

17. Conclusion: Towards a shared understanding of civilian harm

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

In this book, we have studied the negative effects of armed violence on civilians in two ways. In Part I of this book, 'Cases of civilian harm', we analysed thirteen different civilian harm events in great detail. In Part II, 'Elements of civilian harm', we reflected on the elements that are part of every civilian harm event. We have attempted to bring across the experiences of civilians in conflict, and to reflect on the means by which we can mitigate or prevent harm to civilians.

This is part of our efforts to contribute to the current debate on civilian harm, which we regard as lacking in three distinct ways. Firstly, discussions on the impact of conflict on civilians are too often limited to civilian casualties – people killed and wounded during hostilities – and to visible destruction. Such depictions neglect to include other important forms of harm from armed violence: immediate and long-term harm caused by damage to critical infrastructure, psychological trauma, negative socio-economic effects, and other longer-term or reverberating effects from violence. As a result, many depictions of conflict do not reflect a holistic understanding of the human cost of violence in all its complexity. Secondly, different actors and stakeholders use different definitions of civilian harm or refrain from defining the concept altogether. Yet, if we are to jointly discuss means and methods to mitigate harm and better protect civilians, or if we are to determine whether harm to civilians from an armed action is 'excessive' or not, it is crucial that we develop our common understanding of the term 'civilian harm' and what this includes and excludes. Finally, we often observe that stakeholders frustrate transparent discussions about the cost of conflict by using rhetoric that poses that war is too chaotic to be able to keep track of all the effects on civilians. But if we want to avoid and minimise civilian harm, or if we want to find better ways to respond adequately to civilian harm events when they occur, we need to be able to speak about it, openly, with as many facts on the table as possible.

These observations prompted us to write this book. In it, we endeavoured to (1) demonstrate how in this day and age we are increasingly able to map and analyse and by extension *know* the negative effects of armed action on civilians; (2) bring into focus the full scope of direct and indirect, short and long-term, physical and non-physical negative effects on civilians from use of armed violence; and (3) create the foundations of a shared language to describe and discuss this topic. In this chapter, we summarise our main findings from these endeavours and highlight various key insights or questions that warrant further discussion. Subsequently, we reflect on this book's core aim to contribute to building a

common understanding of what civilian harm is and what it is not, reiterate our 'six signatures approach' and present our definition of civilian harm. The chapter ends with a set of recommendations to you, our readers.

17.1 The three elements of civilian harm

In 'Elements of civilian harm', we discussed in separate chapters the three elements that are present in any civilian harm event: civilians who are harmed, actors who do harm, and key factors that contribute to causing or mitigating civilian harm from armed action. This section sums up our key observations.

Those who are harmed: Victims

With regard to the victims of a civilian harm event, we have drawn attention to the variety of ways in which people can be negatively affected by violence. It is insufficient to discuss civilian harm only in terms of the wounded and the dead. The cases show that harm can also consist of psychological trauma, displacement, loss of livelihood, or decreased access to basic needs and essential services, such as healthcare and education. It is also important to take into account that many harmful effects of violence can endure for a long time after violence has occurred, and may not become immediately apparent. Consider, for instance, the stigmatisation of children born of rape in times of conflict; the multitude of negative effects often associated with displacement, such as lack of access to education, jobs, and health care; or long-lasting implications of environmental damages for civilians in the surrounding areas. In particular, we emphasise that the trend towards ever more urban warfare puts civilians at increasing risk of harm.

In addition, it is important to take into account the variability of civilian harm. By this, we mean that a particular instance of violence does not have to affect all civilians in the same way. A perpetrator may target some groups and not others, or different groups in distinct ways. In addition, pre-existing vulnerabilities – for instance related to gender, age, religion or type of livelihood – can minimise or exacerbate the impact of a civilian harm event. Someone who depends on agriculture for his or her livelihood can, for example, experience more harm from damage to the environment than people with other sources of income.

All these observations together lead to the conclusion that a number of key 'signatures' of harm need to be taken into account when monitoring, analysing and reporting on civilian harm, to achieve a holistic understanding of the human cost of violence that reflects the phenomenon's complexity.

1. **Casualties:** The number of lives directly physically affected by the use of violence, i.e. deaths and injuries.
2. **Form:** The different manifestations of civilian harm: physical, social, economic, psychological, cultural, and so on.
3. **Duration:** The effective length of time that civilians are affected by the consequences of armed action, including long-term and reverberating effects.
4. **Object:** The inclusion of damage to property, land, and infrastructure, both public and private, as a form of civilian harm, and carefully weighed in relation to the other aspects listed here.
5. **Systems:** The triggering of a chain of events due to the use of violence, whereby damage to one element reverberates onto other, interconnected elements.
6. **Variability:** The variable impact of the use of armed violence on civilians based on existing vulnerabilities, identity, and other group or personal characteristics.

