

15. Perpetrators: Types, intentions, responsibility

AUTHORS: WILBERT VAN DER ZEIJDEN, WELMOET WELS & ERIN BIJL

In the previous chapter, we examined the harmful impact of armed action on civilians: the victims. In this chapter, we focus on those who cause harm to civilians through the use of violence in hostilities: the perpetrators.¹ In Part I, 'Cases of civilian harm', we have described the role of the perpetrators in as much detail as possible. We examined their intentions, capabilities, methods and tactics, how their chosen actions contributed to causing or mitigating harm, and whether perpetrators in their specific context were – or could be – aware of the harm caused by their actions. In this chapter, we bring reflections from the cases together to discuss perpetrators on a more conceptual level. We consider perpetrators' legal status, their capabilities and different intentions, and we introduce the threat-based approach to the protection of civilians to demonstrate why understanding perpetrators of harm is crucial to preventing and minimising the negative effects of armed violence on civilians. We end the chapter with a brief reflection on the different 'degrees' of responsibility that may be assigned to particular perpetrators. A reflection on the impact of decisions made by perpetrators on civilians, for instance where it relates to weapons choices or target selection, is included in the next chapter on key factors that contribute to increased or mitigated harm.

15.1 Case overview

In the Introduction, we define civilian harm as 'negative effects on civilian or community well-being by use of force in hostilities', whether these effects are of a physical or psychological nature, or are related to the damaging of property or critical infrastructure. Throughout this book, we refer to the actors who cause such negative effects as perpetrators. As discussed before, there is no universal agreement regarding the use of this term to describe actors who cause harm to civilians. For example, NATO uses perpetrators in their Protection of Civilians Policy and Military Concept (see North Atlantic Treaty Organisation [NATO], 2016; NATO, 2021) whereas Airwars – a non-governmental organisation specialised in tracking and assessing military actions and related civilian harm claims – prefers the term belligerent (see Woods, 2016), as do various other organisations and

¹ A more comprehensive discussion of our deliberations in using the term 'perpetrator', as well as other key terms, can be found in the Introduction, section 3 on the discourse on civilian harm.

institutions. We have chosen to use perpetrator as it more specifically relates to actors who cause harm to civilians, which is not necessarily captured in a term like belligerent.

With this approach, perpetrator can refer to formally recognised state forces or informal armed groups, state and non-state actors, actors who harm civilians intentionally and those who do so unintentionally, actors who are the main cause of the harm and those who provide support to the commission of harm. In our use of the term, it does not matter whether the violence used by the perpetrator reaches the legal threshold of an armed conflict or war, meaning that we also identify perpetrators in situations of violence like a regime crackdown or intercommunal violence. We also do not distinguish between the International Humanitarian Law (IHL) concepts of international and non-international armed conflicts. Whether it is the International Coalition against the Islamic State of Iraq and Syria (ISIS) executing an airstrike in Al Mansoura in 2017 (chapter 9), the Israeli Defence Forces (IDF) damaging sources of drinking water in Gaza in 2014 (chapter 4), the Taliban orchestrating suicide bombings in Kabul in 2015 (chapter 11), Colombian paramilitaries forcing people from their land in El Toco in 1997 (chapter 10), or the Syrian Arab Army (SAA) carrying out a chemical attack against its own civilians in Khan Sheikhoun in 2017 (chapter 5), all are examples of actors labelled perpetrator in this book as in some form or other they cause harm to civilians.

Importantly, an actor can also cause harm through inaction. Failure to uphold the positive obligation to protect civilians may have serious repercussions for their safety and well-being. For example, UNMISS peacekeepers took no action when women and girls were raped in the vicinity of UN Protection of Civilians sites in Juba in 2016 (chapter 3). These kinds of actors are referred to as perpetrators in this book as well, allowing us to explore important questions about how different types of actors and their specific behaviours relate to types of harm, as well as to different 'degrees' of legal and moral responsibility.

It should be noted that this book does not provide a comprehensive overview of all possible types of perpetrators, and we recognise that it would be useful in the future to expand the analysis started in this book to include other examples of actors often involved in actions that harm civilians, such as drug cartels, criminal gangs, pirates and cyber-aggressors.

