



The legal production of “the civilian” in contemporary war: International humanitarian law status, surveillance governance, and evidentiary regimes

OÑATI SOCIO-LEGAL SERIES VOLUME 16, ISSUE 5 (2026), 2293-2324: RECKONING WITH THE EAST: SITUATING SCHOLARSHIP FROM EASTERN EUROPE AND EURASIA IN CRIMINOLOGY AND SOCIO-LEGAL STUDIES

DOI LINK: <https://doi.org/10.35295/OSLS.IISL.2628>

RECEIVED 18 FEBRUARY 2026, ACCEPTED 29 JUNE 2026, FIRST-ONLINE PUBLISHED 1 SEPTEMBER 2026, VERSION OF RECORD PUBLISHED 1 OCTOBER 2026

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Abstract

How is “the civilian” made knowable in contemporary war? This article argues that civilian status is increasingly produced as an epistemic outcome at the intersection of international humanitarian law (IHL) status categories, surveillance governance, and evidentiary/justificatory regimes. Through a socio-legal reading of treaty law, ICRC commentaries, military manuals, civilian-harm mitigation policies, selected jurisprudence, and public justifications, it traces two coupled production loops: pre-strike classification (pattern-of-life inference, metadata, probabilistic thresholds) and post-strike recognition (recording, investigation, secrecy, and narrative closure). The analysis shows how the presumption of civilian status in doubt can be practically inverted by risk-calculus and intelligence “confidence”, while accountability mechanisms can stabilise or erase civilianhood through files, standards of proof, and disclosure practices.

Key words

International humanitarian law, civilian status, surveillance, evidentiary regimes, targeted killing

Resumen

¿Cómo se vuelve “conocible” la figura del civil en la guerra contemporánea? Este artículo sostiene que la condición de civil se produce como un resultado epistémico en la intersección entre las categorías de estatus del derecho internacional humanitario (DIH), la gobernanza de la vigilancia y los regímenes probatorios y de justificación pública. A partir de una lectura sociojurídica de tratados, comentarios del CICR,

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manuales militares, políticas de mitigación de daños a civiles y jurisprudencia seleccionada, se reconstruyen dos bucles acoplados: la clasificación previa al ataque (patrones de vida, metadatos, umbrales probabilísticos) y el reconocimiento posterior (registro, investigación, secreto y cierre narrativo). El análisis muestra cómo la presunción de civilidad en caso de duda puede invertirse mediante cálculos de riesgo y “confianza” de inteligencia, mientras que la rendición de cuentas puede estabilizar o borrar la civilidad a través de archivos, estándares de prueba y prácticas de divulgación.

Palabras clave

Derecho internacional humanitario, condición de civil, vigilancia, regímenes probatorios, ejecuciones selectivas

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1. Introduction

One of the oldest words in war is “civilian”; but in the most recent wars, this word functions more like a decision-making technique than a noun. “Civilian” appears in normative texts as a person who must be protected; in targeting practices. However, it is often the output of uncertainty management: a figure whose identity is derived from data fragments, redrawn with suspicion, lost amid “misinformation” and “good faith assumptions.” This article approaches this transformation of “civilian” not as an ethical debate, but from a colder yet more explanatory perspective: as legal production.

The article therefore asks not only “who is a civilian under IHL?” but also through what knowledge practices someone becomes recognizable as civilian before and after the strike.

International humanitarian law (IHL) states that civilians, in its simplest form, are those who do not belong to the armed forces and require distinction. Only military objectives may be targeted during attacks and not civilians or civilian objects (Additional Protocol I 1977, arts 48, 51(2), 52(2)). Nevertheless, contemporary conflicts, remote sensors, multi-source intelligence, persistent surveillance, digital traces, risk scores, and status transform into operational classification. It matters less who someone is than how they are read within a data regime (patterns, networks, spatial-temporal traces). Surveillance has a sorting function; it sorts and classifies according to risk (Lyon 2003; Amoores 2011). The protection of civilians thus relies on an intangible, intelligence-dependent assumption that can be put to the test.

