Since the beginning of 2025, support, due to the effects and impacts of the prolonged war in Gaza, might have been, according to the polls, declining (Mallock 2025; Burke 2025) in comparison to the level of support immediately after the terrorist attack of 7 October 2023 (Smith 2024). Hamas has been supported by a robust sociopolitical structure inside the Palestinian territories. It is concentrated mainly in the GS, but also operates in some areas of the WB (Counter Terrorism Guide 2014). The organisational structure of Hamas and the degree of interconnection among its factions are not transparent. In addition to its militant wing (Al Jazeera 2024), Hamas also includes other factions, such as the political wing, which formed the government in Gaza, and the administrative wing, which provided public administration in Gaza, including social services (cf. Roy 2013).

Hamas' efforts to maintain and expand its support base can be illustrated by various activities targeting children, youth, and their parents, for example, by organising public events and youth camps (Times of Israel 2023). The IDF has repeatedly highlighted what it considers a sustained campaign of indoctrination aimed at fostering hatred towards the Sol. It refers to several examples, including textbooks used in UNRWA-administered schools (The Jerusalem Post 2021; European Parliament 2021), as well as excursions and summer camps which, according to the IDF, constitute "education and upbringing for terrorism" (IDF 2018). It is important to note that some of the above-mentioned information published by the IDF cannot be independently verified, except for the UNRWA textbooks, which were assessed by the European Parliament.

It might be inferred that a visible manifestation of continued civilian support for Hamas includes the participation of Palestinian children in public Hamas-organised events held during the ceasefire

in January 2025 (e.g. The Jerusalem Post 2025). Furthermore, attention might be drawn to the voluntary participation of parents and children in ceremonies related to the handover of Israeli hostages (cf. Reuters 2025; Los Angeles Times 2025; Nath 2025; Israel Ministry of Foreign Affairs 2025; Times of India 2025).

The decades-long trauma experienced by many generations of Palestinians (cf. Maley 2010, p. 868), in the authors' opinion, contributes to the adoption of these views as well as to a tendency toward radicalisation (cf. Voudouri 2020, p. 911). An external manifestation of this phenomenon may be, for example, the illegal possession and proliferation of smuggled weapons and their concealment in civilian buildings, including children's rooms (IDF 2024).

Residents of Israel have similarly faced generations of stress, whether due to the Holocaust, threats from Palestinian terrorists, or security risks emanating from surrounding Arab states, which have resulted in multiple armed conflicts.

The necessity of distinguishing civilians who, in the sense of their beliefs, support the enemy's military and war effort or indirectly participate in hostilities, from those civilians who actively participate in hostilities, is highly relevant for the Sol. The concept under which civilians who actively participate in hostilities lose the protection of IHL does not apply to persons who, for example, attend public events as visitors alongside armed Hamas fighters. This trend was evident during the hostage release ceremonies (Barnes 2025; Fathi 2025). Another example of civilians not directly involved in hostilities may be those who "support Hamas' war effort" economically by providing financial aid or politically by participating in demonstrations (Durhin 2016, 183). This necessity to distinguish civilians actively engaged in hostilities might be considered a substantial clue concerning the subject of this research, as the specifics of Hamas' strategy might create situations of doubt regarding the character of a person.

This notion is supported by the IDF Strategy document, which outlines the characteristics of the IDF operational environment in Chapter 2 (4) c) and d). The IDF must be aware of the

*"enemy's deployment and assimilation within populated civilian areas. This phenomenon strives to impose difficulties upon IDF's combat operations, increase harm to uninvolved civilians and limit the IDF's freedom of action." The enemy aims to "maximise civilian and military casualties, and increase strategic pressure on Israel" (IDF 2015).*

It can be noted that the opinion of the Israeli Supreme Court stated that

*"if a civilian has joined a terrorist organization which has become his "home", and in the framework of his role in that organization he commits a chain of hostilities, with short periods of rest between them, he loses his immunity from attack "for such time" as he is committing the chain of acts. Indeed, regarding such a civilian, the rest between hostilities is nothing other than preparation for the next hostility" (Supreme Court of Israel 2006, para 39; Voudouri 2021, 900).*