15.2 Types of perpetrators

One way to classify the perpetrators discussed in this book is by identifying the type of actor they represent, which can be done by taking into account their legal status. According to IHL, perpetrators can be categorised as members of armed forces, as members of non-state armed groups, or as part of a third category: those who fall in neither or both groups. Even though this is not a publication on international law, we recognise that the legal classification of perpetrators is significant because of its relation to matters of legal responsibility and accountability. Additionally, the type of actor a perpetrator represents – armed forces, non-state armed groups or neither – may often tell us something about that perpetrator's capacity to inflict harm.

In the 'Cases of civilian harm' (Part I), we present a wide range of perpetrators. These include state armed forces: In Yemen, a Saudi-led military coalition lay siege to Hodeidah, depriving its inhabitants of food, water, medicine, and access to basic services (chapter 1); in South Sudan, a combination of government forces and allied militias used brute force to assault internally displaced women (chapter 3); the IDF denied Gazan civilians access to clean drinking water and exposed them to health hazards by bombing wastewater management systems (chapter 4); the SAA used chemical weapons against its civilian population in Khan Sheikhoun, and restricted access to water in Aleppo and other Syrian towns (chapters 5 and 12); the US-led International Coalition against ISIS killed a large group of internally displaced persons (IDPs) when it attacked a building it thought to be an ISIS stronghold (chapter 9); and in 2017, Myanmar's national army terrorised, killed, and sexually assaulted Rohingya in order to drive them out of the country (chapter 13). In several cases, state forces were assisted by (sometimes loosely organised) non-state armed groups when perpetrating harm, such as locals fighting alongside Myanmar's army or the previously mentioned militias in South Sudan. Yet, having primary responsibility in organising military actions that caused harm to civilians, state forces represent the main perpetrator in these cases.

Besides state actors, we describe a variety of non-state actors who cause harm to civilians, as well as actors who may be difficult to classify as either state or non-state, or as combatants or non-combatants, but who possess significant capabilities to inflict harm. Among these are terrorist organisations like ISIS and

the Taliban. ISIS deliberately set fire to oil refineries in Iraq in 2016, resulting in widespread health concerns and environmental damage (chapter 2); it subjected the Yazidi population to mass executions, starvation, rape and sexual slavery, torture, and recruitment of child soldiers following its invasion in Sinjar in 2014 (chapter 8); and, just like the SAA, ISIS too 'weaponized' water (chapter 12). The Taliban caused civilian deaths and injuries, as well as property destruction through suicide bombings in Afghanistan (chapter 11). Colombian paramilitary forces killed and injured peasants to force communities to flee from their lands (chapter 10). Both state and non-state armed groups in eastern Ukraine carelessly used explosive weapons in populated areas, thereby harming civilians through the damage explosives caused to health care facilities (chapter 7). Finally, in Cambodia, explosive remnants of war (ERW) left by various types of armed groups continue to harm civilians in the present day (chapter 6).

State armed forces

According to the International Committee of the Red Cross (ICRC), '[t]he armed forces of a party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates' (see Rule 4 in International Committee of the Red Cross [ICRC], n.d.). Two of our case studies concern the International Coalition against ISIS that bombed the Al Mansoura school in Syria, a military collaboration of internationally recognised armed forces (chapter 9), and the Tatmadaw – Myanmar's national army – which violently drove Rohingya civilians from their lands (chapter 13). While their intentions and the nature of the harm they inflicted differ considerably, in both these cases the perpetrator derived its mandate to act from the legal status of the state it represented. The Tatmadaw specifically acted within the primacy of the use of violence reserved for state actors.² Members of the anti-ISIS Coalition obtained their more unusual mandate from UN resolutions, which permit the use of force to defeat ISIS. State actors generally have a high capacity to inflict large-scale violence to civilians, due to their capacity to organise large standing armies, the professional training of the troops, and access to state resources.

² Please note that this does not equal carrying out a justified action.