Legally, the hinge is “doubt.” The IHL takes the position that civilian status always exists when there is any reasonable doubt about a person (Additional Protocol I 1977, art. 50(1)); and also that civilian-use objects are not contributing to military action when there is any reasonable doubt (Additional Protocol I 1977, art. 52(3)). In practice, uncertainty often gets assigned downwards: civilians take on the risks, and the state retains the informational monopoly. This has resulted in a lopsided regime of proof and what counts as ‘sufficient’ information, as well as what testimonies are ‘reliable,’ what records are obtainable, and what deaths are acknowledged or left in darkness.

Military doctrine uses the language of IHL but alters its rationale. The Law of War Manual of the U.S. Department of Defence frames the classification of a target as a ‘good faith’ judgment, based on what is available and instructs the decision-makers to presume persons/objects as protected unless the information available indicates otherwise to be military targets (U.S. Department of Defence 2023a, sec. 5.4.3.2). Simultaneously, it emphasises that this should not be regarded as a “trial governed by complex rules of evidence” (U.S. Department of Defense 2023a, sec. 5.4.3.2). The outcome of this process is that “civilian” becomes intelligence dependent: such protection follows the adequacy and confidence of information, while the debate about proof standards is sidelined. The article’s problem is the following: how does this information–evidence–interpretation triangle refigure civilianhood, and with what political effects?

This article traces the legal production of the “civilian” in three intersecting areas:

1. IHL status categories (civilian/direct participation in hostilities/membership in an organized armed group/continuous combat function),

2. Surveillance governance (permanent monitoring, riskification, data-derived indicators),
3. Evidence and justification regimes (secrecy, accountability procedures, public narratives, the “good faith” doctrine).

Collectively, the three areas imply that “civilian” depends not only on who someone is, but on how that someone is known and narrated. Socio-legal research is the kind of research that treats the law as a classificatory practice. The categories do not just reflect reality, they help construct it (Hacking 1986, Bowker and Star 1999). The contemporary nature of surveillance creates patterns to govern (Scott 1998). During warfare, enhanced transparency does not eradicate uncertainty; it has the ability to change uncertainty into probability.

The term “civilian” in modern warfare refers to an epistemic status. To be a civilian, or not be a civilian, is mediated by the information architecture of targeting, the secrecy surrounding it and the rhetoric of public justification. Although IHL may be humanizing, it does not negate that humanization is conditioned on political and technological infrastructure. Compared to abstract ideas, humanitarian law is tested more by what is produced, withheld, and authorized as knowledge (Kennedy 2006, Butler 2009). The issue of mournable life becomes one of recognition as civilian (Mbembe 2003, Butler 2009).

The article contributes by connecting the civilian debate with regimes of surveillance and evidence rather than limiting it to the doctrinal DPH/CCF debate. As we move from targeting instantaneous acts to targeting indicators of context and behaviour, risks for civilians increase (Melzer 2008, Mignot-Mahdavi 2023). Simultaneously, the presumption of civilian status in doubt becomes site of reinterpretation and contestation (Daniele 2024). It is not only about what the law states, but how it functions in conjunction with preventive security logics.

1.1. Literature positioning and gap

Existing literature approaches civilian protection through three partly separate debates. First, IHL scholarship refines the doctrine of distinction, doubt, feasible precautions and DPH/CCF, but often treats classification as a doctrinal boundary question (Melzer 2008, Akande 2010, Schmitt 2010, Watkin 2010, Daniele 2024). Second, drone and targeted-killing scholarship shows how remote warfare, signature strikes and global-battlefield claims stretch status categories and weaken judicial scrutiny (Kretzmer 2005, Heller 2013, Lubell and Derejko 2013, Heyns *et al.* 2016, Vlad and Hardy 2025). Third, surveillance and socio-legal scholarship explains how data systems, files and evidentiary routines make persons knowable and governable (Latour 2010, Amore 2011, Krebs 2017, Badalič 2023). The remaining gap is that these literatures are rarely read together: doctrinal status, surveillance classification and post-strike evidentiary recognition are usually analysed separately. This article joins them to show civilianhood as a two-stage epistemic production process.

