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At the Crossroads of Direct Participation in Hostilities and the Use of Human Shields Legal Uncertainty and Protection Gaps

Master's thesis

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Introduction

International Humanitarian Law (IHL) establishes the prohibition on using civilians as human shields. In accordance with Article 51 (7) of Additional Protocol I (Protocol I), the parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.[1] Nevertheless, the impact of shielding certain conduct on the protected status of civilians remains unclear. In current armed conflicts, the use of human shields occurs in densely populated areas, where armed groups operate in proximity to civilian objects. There are documented cases, such as Gaza 2014[2] and Mosul 2017[3], where international bodies reported that military assets are near or within civilian populations, and movement of civilians is restricted. These cases call into question Article 51(3) of Protocol I, which states that "civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities."[4]

With the development of military technology (modern weapon systems), methods of warfare are changing. These developments increase expectations for compliance with the principles of distinction and proportionality, making targeting decisions legally more complex. Real-time monitoring in urban areas creates scrutiny of targeting decisions. The classification of individuals as civilians, combatants, or civilians who lose protection by directly participating in hostilities, including those acting as voluntary or involuntary human shields. It may affect the legal assessment of targeting decisions when they are near military objectives. These developments raise broader interpretative questions regarding the relationship between direct participation in hostilities (DPH) and human shielding in current IHL.

Therefore, the intersection between DPH and human shielding represents one of the most contested interpretative issues in contemporary IHL. There are various approaches regarding human shielding, and these are a clear reflection of prevailing disagreements. The International Committee of the Red Cross's (ICRC) Interpretive Guidance (Guidance) states that voluntary human shielding does not, by itself, constitute DPH or forfeit civilian protection.[5] In contrast, the United States DoD Manual states that voluntary human shields may be considered directly participating in hostilities based on the facts and circumstances of each case.[6] Various interpretations among states, international organizations, and military doctrines allow us to argue about the absence of coherent and clear legal criteria.

This uncertainty reflects a broader tension between the protection of civilians and military necessity. For the maintenance of legal certainty and to prevent undue expansion or contraction of the DPH, the

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[1] Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51(7).
[2] UN Human Rights Council, Report of the United Nations Fact-Finding Mission on the Gaza Conflict (25 September 2009) UN Doc A/HRC/12/48.
[3] Office of the UN High Commissioner for Human Rights, 'Mosul: Protection of Civilians Paramount as Fighting Intensifies' (28 March 2017).
[4] Protocol I (n 1) art 51(3).
[5] Nils Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities (International Committee of the Red Cross 2009) 51.
[6] US Department of Defense, Law of War Manual (June 2015, updated July 2023) para 5.12.3.4.

resolution of this intersection is crucial. Today, hostilities take place in urban areas where civilian objects and military objectives are often next to each other. In such situations, usually weaker parties may deliberately operate within civilian environments to reduce the effectiveness of superior military capabilities.

Although IHL prohibits human shields, it does not explicitly regulate whether a voluntary shield results in loss of civilian protection under Article 51(3) of Protocol I.[7] The treaty system establishes two distinct norms. The prohibition of using civilians to shield military objectives from attack and the rule that governs loss of protection through direct participation, as stated in Article 51(7)[8] and 51(3) of Protocol I accordingly .[9] However, it does not clarify how these provisions interact .

Ambiguity is particularly pronounced regarding voluntariness. Involuntary shields retain civilian protection, with their presence factored into proportionality assessments under Article 51(5)(b) of Protocol I as incidental harm. Yet , determining whether a shield is voluntary or involuntary is rarely straightforward in practice .[10] Modern conflicts are often characterized by restricted mobility, ideological mobilization , and social pressure. This makes it legally complex to distinguish between voluntary and involuntary presence.

A broad interpretation of the principle of distinction may result in "targetability by proximity ." This means that civilians might lose their protection not because of what they do, but just because they are close to military targets. It may affect the proportionality assessment and weaken precautionary obligations in accordance with Articles 51 (5) (b) [11] and 57 of Protocol I. [12]

However , overly restrictive interpretations may fail to account for cases where individuals intentionally contribute to shielding military operations. That is why the paper identifies four core problems :

The absence of clear criteria for determining when voluntary shields lose protection.

The risk of overbroad interpretation of D P H.

The tension between operational realities in urban warfare and doctrinal standards.

Uncertainty regarding the legal status of the evidentiary assessment of involuntary shields.

The "Revolving Door" Dilemma : An analysis of whether the temporal limitation of loss of protection under Article 51(3) remains functionally viable for individuals who engage in persistent or systematic voluntary shielding .[13]

The thesis develops an operationally feasible legal framework to determine when human shielding constitutes DPH . The thesis seeks to clarify the intersection between provisions of Articles 51(3) and

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[7] Protocol I (n 1) art 51(3).
[8] Protocol I (n 1) art 51(7).
[9] ibid art 51(3).
[10] ibid art 51(5)(b).
[11] ibid.
[12] ibid art 51(7).
[13] Protocol I (n 1) arts 51(3).

51(7) of Protocol I. Systematic treaty interpretation, analyses of customary law , and examination of state practice will be used for that purpose.[14] The thesis focuses on doctrinal clarification within the existing legal framework. The proposed model objective is to reduce legal uncertainty , reinforce civilian protection, and prevent the misapplication of the concept of direct participation.

The thesis does not seek to displace the ICRC's three-part framework on direct participation in hostilities. Its original contribution lies elsewhere: in proposing a reinterpretation of the direct causation criterion as applied specifically to voluntary human shielding. The ICRC Guidance leaves this application unresolved. This thesis fills that gap by arguing that causation, in the shielding context, must be assessed functionally, by reference to legally operative effect, rather than purely kinetically. Voluntary human shielding may therefore amount to direct participation not because the civilian physically enables harm, but because their conduct materially constrains or compels a commander to alter or abort an otherwise lawful attack.

Three cumulative elements must be satisfied:

1) Demonstrable intent to shield a military objective,
2) A causal contribution assessed by reference to a legally operative effect rather than kinetic causation alone.
3) Belligerent Nexus to continuing military operation.

Human shielding does not amount to DPH, and civilian protection remains applicable in the absence of these elements. Involuntary shields remain protected, but their presence factors only into proportionality assessments. The thesis proposes a rebuttable presumption of involuntariness, which requires reliable and corroborated evidence to establish loss of protection, which aims to prevent misuse of the voluntary shield classification.

This thesis addresses the following research questions:

1) Does voluntary human shielding constitute DPH under Article 51(3) of Protocol I?

2) Under what cumulative conditions may shielding qualify as direct participation?

3) Do involuntary shields retain full civilian protection?

4. What standards of confirmation and precaution apply in targeting decisions involving alleged shielding?

5. How should IHL address situations relating to psychological presure and contested voluntariness?

[14] ibid art 51(7).

The research adopts a doctrinal legal methodology. A systematic treaty interpretation of Articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT) is employed .[15] It examines Protocol I, Protocol II, and relevant customary international law. State practice is examined via publicly available military manuals and official legal positions, including those of the US [16] UK ,[17] and other selected states. To illustrate the application of the legal principles, cases such as Gaza 2014[18] and Mosul 2017[19], are used.

To evaluate competing interpretations, the research engages leading doctrinal scholars, such as Michael N. Schmitt, Nils Melzer, Yoram Dinstein, and other recognized authors in the field of IHL. Operational considerations are addressed qualitatively to contextualize legal interpretation. The thesis remains doctrinal rather than technical or policy-oriented in nature.

The thesis consists of four chapters.

Chapter I establishes the legal basis for the principle of distinction. It also analyzes the temporary loss of protection in the event of direct participation in hostilities, and examines the criteria proposed in the Guidance and their doctrinal critique. On this basis, doctrinal gaps in the assessment of passive behaviour and causality are identified, which are particularly evident in the analysis of voluntary human shields.

Chapter II examines the treaty basis for the prohibition of human shields, distinguishing between voluntary and involuntary shields, establishing the responsibility of the parties using them, and the obligations of attackers (distinction, proportionality, precautions). It identifies the doctrinal ambiguity of the status of voluntary shields, forming the basis for the analysis of their possible DPH in the next chapter.

Chapter III is the core chapter of the paper. It establishes the legal status of voluntary and involuntary shields. Analyzes the timeframes of loss of protection, state practices through empirical cases, operational targeting dilemmas, and identifies the critical need for clear cumulative criteria for classifying shields as lawful targets.

Chapter IV identifies legal uncertainty and gaps in protection at the intersection of DPH and human shields as a legal grey area, critically evaluates existing approaches, and proposes a structured legal model with three cumulative criteria and a rebuttable presumption of involuntariness.

The conclusion provides direct answers to the research questions, corrects the hypothesis about three cumulative criteria of the DPH for voluntary human shields, and systematizes the proposed legal model with a rebuttable presumption of involuntariness.

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[15] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.
[16] S Department of Defense, Law of War Manual (n 6).
[17] UK Ministry of Defence, Manual of the Law of Armed Conflict (Oxford University Press 2004).
[18] UN Human Rights Council, Report of the United Nations Fact-Finding Mission on the Gaza Conflict (n 2) 31.
[19] Office of the UN High Commissioner for Human Rights, 'Mosul: Protection of Civilians Paramount as Fighting Intensifies' (n 3).

This research is limited to the doctrinal interpretation of existent IHL. It does not propose changes to treaty law or assess the political feasibility of legal reform.

The analysis depends on publicly available sources such as treaties, military manuals, judicial interpretations, and international reports . Access to classified intelligence materials, internal targeting assessments, or confidential operational data is not available and therefore cannot be incorporated.

The study primarily focuses on voluntary and involuntary human shielding in international armed conflicts. Reference is made to customary principles applicable in non-international armed conflicts. It does not examine domestic criminal liability or internal conflict-specific jurisprudence, which lies beyond the scope of this thesis. Even though operational realities are discussed to provide context for legal interpretation, this research remains focused on doctrinal and analytical approaches , rather than technical or tactical ones.

Keywords: Direct Participation in Hostilities, Human Shielding, International Humanitarian Law, Principle of Distinction, Civilian Protection.

1. Normative Foundation

A key principle of IHL is the principle of distinction. As stated in Article 48 of Protocol I and in customary international humanitarian law Rule 1, parties to an armed conflict must always distinguish between civilians and combatants , as well as civilian objects and military objectives, and must direct attacks only against military targets.[20] This principle, reflecting the balance between military necessity and protecting people , acts as a structural limit on using force.

Article 48 of Protocol I establishes the fundamental principle of distinction, which requires that those involved in a conflict restrict their actions to military objectives.[21] It is formally part of treaty law that governs international armed conflicts. Thanks to state practice , it has become a rule of customary international law.[22] Its status as customary international law ensures universal applicability independent of treaty ratification, thereby consolidating its normative authority.

The principle of distinction influences how military operations are planned. It also affects how those operations are carried out. Defining legitimate targets is essential for military planning, intelligence assessment, weapon selection, and targeting procedures. So , distinction is not only a formal norm but also a procedural constraint that influences operational conduct.

Historically, the roots of this protection are in the Hague Regulations of 1907, which first codified the immunity of undefended towns and the distinction between combatants and civilians.[23] The Martens Clause found in the preamble of the Hague Convention IV remains a vital interpretive safety net, ensuring that in cases not covered by specific treaty law, civilians remain under the protection of the “principles of humanity”. It is a crucial factor when analyzing the “grey zone” of voluntary human shields.[24]

1.1. Protection of the Civilian Population under Article 51 of Protocol I

Article 51(1) of Protocol I provides that the civilian population and individual civilians enjoy general protection against the dangers arising from hostilities.[25]

This protection is formulated broadly and provides for the general protection of the civilian population against direct attack.

However, this protection is not functionally absolute in the situation of DPH. The exception in Article 51(3) of Protocol I clearly defines the circumstances in which the civilian population loses protection

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[20] *Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (Cambridge University Press 2005) rule 1.*
[21] Protocol I (n 1) art 48.
[22] International Committee of the Red Cross, *Customary IHL Study* (n 20) rule 1.
[23] Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (signed 18 October 1907, entered into force 26 January 1910) annex, arts 22–28.
[24] ibid preamble (Martens Clause).
[25] Protocol I (n 1) art 51(2).

against attack.[26] This provision suspends protection for such time as the civilian population directly participates in hostilities. Paragraphs 1-3, when read together, form a dynamic legal structure. The civilian protection continues in principle but may be temporarily suspended when the threshold of direct participation is met.

The wording "for such time" in Article 51(3) of Protocol I is important. It shows that protection is lost based on actions rather than status . Unlike combatants, civilians retain protection once their hostilities have ended. This framework aims to prevent civilians from losing their protection indefinitely, even when specific events occur.

To understand it correctly, Articles 51 (2) and 51(3) of Protocol I should be read together as a single protection system, rather than as separate rules. The exception should be interpreted narrowly to preserve the integrity of the protection of civilians.

An important guarantee within the demarcation regime is the presumption established by Article 50(1) of Protocol I.[27] It provides that if there is doubt as to whether an individual is a civilian, that individual is presumed to be a civilian. Presumption operates as a rule of distinction in situations of uncertainty. In practice, targeting decisions are often made in the face of incomplete intelligence. The presumption ensures that uncertainty is resolved in favor of protection, rather than permissible targeting. Customary international humanitarian law confirms this rule. Rule 6 of the ICRC study on customary IHL confirms that civilians are protected from attack unless they directly participate in hostilities.[28] This combination of the presumption and the temporary loss of protection create a structured way to limit the arbitrary expansion of targeting. Notably, this statement does not eliminate operational risk. Commanders still need to assess the intelligence they have and decide if there is a good reason to be suspicious. However, the legal system is designed to protect civilians in situations where the facts are not always clear.

The principle of distinction is not limited to treaty law. This principle is generally recognized as customary international law, which means it applies regardless of whether a country has signed a treaty.[29] Its binding nature is consistently supported by legal decisions, military guidelines, and official statements from diffeternt states.