Non-state armed groups

Non-state armed groups can also be perpetrators of civilian harm. The ICRC defines non-state armed groups as 'dissident armed forces, or other organized armed groups which recruit members primarily from the civilian population and have developed a certain degree of military organization' (Sassòli & Bouvier, 1999). When these groups fulfil certain conditions, they can be considered parties to an international or non-international armed conflict, just like armed forces, which obliges them to abide by IHL and other international law.³ In this book, ISIS (chapters 2, 8 and 12) and the paramilitary forces in Colombia (chapter 10) represent such non-state actors who have acquired the status of a legitimate military actor in that they are recognisable as an organised military force and typically are part of a hierarchical military command structure. In the case of the Colombian paramilitaries, it is clear that a hierarchical unit is represented, identifiable through insignia, uniforms, training and equipment. Legally, this means that individuals fighting in their ranks can be targeted by other military actors, are to be treated as combatants in case they are caught or surrender, and that their leaders can be tried in court for their involvement in causing harm to civilians. Generally, non-state armed groups have less potential to organise large-scale violence than their state counterparts but can nonetheless inflict great harm to civilians. Lack of leadership, insufficient training, irregular payment, and limited accountability can lead to situations where fighters use whatever opportunity they have to exploit, abuse, torment or otherwise harm civilians, especially in the absence of a state exercising its primacy of violence.

Non-classified actors

Conflict and hostilities increasingly take place in populated areas (ICRC & InterAction, 2017). As a consequence, there is an increasing blurring of lines between those who participate in the conflict and those who do not. In addition to the above two groups, there are civilians who take up arms individually, or who provide part-time support to an armed group. As such it can happen that actors are involved in organised violence, but are not clearly identifiable as official members of an armed entity. Other forms of intermingling can be the involvement

³ The non-state armed group must stand (1) under a responsible command, and (2) must have such control over a part of its territory that it (3) enables them to execute sustained and concerted military operations and to implement and adhere to IHL.

of civilian intelligence personnel or the outsourcing of military operations to private contractors. This blurs the distinction between civilians and combatants – in other words, between protected persons and legitimate targets. IHL dictates that civilians are protected from direct attack 'unless and for such time as they take a direct part in hostilities' (see Rule 6 in ICRC, n.d.). This entails that those persons committing acts that meet a certain threshold of harm and damage, that have a causal link with a coordinated military operation, and that are in support of a party to the conflict, forfeit their protected status as civilians for as long as they are directly participating in the hostilities. Hence, they may be legally targeted for the duration of their activity, but regain their civilian protected status under IHL when their activities cease. They may, however, be prosecuted under domestic or international law for their involvement (Melzer, 2009).

For the purposes of the discussion on civilian harm, it is important to realise that the causing of harm is not limited to those traditional actors recognised in international law as parties to the conflict. In recent conflicts, we have seen how fighters not clearly recognisable as belonging to armed forces or non-state armed groups may have a particular propensity to inflict harm. Their unclear status and lack of official 'membership' means that there is little accountability, oversight, training, or command structure, which exacerbates the risk of their causing excessive harm.

Legal implications

It may be clear that all parties to a conflict, whether they are state forces, non-state armed groups, civilians who take up arms, private contractors, or other non-classified actors, can be perpetrators of harm to civilians in a legal sense. The notion of 'perpetration' has a wide scope in international law. Not only those who commit criminal acts themselves may be labelled perpetrators; also those who use their command influence to ensure a certain criminal result may be held accountable (Melzer, 2009). A failure to act can equally invoke criminal responsibility as a perpetrator, for international law sets a positive duty to act and not fulfilling this – by looking the other way or condoning the behaviour of subordinates – is a violation of this fundamental obligation. Those involved in aiding and abetting a crime, planning and preparing, instigating and ordering, may be perpetrators under international law as well.

There are various legal criteria to establish perpetration, such as the substantial

effect of one's act to the commission of the crime, knowledge or awareness of the crime and the consequences of one's actions, and effective control over subordinates. While these concepts apply in the strict legal sense only within the jurisdictional area of the respective international legal fora, they are indicative of the general morality surrounding the commission of crimes that harm those who ought not to be harmed, and they have been included in many domestic legal systems. It means that formal legal status comes with a legal mandate but also with responsibilities. This can contribute to a form of accountability, and, in turn, put pressure on actors, whatever their legal status, to prevent and minimise civilian harm, a matter discussed in more detail in the next section. The most common mechanisms to address perpetrator violations are international, national and regional tribunals and courts, as well as regional complaints mechanisms, treaty-specific monitoring mechanisms, and of course efforts by civil society organisations to hold perpetrators to account through campaigning or striving to improve legislation.