This study’s empirical claim is limited: it does not claim to narrate operational targeting decisions “from within”; it does not produce data through interviews or surveys. Instead, it traces legal production through texts: IHL provisions and interpretations, military manuals, official policy documents (especially civilian harm mitigation

frameworks), selected international judicial/institutional texts, and public justification practices. This choice is not accidental: “civilian” status is precisely defined, limited, exceptionalized, and managed in these texts. Texts are not only the “legal infrastructure” of war; they are also war’s “regime of knowledge.”

Lastly, public scrutiny matters a great deal too. Civilian harm assessments’ transparency appears to be at the heart of legal-political controversies. For instance, in the context of a tribunal judgement, it was reported that secrecy practices that conceal how the United Kingdom tracks civilian deaths could damage public confidence (Graham-Harrison 2026). Cases such as these shows that ‘civilian’ is reproduced not just at targeting moment, but subsequently, in the processes of the recording, recognition, claiming, compensation and memory. Therefore, “civilian” is produced as much in the narrative of war as in the war.

Section 2 outlines the IHL framing of “civilian” (distinction; presumption in doubt; DPH/CCF). Section 3 outlines the classification and critique framework of law for the ‘epistemic status’ thesis. Section 4 focuses on Surveillance Governance and Targeting. Section 5 looks at evidence, secrecy, and public justification. The conclusion delineates the institutional conditions under which IHL’s promise of protection can remain meaningful.

2. The grammar of “civilian” in humanitarian law: Negative definition, presumption rule, and exceptions

2.1. Negative definition: The identity of “civilian” is established outside the membership register

In IHL, civilian is exclusion category not self-definition. Additional Protocol I characterizes civilians by exclusionary criteria: individuals who are not included in the armed forces categories (Additional Protocol I 1977, art. 50(1)). The bureaucratic boundary of membership, not moral qualities, gives rise to civilian status. The definition focuses on affiliation information at the heart of war: status is often gleaned from which collective scheme one is (or is not) registered under (Geneva Convention III 1949, art. 4; Additional Protocol I 1977, art. 43).

The first negative definition is supplemented by the Geneva Convention IV, which organizes protection around the category of “protected persons” and the treatment of civilians in situations of occupation. Thus it extends civilianhood beyond the conduct of hostilities into detention, movement, and everyday administration (Geneva Convention IV 1949).

This negative definition makes civilianhood administratively fragile: protection depends on ongoing differentiation and verification, not on self-evidence (Henckaerts and Doswald-Beck 2005, Rules 1, 5). The security of the category thus hinges on the clarity of norms and on the information systems available to commanders, analysts, and targeting cells, systems that produce “truth” about membership (Additional Protocol I 1977, art. 57; Breeze 2024).

2.2. The stage set by the principle of distinction: The normative function of the category

The negative definition functions only within the principle of distinction. AP I requires parties to distinguish civilians from combatants and to direct attacks only at military objectives (Additional Protocol I 1977, art. 48). The International Court of Justice (ICJ) treats distinction and civilian protection as “cardinal principles,” stressing that civilians cannot be made the object of attack (ICJ 1996, para. 78). “Civilian,” then, is not war’s merciful face but a legal threshold that constrains targeting (Henckaerts and Doswald-Beck 2005, Rule 1; ICTY, *Galić* Trial Judgment 2003, para. 46).

But once the stage is set, the script alone is not enough: the principle of distinction is clear in theory; in practice, however, it is always dependent on the questions “who are we looking at, what do we see, what do we know?” Therefore, humanitarian law imposes not only an ethical imperative of distinction, but also (indirectly) an ethics of knowledge that makes distinction possible: concepts such as “verification,” “doubt,” “feasible,” and “good faith military judgment” come into play here (Additional Protocol I 1977, art. 57, Daniele 2024, van Collier 2024).