International legal precedents , including decisions rendered by international courts, have repeatedly upheld the principle of distinction as a fundamental tenet of the essential regulations governing permissible conduct in armed conflict. Violation of this principle constitutes a serious breach of IHL and may lead to individual criminal responsibility when deliberate attacks are aimed at civilians.

[26] Protocol I (n 1) art 51(3).
[27] ibid art 50(1).
[28] International Committee of the Red Cross, *Customary IHL Study* (n 20) rule 6.
[29] ibid rule 1.

1.2. Loss of Protection Under Article 51(3) of Protocol I

Article 51(3) of Protocol I states that civilians are protected against attack “unless and for such time as they take a DPH.”[30] This provision constitutes the principal legal mechanism. It governs the temporary suspension of civilian protection under IHL. It shows a compromise between the protection of civilians and military necessity. It allows parties to a conflict to target civilians who actively engage in hostilities while retaining civilian status. Unlike combatants, civilians do not lose protection permanently through membership in an armed group; rather, protection is activity-dependent.

It includes three important elements.
1. The identity of the subject (civilian)
2. The conduct requirement (direct participation)
3. The phrase “for such time” sets a time limit.

Each part of the provision needs to be interpreted carefully. Considering the provision's goal and what it is meant to achieve. Considering the fact that the term “direct participation” is not defined in the provision, its meaning must be interpreted through various sources of international law. These include the practical application of treaties, by established customs, by court decisions, and by scholarly analysis.[31] As a result, the scope of loss of protection remains one of the most contested issues in contemporary IHL.[32]

Article 51(3) of AP I must be interpreted through the lens of Articles 31 and 32 of the VCLT, to resolve the normative tension regarding the status of human shields.[33]

The term “direct” in DPH, according to its ordinary meaning, implies a lack of intermediary steps. It suggests a causal link between the act and the resulting harm in the context of DPH. The meaning itself creates the first layer of ambiguity when applied to voluntary human shields. A shield does not pull a trigger, but its physical presence is a deliberate act meant to stop a military operation. So, in this case, “directness” must be weighed against the shield’s effect on the enemy’s ability to strike a legitimate target. In accordance with Article 31(1) of the VCLT, “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.[34] The context of Article 51(3) includes the surrounding paragraphs, most notably Article 51(7), which prohibits the use of human shields. A contextual reading suggests a “Protection Gap”: if Article 51(7) characterizes the use of shields as a violation by the party using them, it does not automatically strip the "shielded" individuals of their civilian status. However, reading 51(3) in harmony with 51(7) implies that the law distinguishes between the involuntary shield

[30] Protocol I (n 1) art 51(3).
[31] Michael N Schmitt, 'Direct Participation in Hostilities and 21st Century Armed Conflict' in Horst Fischer and others (eds), *Crisis Management and Humanitarian Protection* (Berliner Wissenschafts-Verlag 2004) 505; see also Marco Sassòli and Laura M Olson, 'The Relationship between International Humanitarian and Human Rights Law Where It Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts' (2008) 90 *International Review of the Red Cross* 599.
[32] Kenneth Watkin, 'Opportunity Lost: Organized Armed Groups and the ICRC Direct Participation in Hostilities Interpretive Guidance' (2010) 42 NYU Journal of International Law and Politics 641.
[33] Vienna Convention on the Law of Treaties (n 16), art 31(1).
[34] Ibid.

and the voluntary shield. To interpret "direct" so narrowly as to exclude voluntary shields would render the prohibition in 51(7) toothless against those who willfully exploit their civilian status to gain a military advantage. The objective and purpose of Protocol I are dual: the protection of the civilian population and the regulation of hostilities based on the principle of distinction. A strictly broad interpretation of DPH risks eroding the civilian “safety net” by making too many people targets. Conversely, a strictly narrow interpretation undermines the object of IHL by incentivizing the “weaponization” of civilian presence. Under the VCLT, the interpretation of Article 51(3) must therefore strike a balance. Protecting the civilian population from being collateral damage, while ensuring that the “human shield” tactic does not become a lawful method of creating “invincible” military objectives.

1.2.1. Conduct-Based vs Status-Based Approaches

A main debate concerns whether Article 51(3) establishes a conduct-based regime or whether it indirectly introduces status-like effects.

The prevailing interpretation in treaty text and doctrine confirms that loss of protection is conduct-based.[35] A civilian who performs isolated acts that qualify as direct participation loses protection only during the execution of those acts and not beyond them.

This approach contrasts with the status-based model applicable to members of organized armed groups in non-international armed conflicts, as recognized in customary law and elaborated in jurisprudence.[36] Considering that members of organized armed groups, even in periods of inactivity, based on continuous combat functions, may be targeted.

The difference between conduct - based and status - based frameworks matters greatly, because misapplication risks either weakening protection or unduly expanding targetability.

In accordance with the ICRC Article 51(3) of Protocol I, it must be interpreted narrowly to preserve the protective purpose of IHL.[37] However, it is argued that certain forms of sustained support activity may be approximate membership-based targeting even where formal status is absent.

This tension becomes especially relevant when assessing repetitive or coordinated conduct such as systematic shielding of military objectives.

1.2.2. Definition of Direct Participation

The treaty text does not contain a definition of direct participation, which necessitated doctrinal clarification. The most influential interpretative framework is presented in the ICRC Interpretive Guidelines on Direct Participation in Hostilities (2009).[38] The guidelines set out three cumulative

[35] William H Boothby, *The Law of Targeting* (Oxford University Press 2012),134–138; Watkin (n 32) 641; *Public Committee against Torture in Israel v Government of Israel* HCJ 769/02 (Israeli Supreme Court, 14 December 2006) paras 30–35; US Department of Defense, *Law of War Manual* (June 2015, updated July 2023) s 5.8.
[36] *Prosecutor v Tadić* (Judgment) ICTY-94-1-A (15 July 1999) [178].
[37] Melzer (n 5) 46.
[38] ibid 47.

criteria: threshold of harm, direct causation, and belligerent nexus. Only conduct that simultaneously satisfies all three elements is considered direct participation.

The action must have a high probability of adversely affecting a party's military operations or military capabilities, or causing death, injury, or destruction to protected persons or objects. [39] The harm must be more than minimal or remote. Preliminary actions or general political support fall outside the scope of DPH. A direct causal link must exist between the act and the result. [40]

This requirement distinguishes direct operational contributions from indirect or less significant support. The causal connection is often a contentious point in practice. The difficulty lies in determining how close the connection between actions and military impact must be. Actions must be specifically aimed at harming one party and benefiting the other in the context of armed conflict. [41] Neutral or random actions are unacceptable. The cumulative nature of these criteria reinforces the restrictive interpretation of loss of protection.

The expression " for such time " establishes a temporal boundary, which is crucial for interpreting Article 51(3) of Protocol I. The suspension of protection is contingent upon the duration of direct participation in hostilities. This temporal limitation precludes the possibility of permanent targeting predicated on prior actions. Nevertheless, the interpretation becomes intricate when participation is not transient but rather prolonged or repeated.

Two main approaches have emerged:

1) Strict Temporal Approach - Protection is immediately restored after the specific conduct ends. In this model, each action is assessed separately.
2) Continuous Function Approach - It is argued that when conduct forms part of a continuous operational engagement, protection may remain suspended for the duration of that engagement. The debate becomes particularly significant in the context of organized armed group members or individuals performing sustained support roles. The time-based understanding directly influences the evaluation of shielding behavior. The duration of loss of protection must be carefully defined when shielding constitutes DPH.

1.2.3. Jurisprudence and Interpretive Practice

International tribunals have addressed direct participation primarily in relation to criminal responsibility rather than targeting the law.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) states that civilians may lose protection if they actively participate in hostilities. The ICTY did not offer a precise definition. Conversely, the conduct-based rationale inherent in Article 51(3) of Protocol I was recognized.

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[39] Melzer (n 5) 46.
[40] ibid 49.
[41] ibid 58.

The ICTY in Prosecutor v Kuperškić stated that the protection of civilians and civilian objects provided by modern international law may cease entirely or be reduced or suspended in three exceptional circumstances:

(i) when civilians abuse their rights.
(ii) when, although the object of a military attack is comprised of military objectives, belligerents cannot avoid causing so-called collateral damage to civilians.
(iii) when civilians may legitimately be the object of reprisals.[42]

The International Court of Justice (ICJ), in 1996, in its Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons, reaffirmed the obligation to distinguish between civilians and combatants but did not directly elaborate on direct participation. Nevertheless, its reasoning supports a restrictive interpretation of targetability, by noting that “States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets”.[43]

National military manuals also reflect careful approaches. The US Department of Defense Law of War Manual states that direct participation requires a direct causal contribution to harm and that ambiguity must be resolved conservatively.[44] Courts intentionally avoid defining DPH precisely.

Determining whether a civilian is directly participating requires a real-time assessment based on the intelligence available. Commanders must evaluate behavior, intention, functional role, and proximity to military operations. It is very important to consider that intelligence is not perfect often. Article 50(1) of Protocol I states that doubt, creating a protective evidentiary threshold, must favor civilian status.

The operational difficulty lies in distinguishing between passive presence near military objectives, voluntary assistance to combatants, and active operational interference. This difficulty becomes severe in urban areas where civilian and military assets coexist.

It is within this evidentiary uncertainty that allegations of human shielding arise. If voluntary shielding satisfies the criteria of direct participation, protection may be suspended. If not, civilians retain immunity despite engaging in unlawful conduct under Article 51(7) Protocol I .

Article 51(7) Protocol I prohibits the use of civilians to shield military objectives from attack, but the provision does not automatically clarify whether this protection constitutes direct participation.[45] This creates a structural contradiction: Article 51(7) Protocol I regulates the wrongful acts of the defending party. Article 51(3) Protocol I regulates the loss of protection resulting from these acts. The main unresolved question is whether intentional protective conduct meets the criteria of direct participation or falls outside the scope of Article 51(3) Protocol I and therefore protects civilians.

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[42] *Prosecutor v Kupreškić et al* (Trial Judgement) IT-95-16-T (International Criminal Tribunal for the Former Yugoslavia, 14 January 2000) para 522.
[43] Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons* [1996] ICJ Rep 226, 257.
[44] US Department of Defense, *Law of War Manual* (US Department of Defense, June 2016, updated July 2023) s 5.8.
[45] Protocol I (n 1) art 51(7).

1.3. The ICRC Interpretive Guidance and Its Critique

1.3.1. Normative Status and Purpose of the Interpretive Guidance

The Interpretive Guidance on the Notion of Direct Participation in Hostilities was published in 2009. The purpose of the interpretive Guidance is to provide recommendations concerning the interpretation of IHL as far as it relates to the notion of direct participation in hostilities. Accordingly, recommendations made by the Interpretive Guidance, as well as the accompanying commentary, do not endeavor to change binding rules of customary or treaty IHL, but reflect the Guidance's institutional position as to how existing IHL should be interpreted in light of the circumstances prevailing in contemporary armed conflicts.[46] The document is not legally binding, but it has become one of the most frequently cited interpretative instruments in academic literature and military manuals.

The Guidance tries to provide a structured analytical framework for determining when civilian conduct amounts to DPH. Its importance is in offering operational criteria that aim to reduce interpretative uncertainty in targeting decisions. Guidance, despite its significant impact, has been the subject of considerable debate. Both states and academics have criticized its methodological framework and the conclusions it presents. This ongoing discussion stresses fundamental disagreements regarding the appropriate boundaries of civilian protection.

1.3.2. Three Cumulative Criteria and Scholarly Criticism

The Guidance formulates three cumulative criteria: threshold of harm, direct causation, and belligerent nexus, and only conduct satisfying all three elements simultaneously qualifies as direct participation in hostilities. The causation criteria become particularly relevant when analyzing conduct such as human shielding. Shielding does not physically destroy targets but may influence the feasibility or legality of an attack. Whether such influence constitutes direct causation is precisely the point of contention.

Michael N. Schmitt argues that the International Committee of the Red Cross (ICRC) Guidance sets the threshold of harm too narrowly, focusing mainly on damage to the opposing force. He suggests that this perspective omits actions that, while not directly inflicting harm on the enemy, nonetheless support a party's military capabilities, including the construction of defensive fortifications or the repair of air strips. Michael N . Schmitt maintains that such activities can constitute an essential component of military operations and, consequently, should, under specific conditions, be deemed direct participation in hostilities.[47]

He further criticises the restrictive reading of the threshold of harm when combined with the strict direct causation requirement, arguing that operational reality does not always permit clear distinctions between harmful and capacity - enhancing contributions . Schmitt's perspective suggests that excluding actions that bolster one's own capabilities could lead to an overly limited understanding of direct participation. This critique aligns with a wider apprehension that an overly constrained

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[46] Melzer (n 5) 47.

[47] Michael N Schmitt, "The Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law: A Critical Analysis" (2010) 1 *Harvard National Security Journal* 5, 27.

methodology might disrupt the equilibrium between safeguarding civilians and fulfilling military objectives in modern warfare.[48]

Yoram Dinstein offers a more expansive interpretation of direct participation in hostilities, underscoring the necessity of considering the practical dynamics of armed conflict. Although he recognizes the significance of safeguarding civilians, he posits that intentional actions undertaken to further military goals - even those not involving direct violence - could, under specific conditions, warrant a temporary suspension of civilian protection. This viewpoint implies that overly narrow definitions of direct participation could inadvertently omit actions that substantially contribute to the conduct of hostilities.[49]

Well - known military legal expert Kenneth Watkin criticized the ICRC's restrictive "constitutive harm" approach. According to him, the ICRC fails to account for the complications of "war amongst the people".[50] In these cases, functional roles often blur the line between civilian and combatant. Another expert, William Boothby, said that the interpretation of DPH must remain operationally relevant for commanders who face the tactical reality of human shields on the ground.[51] He suggests that the focus should remain on the actual impact of conduct on military operations.

1.3.3. State Perspectives

State practice reveals additional divergence from the Guidance. Military manuals issued by certain states adopt broader formulations of direct participation that do not strictly adhere to the three cumulative criteria as interpreted by the ICRC.