Regarding the position of the Sol (which did not ratify AP I), it is possible to apply the general recommendation suggested by the ICRC, stating that in case of doubt, there must be, under the given

conditions and limitations, a careful assessment of whether there are sufficient indications to carry out the attack (ICRC, IHL Databases, Customary IHL, Rule 6, Situation of Doubt as to Character of a Person). In current practice, however, this rule, even when strictly adhered to, can lead to several difficult-to-solve problems. A responsible and careful assessment made in good faith of a given situation under the available conditions at the given time can subsequently be questioned, challenged, and disseminated in the online space. This trend can be aided by AI tools that allow post-editing of evidence, creating realistic-looking videos and images (e.g. by using older sources) that aim to point to the alleged violation of the duty to spare civilians. This trend might harm the psyche of soldiers and, at the same time, can contribute to the growth of political pressure on the Sol leadership, especially if there is a greater number of contested incidents (cf. Nehring 2024).

### **Specifics of the Military Operations in Urban Areas with a Closer Focus on the Civilians**

The nature of the vast majority<sup>4</sup> of urban settings, presuming that cities by definition and characteristics are inherently civilian, makes it challenging for armed forces to proceed following the fundamental principles of IHL. Before initiating a military operation in an urban area, it is necessary to analyse the terrain and obtain precise information on the military positions of the enemy. Based on the size and surface area of the city, the commander can determine the number of troops needed. It is recommended that the superiority for the attacker should be at least five to one, which is twice as high compared to the ratio generally suggested for attacks in an open landscape (Vautravers 2010). This might be additionally challenging for the IDF in case it is uncertain how many Gaza civilians are armed and have open access to weapons, so they have the potential to immediately engage in hostilities.

It is generally known that, from a military and tactical point of view, it is better to have multiple strategic launch points from which to launch an attack. The enemy is kept in uncertainty as to where the attack may come from and spreads his intelligence, military, and economic power over more areas for defence, which leads to his weakening. The surprise factor plays a huge role and is an advantage, often a decisive advantage, in favour of the attacking side. This is an advantage that Hamas has had in ground operations over the IDF in the GS and took advantage of it when carrying out the October 7 attack.

The selection of the means and methods of the military operations, as well as how the operations are conducted, is a requirement of IHL, which obliges the warring parties to spare civilians from the consequences of the war. It can be noted that fulfilling this requirement is extremely difficult for the IDF due to the specifics of the GS, which is overcrowded, and as reported by the ICRC and UNRWA, “there is no safe zone/place in Gaza” (Hanger 2024; Lazzarini 2024).

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<sup>4</sup> There are military towns, i.e. civilian municipalities which are economically depended on the nearby military installation, and closed military towns where it is required to have entry permission. Such towns can be found today e.g. in the USA. Historical examples of military towns in the territory of today's Czech Republic include the fortress of Josefov or Terezín. The town of Milovice, Czechoslovakia was a closed military town in the years 1968-1989.



One way to avoid warfare in residential areas and eliminate civilian casualties is to force the enemy, through sheer military superiority and speed, to believe that further resistance is futile and will only lead to further losses. This occurred when Paris was declared an “open city” in 1941, when France abandoned futile resistance and surrendered the metropolis without a fight (U.S. Department of State, Office of the Historian 1943). Czechoslovakia in 1939 surrendered entirely without a fight as an “open state.” In addition to the military strategic and IHL perspectives, it is necessary to consider the political perspectives and “moods” of the inhabitants of a given city. This way of solution is currently completely unrealistic for the Sol concerning the conduct of Hamas, PIJ, and other terror groups operating in the GS and WB.

### ***Requirement to minimise collateral damage in urban areas***

The AP I defines in its Art. 57 the precautions under which military operations shall be carried out. Concerning the protection of civilians from attack, military commanders shall:

*“Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives, ...*

*take all feasible precautions in the choice of means and methods of attack to avoid, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects,*

*refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, ... which would be excessive concerning the concrete and direct military advantage anticipated” (AP I, art. 57 (2) a) i, ii, iii).*

The warring party must ensure that precautionary measures are taken to fulfil these legal obligations efficiently and to reduce incidental or collateral damage, which is not prohibited by IHL but must be minimised. This is both a legal and strategic requirement because a military unit causing civilian casualties could discredit the entire operation and undermine the legitimacy of the action carried out (Durhin 2016, 185).