2.3. Doubt, presumption, and the “feasible” standard: The epistemic threshold of protection

AP I’s “benefit of the doubt” rule frames civilian status as an epistemic threshold: in doubt, presume the person is civilian (Additional Protocol I 1977, art. 50(1); Sandoz et al. 1987). A parallel presumption applies to civilian-use objects: in doubt, presume they are not used to contribute to military action (Additional Protocol I 1977, art. 52(3)). Protection is thus oriented not toward certainty, but toward decision-making under uncertainty.

AP I’s precautionary regime requires feasible verification of targets and precautions to minimize civilian harm (Additional Protocol I 1977, art. 57). “Feasible” concerns information quality and timeliness, not only technical capacity (Quéguiner 2006, Breeze 2024).

Debates concerning the “rule of doubt” have intensified in recent years, particularly following the changes in the U.S. Department of Defense Law of War Manual. The 2023 update states that decision-makers must “presume that persons/objects are protected from being made the object of an attack, unless available information indicates that they are military targets” (U.S. Department of Defense 2023a, 201; 2023b; Daniele 2024). The formulation looks protective, but it recenters what “available information” says: doubt is explained as a decision form governed by indicators produced in an information regime (van Collier 2024, The Department of Defense Updates the Law of War Manual 2024).

At this stage, a dangerous risk of slippage arises. If the rule of doubt is interpreted as “technical starting point” linked to “weight of information”, instead of a presumption in favour of civilians, the consequence is protection is no longer a legal means for addressing uncertainty. Moreover, it risks becoming integrated into the self-validating logic of the system that generates uncertainty (intelligence, surveillance, data analytics) (Daniele 2024, van Collier 2024). The next parts of this article will deal with precisely this

integration: the gap between the civilian being legally ‘protected’ and being ‘classified’ in reality.

2.4. *“Civilian population” and the law of mixing: The civilian nature of the community*

IHL also constructs the “civilian population.” AP I states that it consists of civilians (Additional Protocol I 1977, art. 50(2)), while recognizing that civilians and combatants may be intermingled. Intermingling does not cancel protection: the ICTY held that individual combatants within a civilian population do not alter its civilian character (ICTY, *Galić* Trial Judgment 2003, para. 50). The ICRC Commentary similarly notes that combatants will mix with families and that civilian character remains unless there is mass concentration in regular, large units (Sandoz *et al.* 1987, para. 1922).

The critical issue here is not the “mixing” itself, but how the mixing is managed. The concept of civilian population does not create a kind of “collective immunity” in law; however, it also does not permit attack decisions to reduce protection by viewing civilian presence as a “contaminating element.” The opposite interpretation brings the civilian population closer to being a military target based on the “possibility of combat participation” and effectively reduces the principle of distinction to “risk management” (Additional Protocol I 1977, arts. 48, 51; ICTY, *Galić* Trial Judgment 2003, para. 50).

2.5. *When protection is suspended: Direct participation in hostilities*

The fact that civilian status does not confer “absolute” immunity is clarified by the direct participation exception in AP I and AP II: Civilians cannot benefit from protection against attack while they are directly participating in hostilities (Additional Protocol I 1977, art. 51(3); Additional Protocol II 1977, art. 13(3); Henckaerts and Doswald-Beck 2005, Rule 6). The most dangerous word in this sentence is “duration.” This is because “duration” opens the door to an ongoing debate about where the boundaries of suspension begin and end, rather than suspending civilian status immediately.

The ICRC’s Interpretive Guidance defines direct participation through three elements: threshold of harm, direct causation, and belligerent nexus (Melzer 2008, ICRC 2009). It aims to confine loss of protection to specific acts, not broad intent or affiliation. Critics argue it is too restrictive or operationally unrealistic (Akanke 2010, Schmitt 2010, Watkin 2010).