For example, the approach of the United States practice shows that interpretations of direct participation in hostilities are not uniform. In the Manual on military law of the Ministry of Défense of the United States, a context-oriented approach is used when assessing whether the behaviour of the civilian population is a direct participation in hostilities. The Manual explains that civilians can be deprived of protection from attack while they take direct part in hostilities, and it is emphasized that the assessment depends on the nature of the action and its connection with military operations.[52] The Guidelines recognize that certain forms of support for military operations can qualify as direct participation. However, they have a sufficiently close connection with the conduct of hostilities. In particular, the analysis is focused on whether this activity contributes to effective military actions or the operational ability of the conflict party. While the Manual references the Guidance concerning the interpretation of direct participation in hostilities, it subsequently articulates the United States specific understanding of the relevant legal framework. This Guidance is not intended to be an authoritative or exhaustive definition of direct participation. This view shows a wider model of state practice, states define the parameters of DPH in accordance with their own operational and legal procedures.

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[48] Michael N Schmitt, 'Deconstructing Direct Participation in Hostilities' (2010) 42 *New York University Journal of International Law and Politics* 719.
[49] Yoram Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict (1st edn, Cambridge University Press 2004), 119.
[50] Watkin (n 32) 641.
[51] William H Boothby, *The Law of Targeting* (Oxford University Press 2012) 145.
[52] US Department of Defense, *Law of War Manual* (US Department of Defense, June 2016, updated July 2023) s 5.8.

The United Kingdom Manual of the Law of the Armed Conflict adopts a conduct-based approach. In accordance with this Manual, taking a direct part in hostilities is interpreted "more narrowly than making a contribution to the war effort," whether civilians are doing so is a question of fact to be determined on a case-by-case basis.[53] In the UK, the threshold requires not general support for military effort, but active operational participation. For example, civilians serving anti-aircraft guns or sabotaging military installations are directly involved in hostilities. While civilians who work in munitions factories or equipment repair shops are not.

The Canadian Armed Forces Soldier's Handbook on the Law of Armed Conflict verifies that civilians lose protection only while directly participating in hostilities. They may be attacked only for such time as they do so. The Handbook also acknowledges that LOAC does not provide agreed criteria for determining when conduct amounts to DPH. So, each decision must be made honestly and reasonably based on the information available at the time. The Handbook notes that civilians who repeatedly participate may lose protection indefinitely. A civilian who loses protection because of repeatedly participating can regain it by withdrawing from hostilities for a prolonged period.[54]

1.3.4. Core Tension: Restrictive Protection vs Operational Reality

By requiring direct causation and the cumulative satisfaction of strict criteria, the Guidance narrows the circumstances in which civilians lose protection from attack. While this approach helps protect civilians, it could reduce the flexibility of military operations when dealing with changing forms of involvement in conflict . From a practical perspective, the difficulty lies in categorizing actions that do not directly involve weapons but still play a strategic role in supporting hostile actions. The tension becomes especially apparent when considering the practice of voluntary human shielding.. If shielding is understood as simply increasing the operational or legal difficulties of an attack, without directly causing military harm, it would not meet the direct causation requirement outlined in the Guidance. However, where shielding effectively prevents or significantly delays the neutralisation of a military objective, it may arguably form part of the causal chain influencing military outcomes. The Interpretive Guidance does not directly address this matter.

1.3.5. Implications for Human Shielding

The debate surrounding the Interpretive Guidance has direct implications for the legal assessment of human shielding. This debate has produced two principal interpretative approaches.

- Under a strict reading of the Guidance, voluntary shielding is unlikely to constitute direct participation. It rather affects targeting assessments than causing direct military harm.
- From a functional perspective, shielding can be considered direct participation if it actively disrupts military operations and helps maintain a military advantage.

[53] UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford University Press 2004) paras 2.5.2, 5.3.2, 5.3.3.
[54] Canadian Armed Forces, *Soldier's Handbook on the Law of Armed Conflict Applicable to Land Warfare* (Office of the Judge Advocate General, September 2025) ch 3, paras 11–13.

The absence of consensus shows why the legal status of voluntary human shields remains subject to doctrinal debqte and divergent state practice. The critique of the Guidance highlights a structural uncertainty: while it provides analytical guidance, it does not conclusively resolve the classification of complex conduct such as shielding.

The mere fact that a civilian voluntarily positions themselves near a military objective does not, in my view, suffice to strip them of protection under Article 51(3). What matters is whether their presence actually changes anything. A civilian standing in front of a building that will be destroyed by a precision missile strike does not affect the outcome. The strike will happen regardless, and their presence serves no military function from either side. In such a case, there is no meaningful causal link between their conduct and any military result, and protection should be retained.

The analysis changes where shielding genuinely works, where the presence of civilians causes an attacker to abort or significantly alter an operation. In that scenario, the shield has produced a real military effect, and the functional requirements of direct participation may be met. Similarly, an organised group deliberately blocking access to a military objective during a ground operation is in a fundamentally different position from a lone individual whose presence is militarily irrelevant. In short, the question is not what the civilian intended, but what their conduct actually achieved.

1.4. Theoretical Controversies and Operational Interpretation

1.4.1. Passive Conduct and the Limits of Participation

Passive conduct and the boundaries of participation represent a central point of contention in the interpretation of Article 51 (3) of Protocol I. The prevailing understanding in both doctrine and state practice holds that mere civilian presence near a military objective does not constitute direct participation, even where that presence complicates targeting decisions.[55]

This position has been reaffirmed in post-2009 scholarship and operational practice. Sassòli argues that passive presence, even if tactically inconvenient for an attacker, cannot satisfy the direct causation requirement without a demonstrable operational effect.[56] Crawford similarly emphasises that the threshold must remain tied to conduct rather than location, warning that any erosion of this distinction risks collapsing the civilian-combatant divide in urban warfare.[57] State practice in the Ukraine-Russia and Israel-Hamas conflicts has further tested this boundary: in both contexts, the mere presence of civilians near military positions has not been treated as sufficient grounds for loss of protection absent evidence of active functional contribution.[58]

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[55] Watkin (n 32) 648; Boothby (n 35) 140; UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford University Press 2004) para 5.3.2.

[56] Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar 2019), 342–343.

[57] Emily Crawford, *Identifying the Enemy: Civilian Participation in Armed Conflict* (Oxford University Press 2015) 112–115.

[58] Françoise Hampson, 'Direct Participation in Hostilities and the Interoperability of the Law of Armed Conflict and Human Rights Law' (2011) 87 International Law Studies 187, 198–200; UN Human Rights Monitoring Mission in Ukraine, *Report on the Human Rights Situation in Ukraine* (OHCHR, 2022) para 43; UN Human Rights Council, *Report*

In my view, both questions admit to a functional answer. Non-kinetic conduct, whether cyber operations, intelligence collection, or logistical coordination, should be assessed by its actual operational effect rather than its physical form. Where such conduct produces a tangible military result, the threshold and causation requirements are satisfied regardless of whether the means employed were kinetic. Similarly, a person whose daily activity is directly and continuously linked to military operations - planning, preparing, or enabling attacks - confers a sustained military advantage on one party and should be regarded as losing protection for the duration of that function, not merely during discrete acts. The continuous combat function concept captures this reality: what matters is not whether the individual pulled a trigger, but whether their contribution was operationally indispensable to the conduct of hostilities.

1.4.2. Support Functions and Functional Integration

Supporting functions that indirectly contribute to military operations is another important and debated problem. Supporting functions such as logistic assistance, intelligence gathering, communication facilitation, or logistical coordination may not involve DPH. However, it may enhance the effectiveness of military action.

The Interpretive Guidance differs between direct and indirect participation in hostilities. It suggests that the threshold is satisfied only in the case of conduct with a causal effect. However, there are arguments that functional integration into operational structures may justify it as DPH even if the contribution is not kinetic. Members of organized armed groups belonging to a party to a conflict who have a “continuous combat function” are also disqualified as civilians, although the term “direct participation” remains relevant as to them because a “continuous [combat] [59]function involves the preparation, execution, or command of acts or operations amounting to direct participation in hostilities.

In practice, the tension between these approaches is not solved. Wide interpretations risk expanding targetability, while excessively restrictive interpretations may shield conduct that effectively contributes to hostilities.

1.4.3. The problem of the Causal Chain

One of the challenging interpretive elements in the application of DPH is the “direct causation”. The central doctrinal tension is in determining how proximate the causal link must be between a civilian’s conduct and the resulting harm to the adversary.

Harm often results from complicated chains of events involving multiple actors and intermediate decisions. Rarely does a single action directly and immediately produce military damage. Guidance attempts to limit direct participation to conduct that triggers harm in one causal step, without “substantial intervening” steps.[60] This restrictive approach raises significant operational questions.

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of the Independent International Commission of Inquiry on the Occupied Palestinian Territory (A/HRC/56/26, 2024) para 31.

[59] Schmitt, ‘Deconstructing Direct Participation in Hostilities’ (n 54).704.

[60] Melzer (n 5) 51–54.

For example, does an individual's physical obstruction of access to a military objective or their presence as a voluntary shield lead to the cancellation of an attack, satisfy the requirement of directness?

Scholars such as Michael Schmitt argue that the causal chain should not be assessed in purely mechanical or "kinetic" terms. In accordance with Schmitt, the "threshold of harm" is met not only through physical destruction but also through the neutralization of a military advantage.[61] Under this functional view, if a voluntary human shield deliberately exploits the attacker's duty to comply with the principle of proportionality, they are functionally participating in the hostilities. The Israeli Supreme Court addressed the question: When can it be said that a civilian takes a direct part in hostilities? Noticed that "a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them, or is using arms, or is on his way back from such a place, is a civilian taking a direct part in hostilities."[62] The "harm" caused to the attacker is the operational paralysis and the forced forfeiture of a legitimate strike.

In accordance with Nils Melzer, the "intervening step" of a commander's decision to abort an attack breaks the causal link, rendering the shield's participation "indirect." However, critics like Kenneth Watkin and Bill Boothby point out that in modern "war amongst the people," this distinction is increasingly artificial.[63] There are situations when the law directs the commander to cancel the attack due to the shield's presence. In such cases, the civilian's conduct becomes the proximate cause of the military disadvantage. The commander's decision is not an independent intervening act but a legally compelled response to the shield's tactical maneuver.

This thesis posits that the causal link in the context of human shielding should be evaluated based on its legally operative effect. When a civilian's intentional conduct shifts the proportionality equation to the point where an attack becomes legally prohibited, that civilian has moved beyond passive presence into active participation. By weaponizing their legal status to protect a military objective (a tactic often described as lawfare), the voluntary shield fulfils the functional role of a defensive asset. Ultimately, the causal chain problem in human shielding cannot be resolved by looking for a physical "trigger." Instead, it must be understood as a functional contribution where the civilian's choice is the direct cause of the attacker's inability to lawfully engage a military target.

1.4.4. Risk Creation and Direct Harm

Further theoretical differences concern the distinction between creating risk and causing direct harm. Many actions in armed conflict increase the chance of harm, even if they do not directly cause it. For example, being close to military targets increases the chance of more harm , but it does not directly cause physical damage. The explanatory note clarifies that creating risk indirectly isn't enough to

[61] Schmitt, 'Deconstructing Direct Participation in Hostilities' (n 54).697, 725.
[62] Public Committee Against Torture in Israel v The Government of Israel HCJ 769/02 (Supreme Court of Israel, 11 December 2006).
[63] Watkin (n 32) 641.

prove direct participation. [64] Direct participation requires a stronger connection than just recognizing or amplifying a threat.

However, it is questionable whether the deliberate manipulation of risk for tactical advantage can transform risk creation into operational intervention.

If civilians deliberately take positions to exploit proportionality constraints and thereby prevent attacks, it can be argued that their conduct constitutes strategic interference in military decision-making, rather than abstract risk creation.

This analytical distinction is important because it determines if certain forms of voluntary human protection are excluded from the scope of Article 51(3).

1.4.5. Operational Implications

From an operational perspective, the theoretical discussions discussed above lead to practical decision-making problems. Commanders must assess several factors:

The nature of the behaviour determines if it is simply passive or functionally integrated.

Whether the supporting actions reach the threshold of direct harm.

The immediacy of the causal relationship.

Whether a risk-based intervention constitutes participation.

These decisions are frequently made in real-time, often in situations where complete information is not available.

These are not abstract theoretical distinctions and have real consequences. A commander who gets the assessment wrong and orders a strike on a civilian who was not actually participating in hostilities may be personally liable under international humanitarian law. In practice, such prosecutions are rare, and the gap between what the law requires and what actually happens in courtrooms is significant. But the rarity of prosecution does not make the legal obligation disappear. This is also precisely why a human shield is so legally difficult. When civilians deliberately place themselves near military objectives, they put commanders in exactly this position — forced to make a judgment call in real time, with incomplete information, knowing that the wrong decision carries legal consequences either way.

Article 50(1) of Protocol I provides legal protection for civilians in situations where their status is unclear. Even when intelligence suggests intentional defensive actions, there can still be uncertainty about how to classify individuals. Because there is no widely accepted way to interpret these conflicting situations. Different countries have developed different practices, leading to inconsistencies in how they operate.

[64] Melzer (n 5) 51–54.

2. Use of Human Shields in IHL

2.1. Treaty Law

The treaty framework of IHL strongly prohibits the use of human shields. The core provision is Article 51(7) of Protocol I, which prohibits parties to a conflict from using the presence or movements of civilians to render military objectives immune from attack, and from directing civilian movement for the same purpose.[65]

This provision reflects a fundamental problem of IHL by preventing parties to conflict from exploiting the protected status of civilians for military aims. Article 51(7) seeks to preserve the integrity of the principle of distinction and prevent the manipulation of the protection of the civilian population as a tactical tool by prohibiting the deliberate use of the presence of civilians to deter attack on military objectives.[66]

The prohibition contained in Article 51(7) Protocol I is necessary understood within the broader normative framework of Protocol I. This provision is complementary to the rules regulating civilian protection under Article 51(1), (3) Protocol I. This Article establishes the general immunity of civilians from attack and defines the limited circumstances when such protection may be temporarily suspended.[67] Therefore, the prohibition of human shielding by addressing conduct that deliberately undermines the distinction between the civilian population and military objectives operates hand in hand with the principle of distinction.