In addition to fulfilling this legal requirement, it is necessary to consider military strategy practice, according to which reconnaissance of the battlefield must be carried out. This can be done either electronically (e.g., by drones and communication interceptions) or by sending scouting units. If electronic reconnaissance proves insufficient or if its results need confirmation, it is up to the commander to weigh the risks to his soldiers against the potential harm to civilians. A typical example of failed reconnaissance was the My Lai case from the Vietnam War in 1968 (Eckhardt 2000).

The definition of collateral damage is not included in IHL but is rather found in military manuals. According to the NATO perspective, collateral damage is “*harm or damage caused to civilians or civilian infrastructure during military operations*” (NATO 2024). According to the degree of intentionality, three categories of incidents can be identified: unforeseen, incidental, and deliberate civilian harm (Waszink 2011, 30–32).

Unforeseen errors might be caused by human mistakes or by a failure of technical equipment and armament. Because, in the authors' opinion, there can be no doubt that the IDF had no reason to attack Israeli citizens, an example of this error might be the case of shooting hostages on the run in December 2023 (BBC 2023). The terms incidental harm, accidental harm, or collateral damage are often used as synonyms. These kinds of incidents undergo investigation and become a matter of the army's oversight process (Dullum 2022). Since the Israeli military command investigated this incident, admitted its mistakes, and, as a form of satisfaction, apologized and dismissed the two officers responsible for the decision to carry out this attack, it is possible, in the authors' opinion, to note as an example the case of killing seven food aid workers of World Central Kitchen caused by wrong identification and the assumption that they were Hamas operatives (Politico 2024).

The Sol has been widely and sharply criticised for its deliberate harm to civilians during the Gaza war. In the authors' opinion, it is very difficult, given the unpublished results of the investigation, to demonstrate an example that could be classified as such. However, it would be reasonable to consider whether the attack on an ambulance in Gaza in November 2023 could be considered deliberate harm to civilians, since the mere assumption that the ambulance was hiding Hamas fighters cannot be a sufficient argument (HRW 2023).

The risk of accidental damage to civilians in urban areas is high. It is also a predictable risk, the consideration and evaluation of which is part of military strategy. The risk serves as an improvement tool regarding targeting procedures, which include the choice of employed weapons and the intelligence, systemic analyses, and technical studies on the functioning and other features of the examined infrastructure (Durhin 2016, 186).

The degree of accuracy in assessing the situation before carrying out a military operation in urban settings might, however, be affected by the "fog of war" (*Nebel des Krieges*), which is inherent in the nature of war and can take the form of friction, ambiguity, chaos, uncertainty, or combinations thereof. One way this factor can be mitigated is by gaining information dominance over the enemy and by networking information technologies throughout the joint battlespace (Edward 2010, 8–15).

The Sol has sophisticated technologies operating on the principle of AI and uses them in the war in Gaza (cf. D'Evereux 2024, *Obrana a strategie*), but it must cope with the specifics of the method of conducting the fight that Hamas adopted. Hamas has a tactical advantage due to a network of underground tunnels that serve for the movement, attack, and retreat of fighters, as weapons depots and routes for smuggling. They serve as hideouts for fighters, including places where hostages are held. It is known that Hamas widely abuses civilian objects. Hamas has considerable support from civilians, which might explain their voluntary presence in places that could become targets of military attacks. The IDF regularly publishes information about seized evidence (IDF 2025). However, it is also necessary to take into account the nature, size, density, and structure of the Gaza Strip's population. There are no zones in Gaza that are exclusively for military or civilian use, but rather, these areas are interconnected. An example is the Hamas tunnels in Al Shifa Hospital, the existence of which is reported not only by the IDF but also by independent media (Liebermann 2023).