2.6. *The logic of membership: Continuous combat function and the narrowing of “civilian”*

The controversy surrounding actor-based DPH has turned over membership debates, particularly in NIAC. The notion of CCF as applied by the ICRC suggests that those who have a function in an organised armed group that is continuous and combat is a non-civilian and targetable while that function continues (Melzer 2008, ICRC 2009). In counter-terrorism contexts, CCF can switch the target of violence from sighted acts to contextual indicators (Mignot-Mahdavi 2023) which can lead to expansion rather than protection (Henry 2018).

This expansion connects to debates about targeted killings. Kretzmer (2005) illustrates the potential erosion of judicial safeguards by the claims of targeted killing as a legitimate warfare method. Alston cautioned that it could turn out to be a “language of authorization” across contexts (UN Human Rights Council 2010). The ruling on targeted killings by the Israeli Supreme Court shows that there are pressures at work to re-interpret civilian/combatant categories and preemptive strike arguments (Supreme Court of Israel 2006).

This context is essential for the article’s main argument: being “civilian” is not simply a status indexed by AP I; debates on direct participation and membership/CCF (Melzer 2008, Mignot-Mahdavi 2023) constantly reproduce this category through the targeting logics of contemporary warfare. The production of this is no longer just a doctrinal dispute – which indicator counts as “membership,” which behaviour counts as “participation,” and which uncertainty counts as “suspicion” is a series of decisions which create life-and-death consequences (Daniele 2024, Breeze 2024).

In addition to membership logics, the contemporary practice raises a second axis of expansion: that armed conflict frameworks travel with the target across borders. Concerns over the “global battlefield” are not only geographical but also epistemic. As we continue to justify targeting through distributed intelligence architectures, the civilian category is ever-more mediated by transnational surveillance, remote verification etc. (Lubell and Derejko 2013, Heyns *et al.* 2016).

Justificatory debates regarding the use of force across borders, especially claims couched through the ‘unwilling or unable’ doctrine, are formative of the operational frame within which risk, doubt and necessity are assessed. Because they re-adjust what counts as a sufficient basis for lethal certainty. (UN Human Rights Council, 2010; Obregón Fernández, 2023). These moves matter for civilianhood.

Interim conclusion: “civilian” in IHL names a decision process under uncertainty, not a fixed identity. Negative definition, presumption in doubt, and exceptions work together, but the category becomes fragile as decisions rely on information infrastructures and their preferences (Additional Protocol I 1977, arts 50–52, 57, van Collier 2024, Daniele 2024). Section 3 turns to classification sociology and regimes of proof to explain this fragility.

3. Theoretical framework and method: Reading “the civilian” as a classification device

To treat the civilian as a mere object of protection is to miss the socio-legal work done by the category. The civilian is a classificatory achievement that is continuously re-made across legal texts, intelligence practices, evidentiary routines, and justificatory narratives.

3.1. Sociology of classification: Categories are not innocent

The act of classification does not faithfully reflect reality but rather creates reality. It does so by bestowing visibility, vulnerability, and institutional attention (Bowker and Star 1999). As “civilian” becomes an active label, it does not only get deployed to produce persons; it configures what counts as a relevant life, a relevant injury, and a relevant

mistake. In Ian Hacking's terms, categories can "make up" the people they name. They invite new descriptions, new expectations, and new forms of treatment that feed back into conduct and self-understanding (Hacking 1986).

In war, this productive effect has immediate stakes: the boundary between protected life and targetable life determines action. The relevant infrastructures are therefore not abstract; files, metrics, thresholds and default assumptions make "civilian" a practical answer to administrative questions about targeting, counting, investigation and responsibility.