15.3 Intentions of perpetrators

The intentions by which perpetrators cause harm to civilians – of which we have seen a wide variety in the 'Cases of civilian harm' – are a different method to classify and understand perpetrators.

Deliberate infliction of harm

In various examples discussed in this book, harming civilians was the perpetrators' first and foremost objective: They were out to displace, abuse or kill civilians as a goal in itself. The Sudan People's Liberation Army (SPLA) troops in South Sudan using sexual violence as a means of revenge fit in this category (chapter 3). Nuer women were singled out to be raped and humiliated as part of a deliberate strategy: Soldiers used sexual violence as a weapon of war, targeting a specific section of the population to achieve ethnically motivated vengeance. Similarly, ISIS' targeting of the Yazidi population in Sinjar can be described as purposive and intentional (chapter 8). The killing, physical and sexual abuse, and enslavement of Yazidis was organised and systematic. ISIS troops and supporters framed the violence positively, as an exercise of extermination justified by religious interpretation. The deliberate infliction of harm on civilians can also be a means to an end. Colombian paramilitaries used terror against civilians to force people to leave their lands, not

solely for the sake of harming civilians, but because it served their objective to make these lands available for supporters or for economic exploitation by third actors (chapter 10).

Often, the motivation for the use of deliberate violence against civilians is a mixture of the two. The genocidal actions of ISIS against Sinjar's Yazidi population, described above as 'an end in itself', served additional purposes that can be described as 'a means to an end'. By exterminating the Yazidis, ISIS drained the region's potential for supporting military opponents, while also guaranteeing full control over the region's resources. The suicide attacks in Afghanistan (chapter 11) similarly represent a mixture of the two motivations: On one hand, an intrinsic motivation to target civilians loyal to the Afghan government, as well as foreigners and those who supported them; on the other hand, the attack was a tactical choice to inflict infrastructural and financial damage and to instil fear in the population, with the intent to undermine the regime.

Civilian harm as 'collateral damage'

In some cases, armed actors knowingly harm civilians not because they see utility in the harming of civilians, but because they expect the military utility of a certain action to outweigh the civilian costs. In those cases, harmed civilians are sometimes referred to as 'collateral damage'.⁴ The argument often made is that the harm *prevented* in the long term needs to be weighed against the harm inflicted in the short term. It is a paradox of this type of warfare that those who set out to protect civilians from violence, are seemingly not able to do so without using violence resulting in harm for some of those they aim to protect (Walzer, 1992).

Western military forces in particular have developed extensive guidance for decision makers to weigh the anticipated military benefit of an attack or strike against the expected civilian – collateral – damage that will occur. The IHL principles of necessity, distinction and proportionality provide a legal basis for these decisions, and in many cases the civilian harm inflicted by, for example the anti-ISIS Coalition,

⁴ A more comprehensive discussion of the term 'collateral damage' can be found in the Introduction, section 3 on the discourse on civilian harm. The section in this chapter does not discuss whether the damage to civilians meets the legal criteria, but elaborates on the perception of perpetrators that damaging civilians in the course of war is an acceptable by-product.

When military planners understand why, how and with what capabilities perpetrators harm civilians, they are better able to determine the best course of action to protect civilians.

was correctly calculated. Even so, misinformation, miscalculation, or errors in targeting can lead to excessive but unintended civilian harm. The Coalition against ISIS did not intend to bomb the IDPs in the Al Mansoura school building (chapter 9). In fact, efforts were undertaken to mitigate and minimise civilian harm. The primary motivation behind the airstrike was to defeat ISIS militarily, and when launching the strike on the school building, Coalition forces thought they targeted an ISIS stronghold rather than a building full of IDPs. However, it should be noted that the Coalition would not have been unaware of the presence of at least some civilians at the moment of the strike. It could have been known at that moment that their actions would likely inflict harm on individuals who under normal circumstances would be protected from military attack. But *on top of* the harm deliberately caused, the actual harm inflicted turned out – unintentionally – to be much greater than expected.