Although the most explicit articulation is represented by Article 51(7) Protocol I, the concept itself is rooted in earlier treaty law and predates Protocol I. In accordance with the Fourth Geneva Convention, “The presence of a protected person may not be used to render certain points or areas immune from military operations.”[68]

This rule applies in situations of occupation. It also reflects a broader humanitarian principle that protected persons must not be exposed to danger with the aim of shielding military objectives. During the Second World War, civilians were deliberately placed near military installations to deter enemy attacks. In response to such practices, the provision was formulated. Also, Article 23 of the Third Geneva Convention says that “No prisoner of war may at any time be sent to or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.” [69]Additionally, any other protective

[65] Protocol I (n 1) art 51(7); Michael N Schmitt, 'Human Shields in International Humanitarian Law' (2009) 47 Columbia Journal of Transnational Law 292; Stéphanie Bouchié de Belle, 'Chained to Cannons or Wearing Targets on Their T-Shirts: Human Shields in International Humanitarian Law' (2008) 90 International Review of the Red Cross 883.
[66] Bouchié de Belle (n 65) 884–886.
[67] Protocol I (n 1) art 51(1),(3).
[68] Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) art 28.

[69] ibd art 23.

measures taken in favor of the civilians shall also apply to them. Even though the provision does not use the term "human shields", it reflects the same principle that a protected person must not be used to protect military objectives.

Treaty provisions together express that the prohibition of shielding is embedded within the broader protective logic. Prevention of parties to conflict from transferring the risks of military operations onto civilians is the common objective of these rules.

Protocol I reinforces the protective framework through Article 58. The Article imposes obligations on parties to a conflict to take precautions against the effect of attacks. Particularly, parties to a conflict are required "to the maximum extent feasible," to avoid locating military objectives within or near densely populated areas.[70] The purpose of this requirement is to reduce the chances of civilian harm during military operations.

Articles 51(7) and 58 of Protocol I are strictly linked. Article 51(7) Protocol I forbids using civilians to protect military targets, while Article 58 Protocol I requires a broader responsibility to reduce risks to civilians. The joint effect of these Articles consists of placing primary responsibility on the defending party to avoid exposing civilians to the dangers of hostilities.

The prohibition of human shields has been recognized as a rule of customary IHL as well. Rule 97 of the customary IHL Study identifies the prohibition of the use of human shields and affirms that it applies in both international and non-international armed conflicts.[71]

Not all states are parties to Protocol I, and that fact makes crucial the recognition of the rule as customary law. It extends the prohibition beyond the formal scope of Protocol I. It means that, regardless of treaty ratification, the prohibition of shielding is widely regarded as binding on all parties to armed conflicts. Fundamental humanitarian *rationale* underlying the rule, which shows universality.

International criminal law, within its framework, reinforces the prohibition of human shielding. The use of human shields is classified as a war crime in accordance with the Rome Statute of the ICC.[72]

Article 8(2)(b)(xxiii) criminalizes the act of utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military operations.[73]

The criminalization of the shielding under the Rome Statute means that the international community recognizes shielding as a serious violation of the laws and customs of war. This also means that the exploitation of civilians for military aims is incompatible with the fundamental principles of humanitarian protection.

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[70] Protocol I (n 1) art 58(b).
[71] Henckaerts and Doswald-Beck, *(n 20*) Rule 97.
[72] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 8 (2)(b)(xxiii).; *Prosecutor v Blaškić* IT-95-14-A (ICTY Appeals Chamber, 29 July 2004) para 654.
[73] Rome Statute (n 73) art 8(2)(b)(xxiii).

It is essential to note that the treaty base regulates the behavior of the parties that use civilians as human shields, but not the legal status of civilians.

The lack of clear guidance has significant legal implications. It does not automatically determine whether the civilian involved can be considered a legitimate target. As a result, the legal status of civilians voluntarily stationed near military objectives is subject to interpretation within the broader framework of direct participation in hostilities.

The ambiguity of this question has led to extensive scientific discussions. Some commentators emphasize that the ban on the use of human shields applies to the actions of the party using the presence of the civilian population and should not automatically affect the protected status of the civilians participating in it. Opponents argue that, under certain circumstances, the voluntary use of shields, specifically if such behavior intentionally interferes with hostilities, may meet the criterion for DPH.[74] This ambiguous interpretation reveals a structural gap in the treaty framework. Although IHL directly prohibits the use of human shields, it does not fully define how the presence of shields affects the legal analysis of targeting decisions.

The understanding of treaty law, which regulates the use of human shields, is a necessary basis for the analysis of the broader doctrinal discussion discussed in this paper. The ban establishes a legal basis but does not definitively determine the status of civilians participating in the use of human shields. Thus, in the next section, the conceptual difference between voluntary and involuntary use of human shields and its significance for the application of Article 51(3) of Additional Protocol I is considered.

2.2. Voluntary and Involuntary Human Shields

Based on the legal framework established in Section 2.1, it is necessary to distinguish between voluntary and involuntary shields. Simply because their legal status depends on the nature of their involvement. In comparison with the prohibition itself, which is clearly articulated in treaty law and customary IHL, the legal status of civilians participating in a human shield situation is less clearly defined. IHL does not explicitly distinguish between civilians who are intentionally positioned near military objectives by one party to the conflict and those intentionally occupying such positions to prevent attacks. In comparison with the prohibition itself, which is clearly articulated in treaty law and customary IHL, the legal status of civilians participating in a human shield situation is less clearly defined. Particularly, IHL does not explicitly distinguish between civilians who are intentionally positioned near military objectives by one party to the conflict and they intentionally occupying such positions to prevent attacks.

This distinction has important implications for how we apply the laws of war. Even if they don't agree, civilians used as human shields are still protected by the principle of distinction and aren't considered active participants.

[74] Michael N Schmitt and John J Merriam, 'The Tyranny of Context: Israeli Targeting Practices in Legal Perspective' (2015) 37 University of Pennsylvania Journal of International Law 53, 114–118; Geoffrey S Corn, 'Beyond Human Shielding: Civilian Risk Exploitation and Indirect Civilian Targeting' (2020) 96 International Law Studies 118, 118–120.

On the contrary, the legal status of civilians, who voluntarily act as shields, raises the difficult questions related to possible loss of protection in accordance with Article 51(3) Protocol I. To determine whether such conduct constitutes DPH or not requires careful analysis of factual circumstances and the legal criteria regulating participation.

2.2.1. Involuntary Human Shields

Involuntary human shields are civilians who find themselves in proximity to military objectives without genuine freedom of choice. This may arise in several ways: civilians may be physically compelled to remain near military assets; they may be prevented from evacuating areas where military operations are taking place; military objectives may be deliberately relocated into densely populated civilian areas; or civilians may be unable to leave due to the breakdown of infrastructure, restricted mobility, or the dangers of movement itself.[75]

IHL treats such civilians as protected persons whose proximity to military objectives does not alter their civilian status. Protected persons must not be used for military purposes. Civilians are entitled to protection precisely because they are not participants in the conduct of hostilities.[76]

The position that involuntary shields retain full protection is broadly supported in academic literature and state practice. Dinstein argues that the prohibition of human shielding is directed at the party exploiting civilian presence, not at the civilians themselves.[77] Schmitt similarly confirms that civilians compelled to shield military objectives retain their protected status and must be factored into proportionality assessments as civilians.[78] The ICRC Customary IHL study affirms this position under Rule 9 7 .[79]

The practical difficulty, however, lies in establishing whether shielding is truly involuntary. In urban warfare, civilians may appear to be voluntarily present near a military objective while in fact acting under coercion, social pressure, or ideological influence. Article 50(1) of Protocol I resolves this evidentiary problem by establishing a presumption in favour of civilian status in cases of doubt. In my view, this presumption must apply with particular force in shielding situations, where the consequences of misclassification are lethal. The burden of establishing voluntariness must rest on the attacking party, and that burden is a high one.

A further question concerns whether the involuntary nature of shielding matters if it negatively affects military operations. The presence of involuntary shields does not grant immunity to a military objective — it affects the proportionality calculus but does not make an attack unlawful per se. The involuntary nature of the shields is legally relevant not because it changes the targetability of the objective, but because it determines how civilian casualties are attributed — to the defending party that created the situation, not to the attacker who complied with IHL.[80]

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[75] Schmitt, 'Human Shields' (n 65) 300–302; Bouchié de Belle (n 65) 888–890.
[76] Protocol I (n 1) arts 51(1), 51(7); Henckaerts and Doswald-Beck (n 20) Rule 97, 337.
[77] Dinstein (n 49) 123.
[78] Schmitt, 'Human Shields' (n 65) 302–305.
[79] Henckaerts and Doswald-Beck (n 20) Rule 97, 337.
[80] Corn (n 74) 118–122; Schmitt and Merriam (n 74) 114–118.

The use of involuntary human shields has been documented in several recent conflicts. In Mosul in 2017 Islamic State militias systematically prevented civilians from evacuating and forced them to remain near strategic positions..[81] In the Russia - Ukraine conflict, Russian forces have been reported to have used civilians in occupied territories to shield military installations from Ukrainian strikes.[82] The Israel - Hamas conflict in Gaza since October 2023 has produced extensive documentation of Hamas embedding military assets within civilian infrastructure, hospitals, schools, and residential buildings, making the distinction between voluntary and involuntary shielding particularly dificult to establish in practice. [83]

2.2.2. Voluntary Human Shields

The legal analysis becomes significantly more complex when civilians voluntarily place themselves near military objectives in order to deter attacks. In such cases, civilians intentionally rely on their status to influence the actions of the attacking party. Human shielding, when done voluntarily, can take many different forms.

Civilians may group around military facilities , position themselves near weapons systems, or remain in areas where military operations are taking place with the intention of discouraging enemy attacks. These actions might be motivated by political support for one side in the conflict, a strong ideoloqical belief, or a desire to protect local infrastructure from damage. From a legal perspective voluntary shielding raises a fundamental question. Does such behavior remain within the scope of civilian protection, or does it constitute direct participation in hostilities?

One of the approaches highlights that voluntary shields are civilians protected from direct attack. In this view, the prohibition on shield use mainly targets the actions of those who misuse civilian presence, not the civilians themselves. Civilians who choose to be near military sites might akt recklessly or even illegally. Their actions do not automaticaly make them part of the fighting. Article 51(3) of Protocol I states that the loss of civilian protection should only apply to actions that directly support the fighting. Actions only increasing the political or legal value of the attack do not necessarily meet this threshold.

Similarly, a cautious approach is adopted by the Guidance on Direct Participation in Hostilities. In accordance with the Guidance, DPH requires a specific threshold of harm, as set out in section 1.2.3.[84] Classification of voluntary shielding as DPH depends on whether the conduct meets these cumulative criteria under this framework.

According to Michael N. Schmitt, individuals intentionally placed themselves near military objectives in order to prevent their neutralization and may be functionally contributing to military operations.[85]

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[81] UN Human Rights Office of the High Commissioner, *Report on the Protection of Civilians in the Armed Conflict in Iraq, 2016–2017* (OHCHR 2017) para 45.
[82] UN Human Rights Monitoring Mission in Ukraine (n 58), *Report on the Human Rights Situation in Ukraine* (OHCHR 2022) (n 58) para 43.
[83] UN Human Rights Council (n 2) para 31; Schmitt and Merriam (n 74) 119–123.
[84] Melzer (n 5) 46.
[85] Schmitt, 'The Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law: A Critical Analysis' (n 47), 27.

Voluntary shields may indirectly preserve the military capability of the defending party by increasing the operational difficulty of targeting military objectives.

Yoram Dinstein also argues that voluntary human shielding cannot always be described as passive behaviour. If individuals knowingly and intentionally act to protect military objectives from attack, their conduct can form part of the operational effort of one of the parties to the conflict.[86]

These interpretations show the doctrinal uncertainty surrounding the legal status of voluntary shields. As a result, a broad interpretation of direct participation in civilian protection could unintentionally weaken. It may alllow targeting based on actions that do not cause immediate harm. Conversely, a very narrow interpretation might overlok situations where civilians actively help a party in the conflict achieve its military goals. In addition, strict interpretations might not apply when civilians intentionally assist one side in a conflict to reach its military objectives.

2.3. The Problem of Determining Voluntariness

The distinction between voluntary and involuntary shielding is usually difficult to apply. Assessment of intent, coercion, and surrounding circumstances allow as to determine whether civilians are acting voluntarily. Realities of modern armed conflicts make this assessment complicated.

In circumstances of urban warfare, the restricted mobility of the civilian population, restricted access to safe evacuation routes, and significant pressure by armed groups in civilian areas. A civilian who remains near a military objective because leaving is impossible or life-threatening cannot be treated as a voluntary shield simply on the basis of their presence.[87]

Coercion may also take indirect forms that are difficult to observe. Social pressure, ideological mobilisation, and fear of retaliation may influence individuals in ways that are not immediately apparent, including to a military commander making a real-time targeting assessment. What appears at first glance to be voluntary presence may in fact reflect underlying coercive circumstances.[88]

These evidentiary difficulties have direct legal consequences. Article 50(1) of Protocol I establishes that in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.[89] The question is whether this presumption extends to voluntariness, that is, where it is unclear whether a civilian is acting voluntarily or under coercion, should involuntariness be assumed.

In my view, yes. The presumption in Article 50(1) is grounded in the humanitarian principle that the consequences of misclassification are potentially lethal and irreversible. The same logic applies to voluntariness. Doubt about whether shielding is voluntary should operate in favour of the civilian, not because voluntary shielding can never be established, but because the evidentiary threshold must be high and the burden must rest on the attacking party.

[86] Dinstein (n 49) 122.
[87] Schmitt, 'Human Shields' (n 65) 309; Bouchié de Belle (n 65) 895.
[88] Corn (n 74) 125–127; Bouchié de Belle (n 65) 896.
[89] Protocol I (n 10) art 50(1).