3.2. The state's desire to see: Legibility, governmentality, security epistemologies

During wartime, the modern state's push for legibility amplifies the vulnerability of civilians. To administrate through a distance, states simplify social worlds with signs, grids, lists, typologies and so on (Scott 1998). Governmentality refers to a similar movement with which power makes life subject to measurement and governance, and uncertainty stands transformed into a problem of knowledge and management (Foucault 2007)

With regards to targeting, legibility will not 'merely' find civilians; it can reformat civilianhood into risk. People are sorted into degrees of suspicion and vulnerability by surveillance practices (Lyon 2003). Security governance tends to work with a pre-emptive logic which sees uncertainty as a reason to do something rather than to do nothing (Aradau and van Munster 2007). A "data derivative" is a score or flag from disaggregated traces, projected on uncertain futures but used to justify interventions in the present (Amoore 2011).

3.3. Critical legal studies and the sociology of the juridical field

If categories are productive, law is not merely the arena where categories are announced; it is one of the devices through which they are authorised. Critical accounts of war and law show how legal vocabularies can translate violence into reasonableness, and how doctrinal debates can displace political questions into technical ones (Kennedy 2006). Bourdieu's sociology of the juridical field further suggests that legal authority depends on specific forms of symbolic power, forms that appear neutral while structuring which arguments can count as properly "legal" (Bourdieu 1987).

From this angle, the civilian is an institutional achievement. It is made through documents, citations and procedural sequences that assemble legality and give some claims the authority of legal knowledge (Latour 2010).

3.4. Corpus

The analysis draws on four clusters of materials. First, treaty law and commentaries: the 1949 Geneva Conventions and the 1977 Additional Protocols, the ICRC's 1987 Commentary on the Additional Protocols, the ICRC's Interpretive Guidance on DPH, and the ICRC study on customary IHL (Sandoz *et al.* 1987, ICRC 2009, Henckaerts and Doswald-Beck 2005).

Second, military doctrine and policy: the U.S. Department of Defense Law of War Manual and related targeting and civilian-harm documents, the U.K. Manual of the Law

of Armed Conflict, and associated doctrinal publications on targeting (U.S. Department of Defense 2022, 2023a, 2023c; U.S. Joint Chiefs of Staff 2013; U.S. Department of the Air Force 2026; U.K. Ministry of Defence 2004).

Third, accountability and jurisprudence: the UN Special Rapporteur's study on targeted killings and selected case-law and advisory opinions that illuminate how status and doubt are treated in practice (ICJ 1996, ICTY 2003, Supreme Court of Israel 2006, UN Human Rights Council 2010, ECtHR 2011, 2014, 2021).

Fourth, public justification and counter-archives: press reporting and methodological documents from casualty-recording organisations, used not as substitutes for legal sources but as windows into how civilianhood is narrated, contested, and verified in public space (Graham-Harrison 2026, Airwars 2026).

3.5. Method

Methodologically, the paper treats documents as socio-technical artefacts rather than transparent containers of facts. Interpretive policy analysis is used to trace how problems are framed and how "reasonable" action is justified (Yanow 2000, Bacchi 2009). Critical discourse analysis supports attention to recurring lexical choices and argumentative moves that naturalise classification decisions (Fairclough 1992).

Two further literatures anchor the analysis. First, work on verification and audit shows how standards, checklists, and evidentiary rituals shape what counts as adequate knowledge (Power 1997, Strathern 2000). Second, scholarship on documentary practices highlights the materiality of files and the normalisation of electronic evidence in legal proceedings (Riles 2006, Hull 2012, Onțanu 2022).

3.6. Analytical procedure

The analysis proceeds in three stages. Stage 1 develops a conceptual codebook around status, doubt, intelligence confidence, feasibility, and harm. Stage 2 traces how these terms travel across the targeting cycle, focusing on "pattern-of-life" inferences and probabilistic thresholds. Stage 3 follows the afterlife of strikes through casualty recording, investigation, disclosure, and public justification, identifying where the civilian is stabilised as a recognised victim or dissolved into uncertainty.