The intent to avoid or minimise civilian harm sets this case apart from several other cases in this book where the adverse effects on the civilian population resulted also not from an intent to do harm, nor from a deliberate choice of methods and means; some perpetrators simply did not care enough about the fate of civilians caught in conflict. The shelling of hospitals in eastern Ukraine is particularly relevant here (chapter 7). The warring parties habitually used explosives and shelling in urban environments. While they did not aim for the hospital or the population as such, their general methodology demonstrates a lack of care about the impact of their weaponry on the civilian population. Anyone exchanging fire in close vicinity to a hospital must understand the immediate danger to patients and medical staff, and the subsequent danger to the functioning of a crucial societal institution. Yet, these actors apparently did not undertake even the most basic measures to mitigate this kind of harm, such as using more appropriate weaponry or giving advance warning to civilians. Their role in inflicting harm to civilians was not intentional but also not accidental. It seems best described as callous or uncaring.

From the perspective of the civilians being harmed, the motive behind a decision causing harm often matters very little: Survivors will have to deal with violence-induced trauma regardless of whether the perpetrator was directly out to harm them or was unable to avoid harming them. Those who lose their house or livelihood due to the use of explosive weapons will need to rebuild or relocate regardless of whether the house was destroyed with malicious intent or as 'collateral damage'.

Evidence and lessons learned from past armed operations indicate that it is often neither the lawfulness of the behaviour, nor the intent with which violence is used that determines the (perceived) credibility or legitimacy of an armed actor in the eyes of civilians. The key factor in how affected civilians will judge an actor's success and reputation in warfare is the net result of the use of violence. This underlines the (strategic) importance of taking into account civilian perceptions about military operations (Kolenda et al., 2016).

15.4 The threat-based approach to protecting civilians

Having studied perpetrators and their differences in relation to capabilities and intentions, we now turn to how this knowledge can be utilised. The so-called threat-based approach to the protection of civilians is a methodology developed by the Norwegian Defence Research Establishment (FFI) to help military planners determine the best course of action to protect civilians from harm by others by examining why, how, and with what capabilities perpetrators target civilians.⁵ This method distinguishes between five different characteristics of perpetrators of harm, including rationale for targeting civilians, type of actor (state, armed group, community, and individuals), strategies and tactics to attack civilians, capabilities needed to attack civilians, and the potential outcome if the perpetrator succeeds (Kjeksrud et al., 2016). Based on a better understanding of the perpetrator, military planners may derive the most effective protection strategy. Using these five criteria to analyse historical cases of perpetrators of violence, FFI has derived eight threat scenarios, each describing fundamentally different types of physical threats to civilians. These 'scenarios' range from situations at the one end of the spectrum where civilians face mass atrocities (most violent, such as genocide) to situations where the threat to civilians is more limited (least violent, such as mob violence).

⁵ The matter of protecting civilians from harm by *own* actions is taken up in chapter 16, 'Key factors: Causing or mitigating harm', section 16.3.

The rationale behind this categorisation is that situations of violent conflict display considerable differences in the type of perpetrators present, their capabilities, and the means and methods they employ to reach their objectives. As a result, the risk posed to civilians can vary greatly, as will the utility of force to protect from harm. Depending on their objective, perpetrators use different tactics. If we regard, for instance, two scenarios identified by FFI and evident in our own cases, we see why this matters in relation to protection responses. FFI recognises genocide as the most violent situation for civilians, where the objective is to destroy a particular group of people, in many cases including through mass killings. The violent, targeted and systematised attack by ISIS on Sinjar's Yazidi population has been recognised as genocide (chapter 8). The most effective means of protection in this case may be to use coercive or destructive force against ISIS in order to bring their violence to a halt. By being aware of the characteristics that can serve as early warning signals for genocide, protection actors may be able to recognise the situation at hand sooner, and take preventive or mitigating action to decrease (the risk of) civilian harm (Kjeksrud et al., 2016).