Those who do harm: Perpetrators

In any civilian harm event, it is crucial to consider the role of the perpetrator, in particular its capabilities and intentions. We have drawn quite heavily on the threat-based approach to protection – developed by the Norwegian Defence Research Establishment (FFI) – which maintains that military planners need to study and understand certain perpetrator characteristics, so that they can devise the most effective and appropriate protection strategy or military response to particular threats posed by these perpetrators (Kjeksrud et al., 2016). Turning to the different types of perpetrators, we see in 'Cases of civilian harm' that armed forces, members of non-state armed groups, and fighters belonging to neither

category can all cause harm to civilians. Nonetheless, it is important to distinguish between these types of actors to understand the differences in their capability and likelihood to inflict harm. Access to resources and the professional training of troops can make armed forces particularly well equipped to inflict large-scale harm. On the other hand, lack of pay, training and discipline, or insufficient knowledge of or inclination to adhere to International Humanitarian Law (IHL) and a sense of impunity – factors more commonly associated with non-state armed groups – can make non-state actors especially threatening to civilians.

The intentions of a perpetrator are important in this respect. Some perpetrators cause harm intentionally. For them, causing harm can be an end in itself, or a means to an end. Other perpetrators seem to not care if the violence they use causes harm to civilians. We also see cases where actors do not intend to harm civilians, or even try to avoid it, but end up harming them anyway. While the risks for civilians are objectively greater if a perpetrator uses violence to harm civilians intentionally, it is important to realise that civilians can end up perceiving even the most careful actors as threats if they experience the presence of a military actor as harmful. From a military point of view, it is legally and ethically, but also strategically essential to minimise harm to civilians as much as possible.

In 'Elements of civilian harm', we dedicated considerable attention to the question who bears responsibility for harm caused to civilians. It seems straightforward that actors who use armed violence against civilians bear the primary responsibility for the harm they cause. Attributing responsibility can be more difficult when it concerns actors who have not taken up arms themselves but who have supplied intelligence, military equipment or training to actors who have later perpetrated harm to civilians. To what extent are those actors responsible too? While making a case for legal responsibility is complex, we argued that states that claim to protect civilians should systematically consider – and monitor – whether their support to partners can lead to civilian harm. We also pointed out that actors should be held responsible for failures to protect civilians from harm. To refrain from taking action can be as damaging as taking action, especially when civilians are counting on a military actor for their protection. Finally, we discussed the complexity of attributing responsibility when violence exacerbates vulnerabilities that predate the violence itself. To what extent can a perpetrator be held responsible for aggravating already existing, rather than causing new harm? These are important questions especially when we consider future efforts to better prevent, mitigate or respond to civilian harm.

Key factors contributing to causing or mitigating harm

Finally, we argued that a number of key factors in particular influence the degree to which civilians risk being harmed: Decisions made in relation to weapons use and target selection, the area of operations, as well as the shift towards more urban and remote forms of warfare in contemporary conflict. Many of these factors can both increase or decrease the potential of an actor to cause or to mitigate harm to civilians. Of particular concern to increased civilian harm are the more frequent occurrences of urban and remote forms of warfare, where military actors have to operate in highly complex human environments; the worrying use of explosive weapons in populated areas; and an apparent growing disregard for international norms and treaties regulating or prohibiting the use of certain types of weapons and tactics. The latter is evident in the use of prohibited weapons like chemical weapons, and in the targeting of protected services and critical infrastructure, such as hospitals and markets.

We also discussed a recent and more positive development. There appears to be growing willingness among certain states, organisations and military missions to take additional steps to protect civilians. Good practice examples include the AU mission AMISOM and the NATO mission ISAF, which implemented civilian casualty tracking cells in Somalia and Afghanistan respectively to track civilian harm resulting from their own actions, identify excessively harmful patterns, and adapt military practices to prevent or minimise civilian harm (Rupesinghe, 2019; Keene, 2014). While not perfect, these approaches do contribute to civilian protection, especially if national and international security actors take the next step and apply lessons learned in a systematic way in current and future missions.

17.2 The need for a shared understanding of civilian harm

In-depth understanding of what civilian harm is matters. If we look at military practice, 'civilian harm' plays a role in intelligence gathering, targeting and decision-making cycles. When contemplating a particular armed action, IHL obliges planners to adhere to the principle of proportionality. This requires limiting harm to civilians from military action as much as possible: Harm may only occur if it is *proportional* to the direct military advantage the attacking party expects to gain. Here, we see an immediate need for a shared understanding of civilian harm: How can we objectively determine whether harm to civilians is *excessive* if we have a different understanding of what civilian harm encompasses? This raises the question whether in using the principle of proportionality, security actors look at harm occurring immediately because of armed action, or – as we would argue they should – take into account that harm may only become apparent after hostilities have subsided and may extend far beyond the duration of a conflict. And if harm, as a consequence of damages to infrastructure and critical public services, can be traced back to particular military actors and the methods they use, how to incorporate this understanding into military planning and operations?