3.7. Scope and limits

The article is intentionally theoretical and document-based. It does not rely on interviews or surveys, and it does not claim to reconstruct any single operation exhaustively. Its contribution lies in mapping how legal categories, surveillance practices, and evidentiary regimes co-produce "the civilian" as an object of governance, and in showing why doctrinal refinements alone cannot resolve the political and epistemic stakes of civilian protection.

4. Findings I: Surveillance governance and the probabilistic production of the "civilian"

This section argues that the "civilian" is increasingly produced as a classification output within surveillance infrastructures and then reintroduced into law. In contemporary

targeting, “protecting the civilian” often works through converting civilianhood into a measurable risk variable. Along the kill chain, “who is this?” becomes “which pattern fits?” and “is it civilian?” becomes “has it crossed a threshold?” This sits uneasily with IHL’s status logic: fixed legal categories are operationalized through probabilistic sorting (Gregory 2011, Franz 2017, Badalič 2023).

4.1. The visual illusion of truth: Transforming “distant” view into “close” knowledge

Remote warfare’s vertical gaze presents itself as objective: rhythms of movement and crowd dynamics become targeting data. Graham’s “vertical geopolitics” captures how this gaze turns city and body into readable data (Graham 2004). Gregory notes how “surgical” drone rhetoric recasts technological vision as a political virtue, equating seeing with ethical superiority (Gregory 2011). Distinction can then appear as visual verification, as if visibility guarantees knowledge.

The problem here is this: visual certainty is not epistemic certainty. As the surveillance image intensifies, the context often becomes thinner. The object grows; meaning shrinks. Precisely for this reason, surveillance governance functions not as a production of truth but as a production of reasonableness: the political weight of the decision is mitigated by the circulation of the image as “evidence.” Thus, the protection of the “civilian” is often operated not through the “recognition of the civilian,” but through the establishment of the defensibility of the decision with a technical aesthetic (Der Derian 2000, Gregory 2011).

4.2. From identity to implication: Pattern-of-life and the pattern authority that generates suspicion

Surveillance governance turns from identity-based targeting to behavioral inference. “Pattern-of-life” analysis asks whether conduct over time forms a meaningful pattern rather than who a person is. The UN Special Rapporteur’s 2013 report notes the centrality of “pattern of life” analysis in remote surveillance and counter-terrorism operations (UN General Assembly 2013). Franz reads the technique as “weaponized media”: it produces a policing gaze that extends war into everyday routines (Franz 2017).

The classificatory work is publicly visible in the recurring figure of the “kill list” and in the bureaucratic routines of nomination, review, and approval described in investigative reporting on U.S. targeting practices. Even when such accounts are partial, they reveal how legality and intelligence are co-produced in document trails designed to render death administratively reasonable (Becker and Shane 2012, Boyle 2013).

At this point, the status of the “civilian” once again shifts silently. Because the logic of the pattern establishes status as an indirect possibility rather than identifying it “directly”: even if identity information is lacking, behavior “implies” it; implication, once it crosses the threshold, becomes “reasonable certainty.” The IHL’s exhortation to “interpret in favor of civilians when in doubt” can effectively be reversed here: doubt ceases to be a protective brake and becomes fuel that increases the probability of hostility in the hands of the institutions that manage doubt (Heller 2013, Franz 2017, Ní Aoláin 2023).

This transformation crystallizes in the debate over “signature strikes”: attacks where the target’s identity is unknown but who are targeted due to certain “signature” characteristics (geography, movement, relationships, habits) risk severing the principle of “distinction” from direct status categories and linking it to a behavioral score (Heller 2013, Vlad and Hardy 2025). The legal debate often centers on “the legality of these attacks under IHL/IHRL”; but what is critical on the sociological level is this: the way civilians are produced is changing. Civilians are no longer “non-participants” but “non-suspicious pattern” individuals.