The sexual violence of SPLA soldiers against Nuer IDP women in South Sudan (chapter 3) may be better characterised as a scenario of communal conflict. The Nuer ethnicity of the women and girls was the main targeting criteria for the overwhelmingly Dinka soldiers who attacked them, due to the long-standing and increasingly 'ethnicised' conflict between the SPLA and SPLA-IO. The women and girls from UNMISS Protection of Civilians sites moreover represented a relatively easy target that would have a large communal impact. Here, the most appropriate and effective response to prevent or minimise such attacks might be for third parties – in this case UNMISS troops – to deter violence by a show of force in the form of establishing a clear police or military presence or by conducting patrols. Alternatively, protection actors could respond with coercive military action against a serious incident, which may have a future preventive effect (Kjeksrud et al., 2016). By regarding perpetrators' intentions, among other things, military planners can better inform their decision making for protection of civilians and the mitigation or prevention of harm.

15.5 Responsibility of perpetrators

When harm is committed, it is important to consider the question of responsibility. Here, we discuss this not in terms of legal accountability but from a more general point of view of having *caused* or *contributed* to civilian harm. It can be straightforward to determine which of the actors involved in a conflict bears responsibility for a particular instance of civilian harm. In this book, the chemical attack by the SAA in Khan Sheikhou (chapter 5) and the suicide attacks by Taliban operatives in Kabul (chapter 11) are such examples. The chemical attack was not difficult to assess even in the melee of warfighting between multiple parties. It took place at a location where at that moment no other active use of violence occurred and away from any discernible military target. As shown in the chapter, enough evidence has been assembled by credible parties to establish with a high degree of certainty that the SAA is the only responsible party for the death and suffering of the poisoned civilians. The case of the suicide bomber in Afghanistan is another example where assigning responsibility for the harm inflicted on civilians was straightforward. There is no doubt about the affiliation of the suicide bomber, and there is no evidence that other actors contributed to the events.

However, in many cases, it can be much harder to establish responsibility for a particular event involving civilian harm. For instance, warfighting itself may obscure the actions of individual actors to a point that it becomes difficult to pinpoint which actor is responsible for specific events. In protracted warfare involving various armed actors, it can be challenging to keep track of individual violent acts and their consequences. In addition, perpetrators may deliberately obscure evidence of their involvement in an event causing civilian harm because they fear reputational or operational backlash. The Russian refusal to admit involvement in the bombing of hospitals in Syria is a case in point (BBC News, 2016), as is the deliberate lack of transparency demonstrated by Western militaries part of the Coalition against ISIS (Shiel, 2019; Woods, 2016).

Even when the actors involved in a harmful event are known, it can be hard to assign responsibility because the causal relation between the actions and their consequences is difficult to establish. This is especially complex in cases of indirect harm, or harm that only manifests itself later. For example, the harmful effects of the widespread use of certain types of materials on a population during

warfighting, such as heavy metals or toxic propellants, are often difficult to link to one particular case of illness that occurs during or after a conflict. When we consider the oil fires in Qayyarah (chapter 2), it may seem obvious that living under a black cloud caused by oil fires, breathing in smoke and soot, and eating polluted foods is hazardous to one's health. But proving that the pneumonic disease of a particular inhabitant of Qayyarah is caused by these fires is not simple, and some indirect effects, like the pollution of the ground water, may never be entirely understood.

The selection criteria for the case studies required there to be a reasonable level of clarity on who caused the harm, how, and with what consequences. In reality, many of the acts of violence leading to civilian harm happen without impartial outside investigators actively recording and analysing the situation. Nonetheless, our cases show that even in chaotic conflict settings, it is often possible to track and map the impact of a military action on a civilian population; and it may more often be the case that military actors lack the will, incentive, or resources to properly track and analyse their own and others' effects on civilians in a systematic and transparent way. Moreover, there may be considerable differences among militaries and states with regard to their (lack of) willingness and resources to do so.