Working towards a shared understanding of civilian harm matters beyond the military realm too. Military interventions by democratic states require parliamentary – and by extension, public – consent and oversight. Yet, such oversight can be rendered meaningless if crucial information is lacking about the extent to which an intervention causes civilian harm (Watson, 2020). This is especially problematic when expected or already caused civilian harm is part of the political decision-making process determining whether to begin, continue or halt a military intervention. Such deliberations require a comprehensive and shared understanding of the harm (anticipated to be) caused by military action. Additionally, a more complete and shared understanding of how harm to civilians can and does occur is crucial for humanitarian organisations in their efforts to map the needs of people that look to them for aid and protection, and to adequately determine the resources required.

If we are to jointly discuss means and methods to mitigate harm and better protect civilians, or if we are to determine whether harm to civilians from an armed action is 'excessive' or not, it is crucial that we develop a common understanding of the term 'civilian harm'.

17.3 Defining civilian harm

A key challenge to understanding civilian harm is that there is currently no universally accepted definition. Governments, international institutions and non-governmental organisations use varying definitions and quite often leave their conceptualisation of civilian harm unexplained. This increases the risk that actors wrongly assume they share a common understanding of what civilian harm is.

In the Introduction, we reflected on some oft-cited conceptualisations of civilian harm and concluded that they vary considerably. On one end of the spectrum we find those who limit civilian harm to include civilian casualties only and on the other end of the spectrum we find those who include long-term economic and public health impact and even offenses to dignity. Needless to say, such variations in defining civilian harm matter, not in the least for discussions on determining proportionality of the use of violence, or for priority setting in humanitarian assistance. PAX advocates the following definition of civilian harm, based on years of experience working in conflict-affected and post-conflict societies, and on the evidence presented in Part I:

Negative effects on civilian individual or community well-being caused by use of force in hostilities. Effects can occur directly (death, physical or mental trauma, property damage) or indirectly through the destruction of critical infrastructure, disruption of access to basic needs and services, or loss of livelihood. (Bijl & Van der Zeijden, 2020, p. 4)

The construction of this definition is the result of many deliberations with peers. It builds on the definition provided by Kolenda et al. (2016, p. 10). They define civilian harm as 'damage from military operations to personal or community well-being', which they understand to include 'wrongful targeting of key leaders [...], damage and destruction of personal property and civilian infrastructure, long-term health consequences, loss of livelihoods and other economic impacts, and offenses to dignity'. One advantage of our definition of civilian harm is that it draws attention to both the direct and indirect effects of armed action. In doing so, it carves out space to also consider harmful effects that occur through damage to infrastructure, whether directly or because of system interdependencies. In addition, the definition reflects that civilian harm is not limited to physical impact,

but can be of a psychological, environmental, or economic nature as well. The definition also does not contain a temporal limitation. This is on purpose, as we argue that civilian harm needs to be understood to include those negative effects that manifest themselves over longer periods of time.

Our choice for 'use of force in hostilities' rather than 'military operations' – as in the definition of Kolenda et al. (2016) – or 'armed conflict' is equally deliberate. 'Military operations' would reduce the scope of actors who cause harm, excluding for instance non-state actors like paramilitaries, militias or terrorist organisations. The term 'armed conflict' is problematic from a legal point of view as we increasingly see hostile acts that, arguably, take place outside the legal parameters of 'armed conflict' as defined in IHL, such as the use of US drone strikes to execute targeted killings in places like Pakistan, Afghanistan or – recently – Iraq (Vogel, 2010, p. 109; Borger & Chulov, 2020). Particularly so because drone-executed killings often cause more civilian casualties and harm than generally reported and assumed (Callamard, 2020, pp. 6–8). We thus consider it necessary to broaden the scope of civilian harm to also include armed action that does not necessarily fall under IHL. Finally, we think it necessary – like Kolenda et al. (2016) – to emphasise that civilian harm can be both of an individual and communal nature.

With all these deliberations taken together, we believe that this definition adequately encompasses all the complexities of the harm many civilians living through conflict have to face, while also setting clear outer limits for what civilian harm is. As such, we believe this definition contributes to this book's objective to build a common understanding of civilian harm.