This position has three practical implications beyond interpretive caution.

First, proximity alone is not enough. The attacker must gather and assess available intelligence indicating genuine intent before treating a civilian as a voluntary shield. Remaining near a military objective, even after warnings, does not by itself establish voluntariness where evacuation was unsafe or impossible.

Second, behavioural indicators matter more than location. Relevant factors include whether the civilian was observed actively positioning themselves near the objective, whether they showed awareness of its military purpose, and whether their conduct was coordinated with the defending party rather than incidental to it.

Third, the standard must be context-sensitive. Where time and circumstances permit intelligence assessment, as in a planned precision strike, a higher evidentiary threshold is appropriate. In a rapidly evolving ground engagement, the presumption of involuntariness must apply unless behavioural evidence clearly indicates otherwise.[90]

The concept of voluntary shielding must not become a justification for targeting decisions based on mere proximity. Only clear and reliable evidence of genuine intent should trigger consideration of loss of protection under Article 51(3) of Protocol I.[91]

2.4. Legal Implications for Targeting Decisions

Involuntary shields remain protected civilians, and their presence must be taken into account during the assessment of the proportionality of an attack. The expected incidental harm may increase because of their presence, and it affects the legality of a proposed military operation.

However, voluntary shields occupy a more ambiguous position. When their conduct does not constitute DPH, they remain protected and must be included in proportionality assessments as other members of the civilian population.

Contrary, if voluntary shielding satisfies the DPH criteria, then the civilians involved temporarily lose protection from direct attack "for such time" because of their engagement in the relevant conduct. In such situations, they may be treated in the same way as other civilians who are DPH.

The central legal challenge, therefore, lies in determining whether voluntary shielding behavior satisfies the legal criteria for DPH. Resolving this issue requires a more detailed examination of the concept of direct participation. It also requires consideration of the interpretative framework developed in the ICRC Interpretive Guidance.

2.4.1. Obligations of the Attacking Party

Use of human shields cannot be understood as absolving the attacking party of its own obligations. Even where shielding occurs, the attacking party must comply with the foundational principles

[90] Corn (n 74) 128; Neve Gordon and Nicola Perugini, *Human Shields: A History of People in the Line of Fire* (University of California Press 2020) 45–48.
[91] Henckaerts and Doswald-Beck (n 20) Rule 97, 337.

regulating the conduct of hostilities. It includes distinction, proportionality, and precautions in attack.[92] These principles aimed to protect civilians from the effects of military operations regardless of the context in which they find themselves.

According to the principle of distinction Article 48 of Protocol I, parties to a conflict must at all times distinguish between civilians and combatants, and direct their operations only against military objectives.[93] Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.[94] The simple presence of civilians near a military objective, whether voluntary or involuntary, does not remove the obligation to distinguish.

In accordance with the principle of proportionality Article 51(5)(b) of Protocol I, an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, would be excessive in relation to the concrete and direct military advantage anticipated.[95] When human shields are present, this evaluation becomes more complex, but the underlying legal standard remains untouched. The potential for collateral damage increases when civilians are present near a target. It may render an otherwise lawful attack unequal.[96]

Furthermore, Article 57 Protocol I imposes obligations of precautions in attack on all parties to a conflict. These include duties to:

1) take all feasible precautions to verify that targets are military objectives;
2) choose means and methods of attack that minimize incidental harm to civilians and civilian objects; and, where circumstances change, cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack would be disproportionate.[97]

These precautionary duties are especially important when human shields are involved, where the risk of civilian harm increases, and the available information may be unclear.

The duty to take precautions is not static, and it extends to the planning stage and continues until the moment of attack. In practice, this requires commanders to assess available intelligence regarding civilian presence and shielding behavior, and to take feasible measures to mitigate civilian harm. The verification of the nature of the target requires attackers to consider advanced warnings of the attack where feasible, and to select weapons and timing that minimize civilian harm.[98]

Doctrinal sources affirm that the presence of human shields does not grant immunity to military objectives, but neither does it permit the attacking party to disregard its protective obligations. The ICRC Commentary on Protocol I emphasizes that "the presence of the civilian population or individual civilians shall not be used to render certain points immune from military operations," but

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[92] Protocol I (n 1) arts 48, 51(5)(b), 57.
[93] ibid art 48; see also Henckaerts and Doswald-Beck, (n 20) Rule 1.
[94] ibid art 51(3).
[95] ibid art 51(5)(b); Henckaerts and Doswald-Beck, (n 20) Rule 14.
[96] See ICRC Commentary on Additional Protocol I, para 1998 (noting that proportionality assessments must consider civilian presence).
[97] Protocol I, (1) art 57(1)–(2).
[98] Ibid; see also Henckaerts and Doswald-Beck, (n 20) Rule 15.

goes on to state that this does not lessen the obligation of the attacker to comply with other rules of IHL.[99] In other words, the unlawful conduct of the defending party does not justify unlawful conduct by the attacking party. State practice highlights the practical difficulties inherent in the concept of shielding.

The United States Department of Defense Law of War Manual, for instance, emphasizes that even when adversarial forces employ civilians to protect military tarqets, the attacking party is obligated to demonstrate due consideration for civilian safety , consistently applying principles of proportionality and precaution.[100] Likewise, the United Kingdom Manual of the Law of Armed Conflict indicates that the proximity of civilians to military objectives necessitates a more rigorous proportionality assesssment and the implementation of all feasible precautions.[101]

A further requirement arises from customary IHL. The need to interpret and apply the rules in a way that reduces harm to civilians. The ICRC Customary IHL Study states that parties must take possible precautions to protect civilians and civilian objects, and that the presence of human shields may require additional actions in line with this duty.[102] Although customary law doesn't specify exact technical procedures, it emphasizes that the main duty to protect civilians is universal and applies in all armed conflicts. Thus, regardless of whether human shielding is legal or not the attacking party's responsibilities exist. The unlawful use of civilians by a defending party does not diminish the legal responsibilities of attackers. At the same time, the presence of human shields may affect the tactical decision whether to: proceed with the attack; postpone until civilians can be removed; adopt alternative means or timing to minimize civilian harm.

In certain situations, suspending an attack until civilian risk is effectively mitigated may be imperative. This is not only a question of legal allowance. Rather, it is a prerequisite for adherence to international humanitarian law.

To summarize, the responsibilities of the attacking force emphasize that the legality of an attack must be evaluated in accordance with all relevant regulations pertaining to the conduct of hostilities. The existence of human shields introduces complexity into this evaluation, yet it does not exempt the attacker from its obligations to protect civilians. The subsequent chapter will build upon this premise to examine whether, and under what conditions, voluntary human shielding can fulfill the criteria for direct participation in hostilities.

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[99] ICRC, *Commentary on the Additional Protocols of 8 June 1977* (Jean-Pictet ed, Martinus Nijhoff 1987) Art 51(7) para 1949–1950.
[100] Department of Defense Law of War Manual (n 3). 5.11.3.
[101] United Kingdom Ministry of Defence, *The Manual of the Law of Armed Conflict* (2004) Ch 6. Ch 6. Not precise enough.
[102] Henckaerts and Doswald-Beck (n 20) Rules 15–18.

3. Intersection of Human Shields and Direct Participation in Hostilities

3.1. Voluntary Shields and Direct Participation

The legal question examined in this chapter is not whether voluntary shielding is prohibited, that is settled by Article 51(7) of Protocol I, but whether and when it crosses the threshold of direct participation in hostilities under Article 51(3), resulting in temporary loss of civilian protection.

The starting point is that voluntary presence near a military objective does not automatically strip a civilian of protection. A civilian who positions themselves near a military installation, or who remains there despite warnings, retains civilian status. They may become a victim of collateral damage where an attack on the objective is otherwise lawful, but they are not a legitimate target in their own right. Presence alone, however deliberate, does not satisfy the causation and threshold requirements of DPH.[103]

This does not mean that shielding conduct is legally irrelevant. Shielding may become relevant to the DPH analysis where it produces what this thesis terms a *legally operative effect*, that is, where the civilian's conduct does not merely complicate targeting decisions but actively and directly shapes the military outcome in favour of one party. The critical question is not whether the attacker found the shield's presence inconvenient, or even whether the shield's presence rendered an attack disproportionate, but whether the shield's conduct itself functionally contributed to the military effort of the defending party.[104]

On this basis, the thesis advances the following distinction. Where a civilian merely stands near a military objective, even deliberately, even after warnings, their conduct does not constitute DPH. The attacker may need to account for their presence in proportionality calculations, and the civilian may become a victim of lawful collateral damage, but they remain a protected civilian. Their presence has no functional causation, it does not actively advance the military position of the defending party.[105]

The analysis changes where the civilian's conduct crosses into active functional contribution. A civilian who alerts defending forces to the approach of attacking troops, relays tactical information, or coordinates defensive efforts has moved beyond passive presence. Their conduct produces a legally operative effect, it directly improves the military position of the defending party in a way that satisfies the threshold and causation requirements of Article 51(3). The probability of loss of protection in such cases is high.[106]

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[103] Bouchié de Belle (n 65) 895–897; Rewi Lyall, 'Voluntary Human Shields, Direct Participation in Hostilities and the International Humanitarian Law Obligations of States' (2008) 9(2) Melbourne Journal of International Law 313; Protocol I (n 1) art 51(3).
[104] Corn (n 74) 128–130; Schmitt, 'Human Shields' (n 65) 309–312.
[105] Protocol I (n 1) art 50(1); Melzer (n 5) 46–47; Bouchié de Belle (n 65) 897.
[106] Watkin (n 32) 648–650; Boothby (n 35) 140–142; Schmitt, 'Human Shields' (n 65) 312.

The line between these two categories is not always sharp. A civilian who stands near an objective and shouts warnings to soldiers inside when attackers approach occupies an intermediate position, their conduct begins to acquire functional causation and the probability of loss of protection increases accordingly. The assessment must be conducted on the facts, with the presumption of civilian protection under Article 50(1) applying unless the evidence of functional contribution is clear.[107]

A concrete illustration is provided by the Western peace activists who travelled to Baghdad in January 2003 and voluntarily positioned themselves near Iraqi civilian infrastructure, water treatment plants, power stations, and food silos, to deter coalition strikes. Between 200 and 500 activists eventually made their way to Iraq, with approximately 80 remaining throughout the bombing campaign. These individuals acted voluntarily and with full awareness of the strategic value of the sites they were protecting. Yet under the framework advanced in this thesis, their conduct did not constitute DPH. They produced no legally operative effect in favour of the Iraqi armed forces, they transmitted no intelligence, coordinated no defensive action, and made no functional contribution to military operations. Their presence affected targeting assessments but did not actively advance the military position of the defending party.[108]

This stands in contrast to Israeli operational doctrine, which holds that civilians who ignore evacuation warnings and remain near military objectives may be excluded from proportionality calculations as voluntary shields. In my view, this approach conflates presence with participation. Ignoring a warning is not a legally operative act, it is a choice about where to stand. The threshold of DPH requires more.[109]

3.1.1. The Analytical Framework

A threshold question arises before the legal status of any human shield can be determined: in what order should the relevant criteria be assessed? This thesis argues that the DPH criteria under Article 51(3) must be evaluated first, and that the question of voluntariness arises only if those criteria are potentially satisfied.

The structure of Article 51(3) supports this approach. The provision suspends civilian protection where a person takes a direct part in hostilities an objective, conduct-based test. Voluntariness is not mentioned in the treaty text. It is a doctrinal addition that has developed through academic commentary and operational practice. As such, it cannot serve as a threshold requirement that precedes the assessment of conduct itself. As Haque observes, the critical legal question is whether the civilian's conduct satisfies the standard for direct participation, not whether it was voluntary.[110]

The practical case for this order is equally compelling. A commander operating in real time cannot investigate the subjective intentions of every civilian near a military objective. Requiring proof of

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[107] Protocol I (n 10) art 50(1); Lyall (n 103) VIII; Corn (n 74) 130.
[108] Gordon and Perugini (n 90) 45; Schmitt, 'Human Shields' (n 65) 300; Lyall (n 103) VIII.
[109] Michael N Schmitt, 'What is and is not Human Shielding?' (Lieber Institute, West Point, 5 September 2024) <https://lieber.westpoint.edu/what-is-and-is-not-human-shielding/\> accessed 26 April 2026; Corn (n 74) 119; Bouchié de Belle (n 65) 895.
[110] Protocol I (n 1) art 51(3); Adil Ahmad Haque, 'Human Shields' in Helen Frowe and Seth Lazar (eds), *The Oxford Handbook of the Ethics of War* (Oxford University Press 2018) 383, 402.

voluntary intent before assessing whether conduct satisfies DPH criteria creates an unworkable standard particularly in asymmetric urban warfare where the line between civilian presence and functional contribution is deliberately blurred by one party.[111] As Bosch notes, targeting decisions involving voluntary human shields must be grounded in observable conduct rather than subjective states of mind that are impossible to verify under fire.[112]

The correct sequence is therefore as follows. First, assess whether the conduct objectively satisfies the three cumulative criteria threshold of harm, direct causation, and belligerent nexus. If the criteria are not met, the analysis ends: the civilian retains protection regardless of whether their presence was voluntary or not. If the criteria are potentially satisfied, the question of voluntariness becomes relevant not as a subjective intent inquiry but as a conduct-based assessment of whether the civilian was acting freely or under coercion.[113]

Where conduct unambiguously satisfies all three DPH criteria for example, a civilian actively relaying tactical intelligence to defending forces, the voluntariness question is effectively absorbed into the objective analysis. The conduct speaks for itself. Where conduct is ambiguous, the presumption of civilian protection under Article 50(1) applies, and voluntariness becomes a relevant factor in resolving that ambiguity through behavioural indicators: did the civilian actively position themselves near the objective, coordinate with the defending party, or remain after warnings in circumstances where evacuation was feasible?[114]

This framework reconciles the humanitarian imperative to protect civilians with the operational reality that targeting decisions must be made on the basis of observable conduct rather than unknowable intentions.