Degrees of responsibility

Finally, it should be noted that there can be different 'levels' or 'degrees' of responsibility. The immediate perpetrator of the bombing of the Al Mansoura school is clear: The US-led Coalition against ISIS dropped the explosives that killed and injured dozens of civilians (chapter 9). At the same time, we also know that – unrelated to this specific case – during the period of Operation Inherent Resolve, ISIS at times used disinformation to obscure the location of its leaders, and often deliberately positioned civilians as human shields around combatants or military structures to prevent Coalition attacks, or even to trick the Coalition into causing unexpected high numbers of civilian casualties (Dunlap, 2016). ISIS' actions deliberately increased the likelihood of civilian harm. This raises the question which perpetrator then in the end is responsible for the harm caused, or if multiple armed actors are.

Similarly, it is clear that Saudi-led forces in Yemen are the leading actor in the siege of Hudeidah (chapter 1), causing the breakdown of medical services and other

societal structures, not to mention famine, disease, trauma, and displacement. However, it is still crucial that we ask ourselves to what extent we consider the countries that support the Saudi-led coalition with arms, technology or advice as responsible for the harm that occurred, as well as those who provide political and diplomatic support. Legally, it may be impossible to make the case that these countries share responsibility for the civilian harm that was caused. Militarily and politically, however, it should matter. For states expressing their ambition to protect civilians and to mitigate harm, it becomes relevant to ask if material support given to military partners in a coalition or partnered mission, leads to civilian harm. This opens up discussion with regard to the application of the term 'perpetrator'. By using a narrow interpretation, the harm caused by enabling actors who provide material support may not be recognised and they will not be identified as perpetrators. However, such actors are clearly implicit, and by not calling them out as perpetrators, we risk obscuring their part in the actions that led to civilian harm.

In the same way, responsibility can also be attributed to actors who cause harm through inaction, failing to prevent harm when it was possible to do so. While women were being sexually assaulted, UN troops in South Sudan did not intervene (chapter 3). The peacekeepers did not commit the assault, but their inaction enabled it to take place, resulting in the traumatising and injuring of the women. It is important to consider whether failing to intervene at the right time infers responsibility as much as active violence. International law obliges an active posture to protect civilian populations and so too did UNMISS' mandate, yet the peacekeepers did not act. Had they done so, they could have prevented the assaults: they were physically close, had the means to intervene, and the legal position to do so. It could also be said that their inaction may have contributed to greater harm. For the primary perpetrator, raping women in the face of a fully armed and deployed but indifferent UN force is almost a validation of power and impunity. From the perspective of the harmed civilians, it would seem fair to argue that the failure to protect through wilful inaction is a failure to take responsibility, and therefore the peacekeepers assume a passive role in the harm. These are important discussions to put on the agenda.

Lastly, one might ask where the responsibility of the state lies. The water and sanitation structures in Gaza were in dilapidated condition prior to the attacks on them in 2014. This made the impact of the destruction of the remaining working

water facilities significantly more disastrous for the civilian population (chapter 4). It is important to consider whether part of the responsibility for the reverberating effects of civilian harm through lack of maintenance of critical infrastructure – under the principle of ‘responsibility to protect’ – be assigned to the state itself. In this particular case, it moreover raises the question which authorities are then responsible: the Palestinian or Israeli authorities? And what to think of states that are absent or not in charge in certain regions within their territory? However, what seems clear is that in all cases it is the responsibility of any party to a conflict to – as NATO (2016) would formulate it – understand the human environment, including the effects of their own actions on that environment. Understanding the state of local societal infrastructure is just as significant as understanding the capabilities of opposing troops, or the particular vulnerabilities of groups of civilians. If mitigating harm to civilians is an objective, then so is taking into account the various effects a military operation may have on the civilians, and understanding why and how perpetrators attack civilians as part of their warfare.

15.6 Conclusion

Here and in the ‘Cases of civilian harm’, we have seen a wide range of perpetrators. They differ in – and may be classified according to – their legal status, capabilities, intentions, and the degree to which they bear responsibility for the harm that was caused. Knowing these differences is crucial for matters of legal accountability, but also for the work of security actors: A better understanding of the adversary in conflict can aid security actors in anticipating and consequently mitigating or preventing altogether particular harm to civilians. Such efforts are aided by combining knowledge about perpetrators with knowledge about their (potential) victims, discussed in chapter 14. In the next chapter, which will also address the topic of mitigating harm from own action, we will explore the missing element of this ‘equation’: the key factors that either contribute to causing or to mitigating civilian harm.