Military commanders might be rather inclined to consider the effects of individual attacks as part of an overall plan to achieve the ultimate result of defeating the enemy. The provisions of Art. 57 (2) a) iii AP I might in practice lead to a tendency to convert this definition into the opposite, i.e. to consider that “reasonable, moderate or necessary” civilian losses are not unlawful if they are justified by the direct military advantage. From a military perspective, it might be more natural to weigh the potential collateral damage against the overall military advantage, and to prioritise the principle of military necessity over the principles of precaution, proportionality, and distinction. From a legal point of view, there is no hierarchy of superiority or subordination between these principles. Legally, the situation must be evaluated in the context of all these principles, and a responsible decision must be made regarding the target and method of a military attack.

Concerning the Sol, this is another aspect for which it is widely criticised not only by the international community and human rights organisations but also by a large part of the Israeli public. The damage in Gaza is extremely extensive; the war has had serious impacts on the civilian population for more than 18 months, while the military objective, i.e. the saving of all hostages and the elimination of Hamas's combat capability, has not yet been achieved by military force. At the time of closing the manuscript, the authors do not consider it possible to evaluate the degree of fulfilment of this obligation, but they find grounds to address this question after a certain time interval to determine whether and to what extent this obligation was violated.

### ***Specific precautions in favour of civilians***

The AP I defines in its Art. 57 c) that the *“effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.”* (AP I, art. 57 c)<sup>5</sup>

It can be noted that this obligation is contained in other sources of international law, e.g. in Article 19 of the Lieber Code of 1863, Article 26 of the 1899 and 1907 Hague Conventions. It has been mentioned by the International Tribunal in Nuremberg, the International Criminal Tribunal for the Far East, and by the ICJ in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons. It has been listed in several soft law sources of IL. Due to the widespread and widely representative practice, it was identified by the ICRC as a customary rule of IL stipulating that

*“Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.”* (ICRC, IHL Databases, Customary IHL, Rule 20)

The Sol has not disputed that this rule has a customary status, so Israel is obligated to respect it (Schmidt 2023). From the context of the criticism of the Sol in the case of Operation Cast Lead in 2009, raised by the UN, it can be deduced that the warning must meet certain features and criteria to fulfil this obligation. There should be employed a variety of means of communication (including television

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<sup>5</sup> In addition, there is one more area of the precautions stipulated in the Art. 57 b). This section covers the situations and conditions under which the attack should be cancelled or suspended. During ground operations in Gaza, the authors did not note the publication of a significant case applicable to this provision.

and radio broadcasts, telephone calls, leaflets, etc.), so it is ensured that the message reaches the civilians at risk. The warning must indicate the time and place of the attack as clearly as possible. The civilians must be allowed sufficient time for a response. The warning must include precise instructions on how to avoid it, including information on where to go, on the evacuation measures, etc. Finally, the warning must be trustworthy (UN Doc. A/HRC/12/48 2009, 124–133).

The IDF must deal with this requirement not only from a legal point of view, but it must also take military strategy into account and evaluate whether the warning does not put its forces in danger or whether it is essential in relation to the particular attack from the tactical perspective to have the benefit of the element of surprise.

The IDF has a lot of experience with issuing these warnings (cf. Merriam 2023). In 2023, the IDF published a report on warnings issued to Gazans via direct phone calls by personnel speaking fluent Arabic and understanding Palestinian culture and family structure (IDF 2023). The authors note that there might be an improvement in the telephone warnings compared to those in 2014, which were communicated in Hebrew and the recipient of the call was informed that they had only five minutes to inform the residents of the house and evacuate. This could be considered insufficient, considering that in the 2014 conflict, it was recorded that Palestinians generally did not pay attention to the information leaflets and did not consider them trustworthy (IDF 2014).

In the 2023 war, Gazans were, in addition to phone calls, informed by text messages sent by Israel Securities Authority personnel, warning them of the risk of staying in the north of Wadi Gaza and informing them that they must immediately leave for the south of Wadi Gaza. Local civilian officials and informal community leaders were informed to share the warning effectively and insist on the evacuation. Flyers were distributed. The warnings were also online, on TV, and on radio broadcasts (IDF 2023). Equivalent warnings were issued in 2024 in connection with the progress of military operations and the movement of the IDF to other locations where ground operations were taking place (e.g. Bennett, Abdualouf 2024). In the authors' opinion, it is possible to find these warnings effective, as the majority of people have evacuated.