The temporal boundaries of direct participation remain contested. Silvestri argues that the revolving door approach is to permissive in the context of contemporary urban warfere, enabling repeated or serial participation while retaining civilian protection between discrete acts. He proposes a framework that accounts for causal assosiations between individuals and DPH acts, sugggesting that a purely episodic understanding of " for such time " fails to reflect operational reality.[115] However, as Bosch demonstrates through a detailed review of post - Guidance debate, any extension of the temporal scope

[111] Robin Geiss, 'Asymmetric Conflict Structures' (2006) 88 International Review of the Red Cross 757, 766–768; Shannon Bosch, 'Targeting Decisions Involving Voluntary Human Shields in International Armed Conflicts in Light of the Notion of Direct Participation in Hostilities' (2013) 46(3) Comparative and International Law Journal of Southern Africa 447, 458–460.
[112] Bosch (n 111) 462–465.
[113] *Public Committee against Torture in Israel v Government of Israel* HCJ 769/02 (Israeli Supreme Court, 14 December 2006) paras 30–35; Haque (n 110) 422–423.
[114] Protocol I (n 10) art 50(1); Amnon Rubinstein and Yaniv Roznai, 'Human Shields in Modern Armed Conflicts: The Need for a Proportionate Proportionality' (2011) 22 Stanford Law and Policy Review 93, 108–110; Hampson (n 58) 187, 198–200.
[115] Alessandro Silvestri, 'The Revolving Door of Direct Participation in Hostilities: A Way Forward?' (2020) 11(2) Journal of International Humanitarian Legal Studies 410, 420–425

of DPH beyond specific acts risks undermining the conduct-based logic of Article 51(3) and the fundamental presumption in favour of civilian protection.[116]

3.1.2. Temporal Boundaries of Direct Participation

For voluntary human shields, DPH begins when civilians with the intent to influence enemy targeting or obstruct attacks deliberately deploy military objectives.[117] According to the ICRC Interpretive Guidance, the three cumulative criteria must be satisfied altogether. [118] Simple presence, even if intentional, does not satisfy the threshold. Operationally, DPH includes not only active shielding but also preparatory measures such as the deployment toward and return from military objectives with the intent to engage in shielding.[119]

In practice, the factual record from the Gaza conflict addressed in the applied case analysis in section 4.3.3 illustrates the evidentiary difficulty of establishing the beginning of direct participation in shielding scenarios.[120]

Silvestri cautions that an overly restrictive temporal scope risks creating an exploitable loophole: individuals who engage in repeated or serial shielding acts may cycle in and out of protection in ways that undermine the functional coherence of the framework.[121]While this concern is doctrinally significant, it does not override the fundamental presumption of civilian protection established under Article 50(1) of Protocol I. As Bosch states, any extension of the temporal scope of DPH beyond specific acts risks undermining the conduct-based logic of Article 51(3).[122] In my view, the revolving door principle must be maintained precisely because the alternative, treating repeated presence as continuous participation, would effectively punish civilians for conduct that does not satisfy the DPH threshold at the time of the attack.

The loss of protection ceases immediately upon the termination of the relevant shielding conduct.[123] Civilians regain protection as soon as they disengage from shielding activity. This principle also makes clear that involuntary human shields never lose protection, irrespective of duration or proximity to military objectives.[124]

Operationally, attackers must continuously assess whether shielding behavior is ongoing and whether it satisfies all DPH criteria. This continuous assessment is not merely good practice; it is a legal obligation under Article 57 of Protocol I, and its absence may render an otherwise lawful attack

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[116] Shannon Bosch, 'The International Humanitarian Law Notion of Direct Participation in Hostilities: A Review of the ICRC Interpretive Guide and Subsequent Debate' (2014) 17(3) Potchefstroom Electronic Law Journal 1, 35–38.
[117] ibid 24-25.
[118] ibid 47.
[119] ibid 51-54.
[120] OCHA, *Gaza 2014 Humanitarian Report* (n 2), 21–24.
[121] Silvestri (n 115) 410, 420-425.
[122] Protocol I (n 1) art 50(1); Shannon Bosch, 'The International Humanitarian Law Notion of Direct Participation in Hostilities: A Review of the ICRC Interpretive Guide and Subsequent Debate' (2014) 17(3) Potchefstroom Electronic Law Journal, 998, 1035–1038.
[123] Melzer (n 5) 52-54.
[124] Protocol I (n 1) arts 51(7), 50(1).

unlawful. The Mosul context, where ISIS systematically relocated civilians around military assets, illustrates the operational difficulty of this continuous assessment obligation.[125]

3.1.3. Practical and Operational Considerations

The irregularity of urban warfare makes temporal assessment structurally difficult. Civilian movements, coercion, and restricted evacuation can obscure the distinction between voluntary and involuntary shields. Commanders must evaluate intent, deployment, and the operative effect of shielding conduct in real time, a task that requires both legal clarity and reliable intelligence.[126] This approach aligns with operational feasibility while upholding the principle of distinction and the obligation to take precautions in attack.

The loss of protection for voluntary shields is strictly temporal, commencing with deliberate shielding conduct and ceasing upon its termination. Involuntary shields retain protection at all times. In both cases, the attacking party's obligations under Articles 51(5)(b) and 57 of Protocol I remain fully operative.[127]

In my view, the operational difficulty of temporal assessment reinforces rather than weakens the case for a strict revolving door approach. Where a commander cannot determine with confidence whether shielding conduct is ongoing, the presumption must favour civilian protection. The alternative, treating ambiguous presence as continuous participation, creates precisely the kind of evidentiary shortcut that Article 50(1) is designed to prevent.

3.2. State Practice

The US DoD Law of War Manual is one of the few state documents that addresses voluntary human shields directly. Its position is nuanced and in some respects goes further than the ICRC framework.

On the question of DPH, section 5.12.3.4 provides that voluntary human shields may be directly participating in hostilities — but only where their conduct actually satisfies the DPH criteria. If it does, they lose protection and do not need to be factored into proportionality calculations. This is consistent with the conduct-based approach and does not treat voluntariness alone as sufficient for loss of protection.[128]

Where voluntary shields do not satisfy DPH criteria and retain civilian status, the Manual takes a more controversial position. Section 5.12.1.4 states that the responsibility of the defending party for placing civilians in harm's way is a factor that may be considered in the proportionality assessment. In practice this means that harm to voluntary shields may be weighted differently than harm to civilian bystanders, a position that critics argue is difficult to reconcile with the unconditional structure of the proportionality rule under Protocol I.[129] The Manual also requires all feasible precautions regardless

[125] Human Rights Watch, *Civilians Caught in the Crossfire: Mosul Offensive* (2017) 12–15.
[126] ICRC, *Reducing Civilian Harm in Urban Warfare: A Commander's Handbook* (ICRC 2019) 11–12.
[127] Protocol I (n 1) arts 51(5)(b), 57.
[128] US Department of Defense, *Law of War Manual* (June 2015, updated 2023) s 5.12.3.4.
[129] ibid s 5.12.1.4.

of whether shielding is voluntary, and emphasises continuous assessment of civilian presence and intent in urban environments.[130]

In my view, the US position in section 5.12.1.4 sets a problematic precedent. Allowing the defending party's responsibility to discount the value of civilian lives in proportionality calculations risks creating a different system of civilian protection, one for those who happen to be near military objectives voluntarily and another for those who are not. This is difficult to reconcile with the fundamental premise that civilian protection under IHL is unconditional. The more defensible approach is to treat voluntariness as relevant only to the DPH threshold analysis, not as a factor that reduces the weight of civilian lives once DPH is not established.

The UK Manual of the Law of Armed Conflict.

The UK Manual of the Law of Armed Conflict takes a position on human shields that is notable for its explicit treatment of proportionality. Section 2.7.2 states that even where human shields are being used, the proportionality rule must be considered. However, where the defending party has placed civilians near military objectives, this is a factor that may be taken into account in favour of the attacker when assessing the legality of an attack on those objectives.[131]

Unlike the US Manual, the UK Manual does not explicitly address the distinction between voluntary and involuntary shields in the context of DPH. Its approach focuses on the conduct of the defending party rather than the intent of the civilian. Where the defending party is responsible for exposing civilians to risk, the attacker's proportionality obligation may be adjusted accordingly — but the civilians themselves retain their protected status unless their conduct independently satisfies the DPH criteria.[132]

The UK Manual also stresses that the presence of human shields does not relieve the attacking party of its obligations under IHL. Distinction, precautions in attack, and proportionality remain fully operative.[133]

In my view, the UK approach is more principled than the US position in one important respect, it locates the adjustment in the conduct of the defending party rather than in the status of the civilian. This avoids the risk of creating a different system of civilian protection based on voluntariness. However, even the UK approach is not without difficulty, allowing the defending party's unlawful conduct to adjust the proportionality calculus still risks undermining the unconditional structure of IHL obligations.

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[130] ibid ss 5.11, 5.13.
[131] UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford University Press 2004) para 2.7.2.
[132] ibid para 5.3.2.
[133] ibid para 2.7.2.

3.2.1 Empirical Case Study Analysis

Ukraine vs Russia (2022 - present) - What happened in Ukraine leaves little room for legal ambiguity. In March 2022, Russian soldiers in Obukhovychi, Kyiv Oblast, rounded up around 150 civilians at gunpoint and held them in a school building to use as protection against Ukrainian forces. The OHCHR documented this as part of a wider pattern of Russian forces deliberately positioning military assets near civilian infrastructure. The Independent International Commission of Inquiry on Ukraine concluded there were reasonable grounds to find that Russian armed forces committed war crimes, including the use of civilians to shield military operations.[134]

These cases are straightforward under the framework advanced in this thesis. None of the documented Ukrainian incidents involved any genuine question of voluntariness civilians were coerced at gunpoint or prevented from leaving. They are involuntary shields in every meaningful sense, entitled to full protection, and must be counted in full in any proportionality assessment. The responsibility for their exposure to danger lies entirely with the Russian forces who put them there.[135]

Israel vs Hamas (2023-2024) - Gaza, since October 2023, has presented some of the most legally contested human shielding situations in recent history. Hamas embedded military assets, command centres, weapons storage, tunnel infrastructure, within hospitals, schools, and residential buildings. The UN Secretary-General confirmed that Hamas and other armed groups use civilians as human shields, and 27 EU member states condemned the practice in November 2023.[136]

The legal difficulty lies in the voluntary/involuntary distinction. Hamas actively discouraged civilian evacuation and in many cases physically blocked it, which itself constitutes involuntary shielding under Article 51(7) of Protocol I. Some civilians who stayed near military objectives after Israeli warnings may have done so voluntarily. But establishing that requires clear evidence of intent, and that evidence is rarely available in the fog of urban warfare.[137]

In my view, Hamas bears direct legal responsibility for embedding military assets in civilian areas and for preventing civilians from evacuating. That responsibility is real and serious. But it does not reduce Israel's own obligations under IHL. The use of human shields by the defending party does not release the attacking party from its duties of distinction, proportionality, and precaution. Both parties are accountable for their own conduct, and that accountability runs in parallel, not in sequence. Where Hamas created the conditions that made civilian harm more likely, Hamas bears responsibility for that.

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[134] US Department of State, *2022 Country Reports on Human Rights Practices: Ukraine* (2023); Independent International Commission of Inquiry on Ukraine, *Report to the UN Human Rights Council* (A/HRC/52/62, March 2023) para 45; OHCHR, *Report on the Human Rights Situation in Ukraine* (OHCHR 2022) para 43

[135] Independent International Commission of Inquiry on Ukraine (n 134) para 45; Protocol I (n 1) art 51(7).

[136] OHCHR, Press Release, 'Commission of Inquiry Collecting Evidence of War Crimes Committed by All Sides in Israel and Occupied Palestinian Territories since 7 October 2023' (OHCHR, 12 October 2023); UN Human Rights Council (n 58) para 47.

[137] Michael N Schmitt, 'What is and is not Human Shielding?' (Lieber Institute, West Point, 5 September 2024) <https://lieber.westpoint.edu/what-is-and-is-not-human-shielding/\> accessed 26 April 2026; UN Human Rights Council (n 58) para 47.

Where Israel chose to strike knowing civilians were present, Israel must answer for its proportionality assessment. The two questions are legally distinct.[138]

Within the fighting in Iraq, particularly in Mosul, ISIS militants allegedly forced civilians to stay near their fighting positions, effectively using them as human shields.[139] Human Rights Watch's reports confirmed this practice of involuntary shielding, showing that civilians couldn't escape without risking their lives.[140] Both the US and UK military commands clearly classify these civilians as protected, which means attacking forces must weigh potential collateral damage and adhere to the principle of distinction.[141]

These case studies underscore the necessity of operationalizing IHL principles, encompassing distinction, proportionality, and precautions, within the framework of urban warfare.

In Mosul in 2017, ISIS systematically forced civilians to remain near their fighting positions. Human Rights Watch documented that people could not leave without risking being shot. This was not a case of civilians choosing to be there, they had no choice. Both US and UK forces treated these civilians as fully protected persons, meaning every targeting decision had to account for their presence through proportionality assessments and precautionary measures.[142]

The case studies examined in this chapter, Gaza, Mosul, and Ukraine, share a common thread. In each conflict, the defending party placed civilians in harm's way, either by embedding military assets within civilian infrastructure or by physically preventing evacuation. In each case, the question of whether any civilian was acting voluntarily was either unanswerable in real time or answered clearly in the negative. This is not a coincidence. It reflects the operational reality that voluntary shielding, as a legally meaningful category, is far rarer in practice than the doctrinal debate might suggest.

What these cases also confirm is that the responsibility of the defending party and the responsibility of the attacking party run in parallel, they do not cancel each other out. Hamas embedding military assets in hospitals does not reduce what Israel is required to do under the principles of distinction, proportionality, and precaution. Russia using civilians as human shields does not reduce what Ukrainian forces are required to do when engaging Russian positions. Both parties answer for their own conduct. This is not a political judgment, but it is the structure of IHL.