17.4 The way forward: Recommendations

Above all, this book makes clear that civilians are likely to suffer when violence is used, whether the violence falls within or outside of IHL parameters. We have challenged the notion that civilian harm is an unfortunate but unavoidable by-product of warfare, and argue that all security actors, be they politicians, policy makers, military, or civilian practitioners in the field, need to thoroughly understand the complex, multi-faceted, and long-lasting harmful effects of the use of violence in and around areas where civilians live and work; whether it concerns their own

actions, those of their partners or their adversaries. We conclude that progress on the protection of civilians and the prevention and mitigation of civilian harm requires doubling down on efforts to understand the human environment in which violence is used in much more detail than currently prescribed in military and civilian discourse, norms and the law. This requires a common understanding of what civilian harm is, and who is responsible for harm caused. This, in turn, calls for a shared definition, as well as emphasis on development of knowledge, skills and expertise to monitor and evaluate – and increasingly to predict – the impact of the use of violence on civilians.

In order to operationalise a civilian harm-sensitive approach in any context of military planning, decision-making, political fora, and academic study, we make a number of recommendations.

To researchers and policy makers, we recommend to:

- **Pursue further academic and applied research** to improve understanding of the many ways in which armed action can negatively impact civilians.
- **Standardise and make explicit the definition of 'civilian harm'** to reflect the full range of direct, indirect and reverberating harm experienced by civilians in conflict. Use the definition formulated in this book as a starting point.
- **Develop and apply methodologies to empirically model pathways of civilian harm**, allowing security and humanitarian actors to better anticipate the reverberating effects of armed action on civilians.
- **Contribute to the development of a public database** logging analyses and best practices for harm mitigation from use of particular weapon systems, tactics and strategies.
- **Use the 'six signatures' of civilian harm approach** to achieve a holistic understanding of the human cost of violence in all its complexity, in military planning, decision making, analysis, mitigation and reporting.

To military decision makers, we recommend to:

- **Implement civilian harm mitigation teams during all military operations** tasked to track civilian harm from own actions, identify harmful patterns, and to adjust tactics, techniques and procedures accordingly to prevent or mitigate future harm.
- **Apply a 'threat-based approach' to the protection of civilians.** Develop the necessary capacity to evaluate a perpetrator's capabilities and intentions and how these may lead to civilian harm, in order to design appropriate and effective protection strategies, including tactics, techniques and procedures to protect civilians from harm by others.
- **Develop policy and doctrine to specifically integrate tracking and analysing of long-term and reverberating effects of armed action in all harm mitigation efforts** (e.g. including anticipated reverberating effects from a military action in proportionality assessments).
- **Assume shared responsibility for any civilian harm resulting from military assistance** (e.g. intelligence sharing, arms transfer, training) **and develop harm mitigation policies accordingly.**
- **Implement publicly scrutinised mechanisms for immediate redress,** for all victims of civilian harm from own actions, irrespective of legal culpability.

By applying these recommendations, we can work towards more transparency about civilian harm from the use of violence, as well as enhanced mutual understanding across stakeholders. We hope that the discussions on specific cases in Part I of this book, together with the more abstract deliberations in Part II encourage further debate on practical improvements towards more effective protection of civilians.

17.5 Concluding remarks

With a topic as complex and substantial as civilian harm from armed action, it is inevitable that not everything can be discussed in all detail. In the Introduction, we indicated that civilian harm from violence can take many forms, not all of which we could include in this book. We encourage others to further explore topics like the interlinkages between crime and violence and its impact on civilians, and destruction of cultural heritage as a form of civilian harm. Similarly, by confining our discussion of civilian harm to negative impact from the use of violence, we have excluded examples of non-violent harm to civilians during times of conflict, for example the consequences for civilians of administrative discrimination by an occupying force. Finally, we would like to stress that we have only broached the subject of indirect responsibility for the perpetration of civilian harm, for instance through the provision of arms, intelligence or training to partnered military forces, and we strongly encourage more attention for this topic.

The original aims of this book – to describe civilian harm in its many forms; to show that it is possible to describe and understand civilian harm events in great detail; and to work towards a shared language and understanding of the topic – proved to be a complex and ambitious endeavour. Now, at the end, we realise we have only grown stronger in our conviction that these are important and worthwhile aims. We are confident that this publication makes considerable contributions towards achieving them.

Some 300-plus pages ago, we began this book with a reflection by us, the editors, on current discourse on the Syrian war. We juxtaposed abstract, distant and 'clean' language about this conflict, as we so often hear in the media and political speeches – 'actor *a* gained military advantage over actor *b*, after having suffered losses in territory *x* some *n* months ago' – with thirteen information-dense narratives using language that more comprehensively reflects the reality of civilians living through conflict. They describe the violence used against civilians, and detail how this subsequently affected – and often continues to affect – people's lives and environs. This book is part of our continued efforts to put civilians front and centre in international debates about protection of civilians and civilian harm mitigation. Only if we understand the myriad ways in which conflict and armed action negatively affect civilians, can we begin to take effective steps towards reducing civilian harm. Because, to echo the words of the Dutch Minister

of Foreign Affairs at the UN Security Council highlighted in the Foreword by Ms. Schuurman, 'if we are not here to protect people, what are we doing?'