As for civilians who nevertheless decided to remain in the evacuated zones, it is likely that Israel, similarly to previous operations (e.g. IDF 2014), used the “roof knocking” tactic, which is considered a controversial and not universally acceptable way of warning.

*“The technique involves employing ... munitions that impact one corner of the roof and detonate a very small explosion that produces noise and concussion several minutes in advance of the strike. The civilians are hopefully frightened into dispersing. Once it has cleared the target area, the IDF launches the attack.” (Merriam 2023)*

In military practice, roof knocking is used only when the building is a military target, and other warnings have been ignored or are impractical. The purpose of knocking on the roof is not to harm the enemy, but instead to avoid civilian casualties during an imminent attack. This technique is used in military practice in situations where it has been evaluated from a tactical point of view that it is not possible to issue a “standard” warning before an attack, and this technique serves as a last warning to limit civilian losses (Schmidt 2023).

Among other precautions in favour of civilians, locating military objects away from civilians can be noted. This precaution is rather applicable to the Hamas government of Gaza. It is possible to note that there is no positive legal obligation for the warring party to relocate civilians from the area affected by conflict (Durhin 2016, 195–197). Because there is no positive commitment of the attacking party, and because, with a few exceptions for serious health reasons, evacuation of people outside Gaza was not ensured, there is no reason to examine this issue in detail concerning the Sol.

### ***Voluntary presence of civilians in military objectives***

The last section focuses on the voluntary presence of civilians in military objectives. In such cases, it could be argued that these civilians might abuse their status as protected persons. If they voluntarily choose to stay, some sources suggest they could be considered civilians directly participating in hostilities. While remaining at military objects, they would lose their protection and could become legitimate targets (Schmidt, Garraway, Dinstein 2006, 44). However, if civilians fled immediately before the attack or raised their hands to indicate surrender, they should not be targeted.

The assumption that civilians automatically lose protection when voluntarily present in military objectives is not generally accepted. Part of the doctrine (e.g., Sassòli 2008, 7–10) maintains that under certain circumstances, such as when individuals do not pose a real or sufficiently serious risk to the attacking party, they should not be classified as directly participating in hostilities. This approach is supported by the ICRC Interpretive Guidance (ICRC 2009, 57).

The voluntary presence of civilians in military targets can be examined, for example, in connection with operations during the first phase of the Gaza war, which targeted northern Gaza. It was reported that in October 2023, approximately one million people refused to evacuate. By October 2024, about 400,000 civilians still refused to evacuate northern Gaza. Refusal to evacuate may stem from a variety of typical reasons. The authors briefly summarise findings from interviews with Gaza residents and also consider psychological and human factors. Given the focus of this article on international law and military strategy, the list presented is demonstrative rather than comprehensive.

Middle East Eye journalists published results from interviews identifying several common reasons Palestinians refused to evacuate. For example, elderly people often refused to leave their homes out of fear of losing their property. This is exemplified by a 20-year-old respondent, Naama Hazem, who explained that her grandfather preferred to accept death at home rather than live as a refugee in southern Gaza. Consequently, her entire family chose to stay together despite the risks. Decisions of older family members, influenced by cultural aspects of Arab families, often affected entire families' choices to remain. Another respondent, Ali Abdel-Wahab, identified a typical reason. Palestinians did not want to contribute to a repeat of the 1948 Nakba, when evacuation orders made it impossible for many Palestinians to acquire Israeli citizenship after fleeing to Egypt, Jordan, and neighbouring states. This trend continues among descendants of those displaced (MEE 2023).

Beyond direct interviews, other typical reasons can be identified. Psychological factors related to long-term war exposure may include traumatic symptoms, physical and mental exhaustion, feelings of hopelessness, lack of willpower, and apathy (cf. Murthy, Lakshminarayana 2006). Another factor, described as “human reasons,” is comparable to the behaviour of the “Chernobyl grandmothers” who

returned to restricted areas despite health risks and reduced living standards. Their attachment to home is a compelling factor relevant to Gazans. Due to the extensive destruction in Gaza, residents may view evacuation as pointless, convinced that any refuge they find will soon be subject to further evacuation orders, causing them to believe that no place in Gaza offers safety (cf. Barnett 2007).