[138] Protocol I (n 10) arts 51(7), 51(8); Haque (n 110) 402; UN Human Rights Council (n 58) para 31.
[139] Human Rights Watch, *Civilians Caught in the Crossfire: Mosul Offensive* (2017) 12–15.
[140] OHCHR, *Report on the Protection of Civilians in the Armed Conflict in Iraq, 2016–2017* (n 81), para 45.
[141] US Department of Defense, *Law of War Manual* (2015, updated 2020) §§5.6–5.11; *The Manual of the Law of Armed Conflict (n 2,)* (2004, with 2019 amendments) 88–92.
[142] Human Rights Watch, Civilians Caught in the Crossfire: Mosul Offensive (2017) 12–15; OHCHR, Report on the Protection of Civilians in the Armed Conflict in Iraq, 2016-2017 (n 81) para 45; US Department of Defense, Law of War Manual (n 6) ss 5.6–5.11; UK Ministry of Defence, The Manual of the Law of Armed Conflict (n 17) 88–92.

4. The DPH and Shielding Intersection as a Legal Gray Zone

The interaction between the "human shield" status and the concept of DPH creates one of the most complex "gray zones" in contemporary IHL. The problem arises because Article 51(3) of Additional Protocol I was originally drafted for classic combatants, whereas civilians may participate in a conflict passively or spatially, without committing direct attacks.

In practical terms, this allows states to interpret the behavior of civilians differently: some view them as fully protected, while others may qualify their presence as a functional contribution to defense. It should be noted that many national constitutions explicitly stipulate that every citizen has a duty and obligation to defend their homeland or fatherland.[143] In practice, this principle is regulated by additional laws on conscription and the authorization of citizens to participate in the defense of the state. Nevertheless, the presence of such a clause in a constitution sometimes creates a certain interpretative climate within a state, allowing the civilian population to be viewed as potentially participating in defense. Such national norms cannot override states' international obligations under Article 51(3) of Additional Protocol I, but they can influence how states practically assess the status of civilians in situations where human shields are used.

The conceptual gap lies in the fact that the traditional understanding of DPH requires a "kinetic" action, a specific physical impact on military targets, while human shield activity is based on the legal deterrence of the attacker.[144] The goal of such behavior is not to directly harm the enemy, but to use one's own presence as a factor capable of influencing the attacker's decisions and its compliance with international humanitarian law.

The legal uncertainty is exacerbated by the fact that the ICRC's Guidance on Direct Participation in Hostilities leaves open the question of when the presence of civilians can create a "direct causal link" with military operations.[145] As a result, states and military planners are forced to interpret such situations under conditions of considerable uncertainty.

This ambiguity creates significant legal and operational difficulties. Ground commanders are obliged to make decisions based on incomplete information about civilians' intentions. As a result, the chances of mistakenly identifying voluntary human shields as combatants, or, conversely, underestimating their potential involvement in military activities, are increased.[146]

4.1. Central Challenges

The legal and conceptual ambiguities outlined earlier give rise to several practical and normative difficulties in the implementation of the IHL. These challenges are particularly evident in modern conflicts, which are marked by combat within densely populated areas and an increasingly indistinct boundary between non-combatants and those actively participating in hostilities. Consequently,

[143] Constitution of the Republic of Azerbaijan (adopted 12 November 1995, as amended) art 76, see also Constitution of the Republic of Estonia, art 54.
[144] Melzer (n 5) 55-56.
[145] ibid 55-56.
[146] Turns (ed), *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (n 128), 211–215.

military commanders must make operational decisions on the basis of incomplete information, a structural problem that becomes acute when assessing the presence of civilians near military objectives.

Verifying whether a civilian's presence near a military objective is voluntary or involuntary is among the most difficult operational and legal challenges commanders face. Rarely does available intelligence permit a confident determination of intent in real time. To effectively address the research question regarding psychological pressure, three distinct scenarios require separate analysis:

Physical Coercion: Civilians are prevented from leaving a military objective through armed force or physical barriers. This is the clearest case of involuntary shielding. Civilians in this category do not lose protection under any circumstances.

Psychological and Social Pressure: Civilians remain near military objectives as a result of ideological mobilization, fear of being labelled a traitor, or sustained community pressure. No physical force is used, but the freedom of choice is meaningfully compromised. Under the proposed model, such individuals must be presumed involuntary unless there is reliable and corroborated evidence that they assumed an active leadership role in the shielding conduct.

Motivated Presence: Civilians remain near military objectives in exchange for material benefits - money, food, or housing. While no direct coercion is present, their presence forms part of a functional defensive strategy by the belligerent. Rebutting the presumption of involuntariness in this category requires evidence of a contractual arrangement in which the civilian is effectively engaged as a defensive asset, a high evidentiary threshold that reflects the seriousness of the legal consequence.

Although IHL requires a distinction between civilians and those directly participating in hostilities, in the real world of armed conflict, such a distinction is often impossible to establish at the time the decision to use force is made. Civilians near military objectives typically lack visible signs that would allow them to determine their intentions, level of awareness, or affiliation with one of the parties to the conflict.[147] As Melzer observes, this evidentiary gap creates a structural risk: commanders operating under conditions of limited information may apply an overly broad interpretation of DPH, exposing civilians to unlawful targeting.[148] Schmitt, by contrast, warns that excessive caution may unduly restrict the conduct of legitimate military operations.[149]

The solution this thesis proposes is contextual rather than categorical. Where a commander cannot establish voluntariness with confidence, the presumption must run in favour of the civilian. But that presumption is not a blank cheque, it can be rebutted by observable behavioural indicators. Is the civilian actively coordinating with defending forces? Have they positioned themselves deliberately near a specific military asset rather than simply remaining in the area? Did they ignore a genuine and effective evacuation opportunity when leaving was realistically possible? These are the kinds of

[147] Melzer (n 5) 56-57.
[148] ibid 56-57.
[149] Schmitt, "The Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law: A Critical Analysis" (n 53), 24–28.

questions that can be answered on the basis of available intelligence without requiring a psychological assessment of intent. Where none of these indicators are present, the civilian is treated as involuntary and retains full protection. Where they are present and corroborated, the presumption begins to give way, but the evidentiary bar remains high, because the consequence of getting it wrong is lethal and irreversible.

A second structural challenge arises from the incentive dynamics created by the prohibition of human shielding. Article 51(7) of Protocol I explicitly prohibits the use of civilians to protect military objectives or operations.[150] However, in practice, violating this prohibition can create certain tactical advantages for the defending side.

If the attacking party strictly adheres to the rules of proportionality and precautions, the presence of civilians can significantly limit the ability to strike a legitimate military target. This creates the risk that parties to a conflict will deliberately use civilians as a means to reduce the likelihood of an attack.

As Sassòli notes, this dynamic threatens both the efficacy of military operations and the long-term legitimacy of IHL, insofar as it suggests that breaching established norms can produce tangible military advantages.[151] The tension this generates - between the humanitarian objectives of the law and the military imperatives governing the conduct of armed conflict cannot be resolved by interpretation alone. It requires the kind of structured operational framework that the proposed model seeks to provide.

4.2. Critical Assessment of Existing Approaches

Contemporary international humanitarian law doctrine offers several approaches to determining the status of civilians participating in actions involving human shields. However, none of these approaches provides a fully satisfactory answer to the problems identified in the previous section, particularly the difficulties of verification and the issue of incentives. Two main approaches can be identified in the academic literature and state practice: a restrictive approach, primarily associated with the position of the International Committee of the Red Cross, and a more expansive interpretation, reflected in a number of state doctrines and academic works.

The restrictive approach is most clearly expressed in the ICRC's Guidelines on Direct Participation in Hostilities. According to this position, the loss of a civilian's protection is possible only when three cumulative criteria set out in section 1.2.3 are met. This approach aims to preserve civilian status. It also aimed to prevent an excessive expansion of the category of persons who may be lawfully attacked.[152]

Concerning human shields, this position means that the simple presence of a civilian near a military objective, even if deliberate, will not necessarily be considered direct participation in hostilities. To recognize such conduct, DPH requires proof that the individual's actions directly contribute to the

[150] Protocol I (n 1) art 51(7).

[151] Sassoli (n 56) 342–343.
[152] Melzer (n 5) 56-57.

military operation. The actions must also have a sufficient causal link to the potential harm to the adversary.[153]

Despite the important humanitarian purpose of this approach, scholarly discussion notes that it may not sufficiently address the operational reality of modern conflicts. In urban warfare, the presence of civilians can indeed influence the conduct of attacks and thus have a real impact on military operations. An overly narrow interpretation of DPH, according to some researchers, could create a situation in which the use of human shields becomes an effective means of restricting enemy actions.[154] Furthermore, this approach does not fully address the problem identified in Section 4.2: if a civilian's intent cannot be ascertained, commanders are forced to operate in a state of uncertainty, while legal criteria remain rather strict and difficult to apply in real time.

In contrast, several state doctrines and academic works advocate a more expansive interpretation of DPH, which considers the voluntary participation of civilians in the defense of military objectives a form of direct participation in hostilities. This approach is partially reflected in some military manuals and analyses related to the practice of contemporary armed conflicts.[155]

According to proponents of this position, the voluntary deployment of civilians near military objectives to prevent attack can be considered a functional contribution to military action. In this case, their behavior is considered not only a humanitarian issue but also an element of defense strategy. From a protection perspective, this approach raises serious concerns. From the protection perspective, this approach raises serious concerns, such as a wide interpretation of DPH. This can lead to confusion of the distinction between combatants and non-combatants. This also contradicts the principle of distinction.[156]

Beyond that, in practice, there is a risk of incorrectly classifying civilians as voluntary human shields. In the information vacuum that characterizes modern conflicts, the expansive interpretation may increase the likelihood that individuals who are in fact coercive shields will be mistakenly viewed as combatants.

4.3. Proposed Legal Model: A Functional and Protective Framework

Neither of the two existing approaches works well enough. The restrictive approach is too cautious to give commanders any real guidance when the situation is genuinely ambiguous. The expansive approach goes too far in the other direction , it risks treating civilians as legitimate targets simply because they happen to be near a military objective.

This thesis proposes something different. The model I put forward has three parts: a presumption that shielding is involuntary unless proven otherwise, a functional test for establishing when conduct

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153 ibid 51-52.
154 Schmitt, "The Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law: A Critical Analysis" (n 53), 27.

155 US Department of Defense, *Law of War Manual* (2016, updated 2023) paras 5.8–5.12.
156 Protocol I (n 1) arts 48, 51.

actually crosses into direct participation, and a principle that some protections survive even when a civilian loses their primary shield. None of these elements is borrowed wholesale from existing doctrine. The presumption extends the logic of Article 50(1) into territory the ICRC Guidance does not cover. The functional test grows out of the legally operative effect concept developed earlier in this thesis. [157]The residual protection principle reflects what Article 51(8) of Protocol I already says,[158] that one party's violations do not release the other from its obligations. Together, these three elements give commanders a structured way to work through the hard cases that the current framework simply leaves open.[159]

4.3.1. Rebuttable Presumption of Involuntariness

The rebuttable presumption of involuntariness is the first step of the model. In situations where it is impossible to establish the status of a civilian with high probability, it should be assumed that the individual is acting under coercion. This complies with the general principle of the IHL; in case of doubt, a person must be presumed to be civilian.[160] The proposed model extends that logic to the shielding context, where doubt exists as to whether presence is voluntary, and involuntariness must be presumed. It is not for the civilian to demonstrate involuntariness, but for the commander to establish voluntariness on the basis of reliable and corroborated evidence before any loss of protection can be concluded. The practical importance of the presumption is to decrease the risk that civilians will be mistakenly classified as persons who are participating in hostilities. Taking into account the information vacuum, this presumption helps maintain a balance between military necessity and the principle of humanity.

At the same time, this presumption is not absolute; it can be rebutted but only if there are objective indications that a civilian is acting voluntarily. For example, coordinating their actions with armed groups, understanding the direction of military objectives, or a change in the regime’s actions aimed at preventing an attack. Commander to attack a target must have sufficient grounds to be sure that the civilian is present voluntarily rather than being there because of coercion or lack of choice and is deliberately attempting to obstruct the strike. Simple suspicion is insufficient. To support that conclusion, there must be a powerful basis, grounded in information reasonably available at the time of the operation.

The applicable standard of proof is analogous to the “reasonable commander” standard established in targeting law under Article 57 of Additional Protocol I, that is, what a reasonable and prudent commander would conclude on the basis of information reasonably available at the time of the decision.[161] This standard is deliberately lower than the criminal proof standard of beyond a reasonable doubt, but meaningfully higher than mere suspicion. It requires an affirmative factual basis, not an inference drawn from proximity alone.

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157 Haque (n 110) 402.
158 Corn (n 74) 128.
159 Rubinstein and Roznai (n 114) 108–110; Beth Van Schaack, 'Human Shields: Complementary Duties under IHL' (2016) 110 AJIL Unbound 317, 320-322.
160 ibid art 50(1).
161 ibid art 57.

In operational terms, this means a commander must be able to point to specific, articulable indicators, intelligence reports, observed behaviour, signals intercepts, or witness accounts that support the conclusion that a particular individual's presence is voluntary and purposive. General assumptions about the civilian population of an area, or the fact that evacuation warnings were issued, are insufficient on their own to rebut the presumption. The warning establishes the opportunity to leave; it does not, by itself, establish that those who remained did so voluntarily and with intent to shield.

Where the presumption cannot be rebutted on this standard, the civilian retains full protection under IHL. Their presence remains relevant only to the proportionality assessment under Article 51(5)(b), not to their targetability.[162]

The second element is a functional test, which consists of three steps that determine whether the conduct of a civilian can be considered DPH in the context of the use of human shields. The second operational contribution is a must. The civilian's presence must produce a legally operative effect. It may alter the attacking party's legal assessment of the strike but not complicate its tactical execution. Where civilian intentional positioning shifts the proportionality equation to the point where an otherwise lawful attack becomes legally prohibited, this element is satisfied. This functional understanding of causation distinguishes the proposed model from the ICRC's purely kinetic conception of direct causation.