To conclude this discussion on evacuation refusal, it can be speculated that some civilians believed their presence would complicate Israeli ground operations. If so, this might reflect ideological support for Hamas; however, legally, such a position does not amount to direct participation in hostilities. The Gaza Health Ministry reported hundreds of civilian casualties, including children. According to some sources, troops were ordered to conduct operations without sufficient intelligence (MEE 2024). These ground operations affected the functioning of three hospitals in northern Gaza (OCHA 2024).

In the authors' opinion, fault could be found with the IDF if it were proven that military operations were carried out in areas with clearly present civilians without reliable intelligence. Moreover, if it were proven that no warning was given to surviving civilians immediately before the attack, an obligation that remains relevant even if the area was deemed evacuated, it would be necessary to evaluate whether circumstances genuinely prevented the issuance of a warning. The authors consider the following situations to be primary justifications for the absence of warnings, given the risk of information leaking to Hamas militants. First, the operation aimed to free hostages, and warning civilians would endanger the hostages' lives. Second, the target was a significant military objective, such as senior Hamas figures. Third, the attack required the element of surprise for success; without it, the desired military advantage would not have been achieved.

## Conclusion

Considering that, at the time of closing this manuscript (early March 2025), it was uncertain whether the parties would continue the ceasefire or resume fighting, the conclusion remains open. Nonetheless, it can be noted that this paper has fulfilled its objective by explaining the complexity of protecting civilians during armed conflict within a clearly defined legal framework. The rules of lawful conduct have been identified and applied in three key contexts: first, when the IDF has doubts about whether a person is a civilian; second, regarding the direct and indirect participation of Gazans in hostilities; and third, concerning civilians who voluntarily remain in evacuated zones where military operations are ongoing. Areas where the IDF might be found to have acted following applicable IHL and military obligations have been described, alongside examples where the IDF has failed.

Concerning answering the research question<sup>6</sup> and making recommendations on improving the protection of civilians in the Gaza Strip, the following points may be highlighted. There is no indication that it would be realistic to achieve the most effective outcome, namely, convincing Hamas through military superiority to surrender and demilitarise, as all armed resistance would then be futile.

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<sup>6</sup> Which was phrased as: *What recommendations could be made to the Sol in terms of protecting the civilian population of Gaza in connection with conducting ground operations according to IHL and from the perspective of military strategy?*

Hamas holds a tactical advantage with approximately 24 hostages believed to still be alive (Cramer 2025). If hostilities resume, further civilian casualties in Gaza might bolster support for the Palestinian Authority. It can be assumed that Hamas might welcome this, aiming to create a post-war unified Palestinian government. Such support could manifest on two fronts: domestically, by strengthening Hamas's position in a future Palestinian government; and internationally, by increasing support for the Palestinian Authority and applying greater pressure and sanctions on the Sol.

Therefore, if military operations resume, the Sol might be recommended to focus far more intensively on reducing the risk of collateral damage. Attacks should be precisely targeted at legitimate military objectives. The IDF should strive for more careful evaluations regarding whether individuals have lost their civilian status. It should continue to consistently collect information and preserve evidence regarding the assessment and importance of targets, thus justifying the choice of weapons and methods of attack corresponding to the size and nature of each target. Furthermore, it is recommended that IDF officers receive ongoing training not only in military strategy but also in IHL. Eventually, it would be possible to consider enabling the evacuation of civilians outside the Gaza Strip. Overall, the IDF should maximise efforts to minimise civilian harm by applying available ICRC recommendations tailored to the specific combat conditions in Gaza (cf. ICRC 2022, 146–148). Finally, even if intelligence indicates that Hamas has been misappropriating humanitarian aid, selling it to civilians, and using the proceeds to re-arm for future attacks, Israel should not use the suspension or threat of suspension of humanitarian aid as a coercive tool without further justification. Instead, Israel might seek ways to encourage more efficient distribution of humanitarian aid, ensuring it reaches civilians free of charge. This last part of the answer to the research question is related to the obligation of all states to respect the fundamental principle of IHL, namely the principle of humanity, according to which it is essential to particularly protect victims of armed conflicts (cf. Coupland 2001; Slim 1998; Meron 2000).

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