1) strategic intent must be established. The civilian must consciously seek to influence the decisions of the attacker and use his or her presence to protect a military objective or operation.
2) operational contribution is required. The civilian's participation must actually constitute a significant impediment to the military operation and must not be incidental or involuntary.
3) there must be a combative connection, that is, a link between the civilian's actions and support for one of the parties to the conflict. This element meets the existing criteria for determining direct participation in hostilities.[163]

Only when all three elements are present simultaneously can the conduct of a volunteer human shield be considered a form of direct participation in hostilities.

4.3.2. Applied Case Analysis: The Battle of Shejaiya, Gaza, July 2014

The Battle of Shejaiya on 20 July 2014 offers one of the most legally instructive and contested examples of the human shielding problem in recent armed conflict. The neighbourhood, located east of Gaza City, was not simply a densely populated residential area. It was also a significant hub of Hamas military infrastructure, with tunnel networks running beneath its streets and armed units operating from within its buildings.[164] The fighting was intense: thirteen IDF soldiers were killed in a

[162] ibid art 51(5)(b), Michael N Schmitt, "Targeting and International Humanitarian Law in Afghanistan" (2009) 85 International Review of the Red Cross 307, 316.
[163] Melzer (n 5) 46–64.
[164] Human Rights Council, 'Report of the Independent Commission of Inquiry Established Pursuant to Human Rights Council Resolution S-21/1' (24 June 2015) UN Doc A/HRC/29/52, paras 24–31, available at https://www.un.org/unispal/document/auto-insert-185919/.

single day attempting to advance into the area, reflecting the degree to which Hamas had embedded its defensive operations within the civilian environment.[165]

The civilian situation was equally complex. On 16 July, four days before the ground assault, Israeli forces dropped leaflets and issued warnings for residents to evacuate.[166] Many did not leave, but the reasons varied considerably. UNRWA shelter facilities were already at capacity, safe corridors were unreliable, and many residents had nowhere to go.[167] At the same time, there are documented reports that Hamas actively encouraged residents to ignore evacuation warnings.[168] It is this combination, genuine entrapment for some, and apparent choice for others, that makes Shejaiya a useful test case for the proposed functional model.

The first element does not ask whether a civilian was near a military objective. It asks whether they were there with a purpose, specifically, whether their presence was a deliberate attempt to impede a lawful attack.

In Shejaiya, this question cannot be answered uniformly. For the majority of residents who stayed because evacuation was practically impossible, the answer is straightforward: there is no demonstrable intent to shield. Their presence reflects entrapment, not choice. The rebuttable presumption of involuntariness applies without serious question.

The harder cases involve those who remained after receiving effective warning and despite having a realistic means of departure, particularly where their decision appears connected to Hamas's calls to stay. For this narrower group, the factual basis for examining intent begins to take shape. This does not mean the intent element is automatically satisfied. The presumption of involuntariness still applies, and rebutting it requires reliable and corroborated evidence of a deliberate, informed refusal to leave in circumstances where leaving was genuinely feasible.[169]

This is where the proposed model departs most clearly from the ICRC's framework, and where Shejaiya is most instructive.

Under a purely kinetic reading of causation, a civilian sheltering in a building above a tunnel shaft causes no military harm. They fire no weapon. They destroy nothing. By the ICRC's traditional standard, their presence does not constitute a direct causal contribution to hostilities.

The functional test asks a different question: did their presence materially constrain a commander's ability to carry out an otherwise lawful attack? In Shejaiya, the answer is traceable in the operational record. Israeli forces employed the "knock on the roof" technique, firing inert munitions onto buildings before strikes, precisely because the presence of civilians triggered legal obligations that

[165] The Combat Performance of Hamas in the Gaza War of 2014 (Jewish Virtual Library, 2015) https://www.jewishvirtuallibrary.org/the-combat-performance-of-hamas-in-the-gaza-war-of-2014 accessed 26 April 2026.
[166] State of Israel, '2014 Gaza Conflict: Factual and Legal Aspects' (May 2015) 178–180 https://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf accessed 26 April 2026.
[167] Amnesty International, 'Israel/Gaza Conflict: Questions and Answers' (July 2014) https://www.amnesty.org/en/latest/news/2014/07/israelgaza-conflict-questions-and-answers/ accessed 26 April 2026.
[168] ibid; see also Human Rights Council (n 185) para 28.
[169] Protocol I (n 1) art 50(1).

had to be discharged before lethal force could be applied.[170] Where a commander delayed, modified, or aborted a strike on a confirmed military objective because civilians who had received effective warning remained in the target area, the legally operative effect of that presence is clear. It was not a physical effect. It was a legal one: the civilian's continued presence altered the proportionality aassessment under Articles 51(5)(b) and 57 of Protocol I and constrained what the commander could lawfully do.[171]

The tunnel infrastructure beneath Shejaiya was a valid military objective, whether or not civilians were present above it. But where that civilian presence, including those who had chosen to remain after effective warning, forced successive delays or modifications to otherwise lawful targeting decisions, those individuals exercised a legally operative effect on the conduct of hostilities. Under the proposed model, that is sufficient to satisfy the second element, provided the remaining criteria are also met.

The belligerent nexus element ensures that the analysis remains grounded in a specific military operation rather than the general condition of armed conflict. In Shejaiya, this is not difficult to establish. Hamas's defensive operations were structured and coordinated, with fighters moving through tunnel networks to engage IDF ground forces as they advanced.[172] Where civilians remained in direct proximity to active tunnel entry points or documented firing positions during that ongoing operation, having received prior warning, the link between their presence and the specific military operation is objectively established in time and space. This element matters as a limiting principle. It prevents the functional test from being applied to civilians whose proximity to military infrastructure is coincidental or historical rather than operationally relevant.

Even where all three elements appear *prima facie* satisfied, the model does not automatically conclude that a civilian has lost protection. The rebuttable presumption of involuntariness must first be addressed, and in Shejaiya, it carries real weight. For the majority of civilians who remained in the neighbourhood, the presumption is not displaced. Restricted mobility, collapsed evacuation infrastructure, and documented fear are precisely the conditions the presumption is designed to protect against.[173] These individuals retain civilian protection; their presence is relevant only to the proportionality assessment under Article 51(5)(b).

For a narrower subset, those who remained after effective warning, with a realistic means of departure, in immediate proximity to active military infrastructure, and apparently in response to calls to stay, the presumption may be rebuttable. But the evidentiary threshold is deliberately high. Operational

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[170] Schmitt and Merriam (n 74) 53; see also Lieber Institute, 'The IDF, Hamas, and the Duty to Warn' (West Point, 2023) https://lieber.westpoint.edu/idf-hamas-duty-to-warn/ accessed 26 April 2026.

[171] Protocol I (n 1) arts 51(5)(b) and 57; ICRC Online Casebook, 'Israel/Palestine, Operation Protective Edge (Gaza, 13 June-26 August 2014) https://casebook.icrc.org/case-study/israelpalestine-operation-protective-edge-gaza-13-june-26-august-2014 accessed 26 April 2026, paras 234–240.

[172] The Combat Performance of Hamas in the Gaza War of 2014 (Jewish Virtual Library, 2015) https://www.jewishvirtuallibrary.org/the-combat-performance-of-hamas-in-the-gaza-war-of-2014 accessed 26 April 2026.

[173] Amnesty International (n 167); Human Rights Council (n 185) paras 24–31.

intelligence, signals intercepts, or credible witness testimony would be required to establish that the decision to remain was deliberate and informed. Absent that quality of evidence, the presumption holds and protection is maintained. The Shejaiya case does not produce a simple answer, and the proposed model is not designed to produce one. What it does is provide a structured framework for working through a genuinely difficult factual situation without resorting to blanket classifications in either direction. The vast majority of civilians who remained in Shejaiya were not voluntary shields in any legally operative sense, and the model reaches that conclusion through principled analysis rather than assumption. For the small subset whose conduct might satisfy the cumulative criteria, it sets a deliberately high evidentiary bar before protection is displaced. That combination, analytical precision at the top, robust protection at the base, is precisely what the existing framework lacks, and what this model is designed to supply.

4.3.3. The Residual Protection Principle

The third element of the model is the principle of residual protection. Even if a civilian is recognized as a voluntary human shield and, therefore, temporarily loses protection from a direct attack, this does not mean the complete disappearance of all guarantees provided by international humanitarian law.

First, the loss of protection should be temporary, lasting only while someone is actively involved in the relevant actions.

Secondly, the presence of such persons does not exclude the obligation of the attacking party to observe the principles of proportionality and precaution.[174] Even in the case of the qualification of a person as participating in hostilities, military planners are obliged to take into account the possible harm to other civilians who are nearby.

Thirdly, if possible, preventive measures and other means of reducing the risk to the civilian population should be applied, especially in the conditions of urban hostilities.

4.3.4. Operational Advantages of the Model

The model proposed in this thesis is not built in isolation from existing scholarship. Its three elements each find support, and in some cases push beyond, what other authors have argued.

On the presumption of involuntariness, Van Schaack has argued that IHL demands parties treat all human shields as civilians absent adequate proof to the contrary, and that any legal uncertainty cannot eliminate the protections afforded by the proportionality rule.[175] The model proposed here takes this further by extending the presumption explicitly to the voluntariness question, something the ICRC Guidance leaves unaddressed.

On the functional test, Schmitt has argued that the legally operative effect of civilian presence, its capacity to prevent an otherwise lawful attack, is itself a form of functional contribution to

[174] Protocol I (n 1) arts 51, 57.
[175] Van Schaack (n 159) 322–324317, 320-322.

hostilities.[176] The model builds on this insight but constrains it through the rebuttable presumption, preventing it from becoming a basis for blanket targeting of civilians near military objectives.

On residual protection, Haque has argued persuasively that even voluntary shields do not fully forfeit their moral and legal rights, and that collateral harm to voluntary shields can still render an attack disproportionate depending on the circumstances. The residual protection principle in this model reflects that position.

What distinguishes this model from both the restrictive and expansive approaches is not the individual elements, each has precedent in the literature, but their combination. Placing the presumption first, before the functional test, is the structural choice that neither approach makes. It is also the choice that most closely reflects the operational reality that voluntariness is almost never knowable in real time.[177]

[176] Michael N Schmitt, 'The Interpretive Guidance on the Notion of Direct Participation in Hostilities: A Critical Analysis' (2010) 1 Harvard National Security Journal 5, 41–43.
[177] Rubinstein and Roznai (n 114) 108–110.

Conclusion

This thesis analyzed the legal status of human shields in international humanitarian law, in particular their intersection with the concept of DPH. The main purpose of the work was to assess the ability of the existing legal framework to adequately regulate situations arising in modern armed conflicts, especially in the conditions of urban warfare.

An analysis of the provisions of Additional Protocol I, the doctrine of the International Committee of the Red Cross, and the state practice revealed significant legal uncertainty regarding voluntary human shields. The existing dichotomy, in the framework of which civilians are considered either as fully protected or as having lost protection due to direct participation in hostilities, does not reflect the complexity of modern conflicts and creates difficulties both for legal qualification and for the practical application of the norms of international humanitarian law.

Key practical problems include the complexity of establishing voluntary participation and the risk of erroneous classification of civilians in the context of information uncertainty. The conducted analysis confirms the initial hypothesis of the study: neither the restrictive approach associated with the position of the International Committee of the Red Cross (§3.1), nor the more expansive interpretations presented in the works of such authors as Michael N. Schmitt and Yoram Dinstein, provide a stable balance between the principles of humanity and the requirements of military necessity.

In response to the identified problems, a functional legal model (§4.3.4) was proposed in the paper, aimed at clarifying the application of the concept of Direct Participation in Hostilities in modern conflicts. This model includes three key elements: the rebuttable presumption of involuntariness, the triple test DPH, and the principle of residual protection. The proposed approach accounts for the actual role of civilians in specific situations, without undermining the fundamental principles of international humanitarian law.

The thesis concludes that voluntary human shielding may constitute DPH, but only where three cumulative elements are simultaneously satisfied: a demonstrable intent to shield a military objective, a causal contribution assessed with reference to legally operative effect rather than kinetic causation alone, and a belligerent nexus to a continuing military operation. Voluntary presence alone, without satisfaction with all three criteria, does not entail loss of protection.

Regarding the second question, the thesis concludes that the causation criterion must be assessed functionally rather than purely kinetically. Where intentional conduct of a civilian shifts the proportionality equation to the point where an attack becomes legally prohibited, the causal link is satisfied. The commander's legally compelled decision to abort is not an independent intervening act but a direct consequence of the shield's tactical conduct.

This thesis confirms that involuntary shields retain full civilian protection without qualification. Their presence is taken into account exclusively within the proportionality assessment as anticipated collateral damage and does not render them lawful targets under any interpretation of Article 51(3).[178]

This thesis proposes the rebuttable presumption of involuntariness as the primary evidentiary standard, requiring reliable and corroborated evidence to establish loss of protection, combined with the continuous assessment obligations under Article 57 of Protocol I.[179]

This thesis concludes that the conduct-based framework of Article 51(3) remains the correct analytical lens to address the "revolving door" problem in cases of multiple voluntary concealment. However, when there is clear and repeated evidence of coordinated shielding, it may be easier to demonstrate that the presumption of involuntariness does not apply without converting the analysis to a status-based approach.

The results of the research allow us to formulate a number of practical measures. It is expedient for governments to develop clearer guidelines for military commanders in assessing situations involving the use of human shields. The International Committee of the Red Cross should continue the development of the DPH doctrine taking into account the problem of voluntary human shields. In turn, the Organization of the United Nations could contribute to the formation of a more harmonized international practice through the development of expert guidance and analytical reports.

In the conditions of growing urbanization of armed conflicts and the complication of the nature of military operations, a more flexible and functional interpretation of the concept of DPH becomes necessary to preserve the legitimacy and effectiveness of international humanitarian law. The model proposed in this work is a step towards achieving a balance between the requirements of humanity and military efficiency in the legal regulation of armed conflicts of the XXI century.

[178] Protocol I (n 1) art 51(3).
[179] ibid art 57.

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