4.3. Metadata, network logic, and “relational criminality”: The transformation of membership into deduction

Surveillance governance does not merely produce images; it also produces relationships. By “relationship,” I do not mean social relationships, but correlations between data traces. Risk management literature has long debated the governance of “dataveillance” in the post-9/11 security sphere: risk becomes a category derived not so much from people’s actions as from the assembly of data fragments (Amoore and De Goede 2005, Amoore 2011). This “derived” risk is surveillance’s most powerful political invention: a system that operates based on the probability of being a perpetrator rather than the perpetrator’s intent.

Vasja Badalič’s analysis of metadata-based target selection reveals a conflict with the logic of distinction in IHL precisely at this point: metadata analytics struggles to make qualitative distinctions; margin of error and uncertainty become embedded in the decision as a “technical normal”; ultimately, the determination of the “target” relies on network inference (Badalič 2023). In such an epistemology, “civilian” is not a status but a probability produced by one’s position in the network: proximity to a particular node can facilitate the attribution of hostility through “proximity.”

It is illuminating to compare this situation with the policing field, where crime is redistributed in a “relational” manner. The predictive policing literature shows how patterns gain “authority” in police knowledge; how the pattern produced by the model replaces human intuition and standardizes “suspicion” (Kaufmann *et al.* 2019). A similar logic operates in the targeting domain: the pattern is not “evidence,” but it functions as sufficient justification for a “decision.” Thus, the production of the “civilian” shifts towards the correlations produced by the model rather than the protective presumption of the law (Amoore 2011, Kaufmann *et al.* 2019, Badalič 2023).

The algorithmic turn sharpens this problem. AI-enabled decision-support systems and machine-learning classifiers may not formally remove a human from the targeting chain, but they can pre-structure what the human sees, which correlations appear relevant, and when doubt is translated into a confidence score. This matters because IHL’s demands of distinction, precaution and proportionality presuppose contextual judgment, not merely system output. The concern is therefore not only fully autonomous weapons; it is also automation bias within ostensibly human-supervised targeting, where machine-ranked suspects, predicted patterns and confidence thresholds narrow the space for hesitation (Asaro 2012, Bode and Huelss 2018, Ekelhof 2018, ICRC 2020).

4.4. *The legalization of probability: “Near certainty” and human-looking thresholds*

Surveillance governance is also legalized through policy language. U.S. counterterrorism standards have used “near certainty” both that the target is present and that civilians will not be harmed (White House 2013, Siemion 2017). Although framed as protection, “near certainty” institutionalizes a probabilistic management regime: a policy threshold, not a universal legal standard. In practice it can shift legitimacy from correctness to procedure, decisions may still be wrong, but defensible as having met the threshold.

There is a dual movement here: on the one hand, legal rules (distinction, precautions) are mentioned alongside a rhetoric of “humanitarian” sensitivity; on the other hand, sensitivity is reduced to a measurable threshold. Thus, the “civilian” ceases to be a normative subject and becomes a parameter reduced to “probability of harm.” This is also consistent with a broader transformation pointed out by Der Derian in his “virtuous war/virtual theory” line: technology reduces the apparent moral and political costs of war while transferring the responsibility for decisions to procedures (Der Derian 2000).

4.5. *The targeting chain: Doctrine, process, and the institutional circulation of the “civilian”*

Targeting doctrine also embeds this production in process. U.S. doctrine frames targeting as a cycle (find, fix, track, target, engage, assess) (U.S. Joint Chiefs of Staff 2013, U.S. Department of the Air Force 2026). “Civilian” appears as a question at the start (“who is this?”) and as an assessment at the end (“was there civilian harm?”), yet within the cycle it often emerges as an output of intelligence and surveillance flows rather than a stable input.

Gould and Stel’s analysis of “strategic ignorance” (Hawija) captures the accountability paradox: sophisticated processes can enable not knowing, or avoiding knowing, specific harms. Official narratives may move from denial to secrecy to institutionalized “not knowing” (Gould and Stel 2022). Constant monitoring can produce manageable uncertainty, within which civilians are rhetorically centered yet structurally exposed to misclassification.

Consequently, the finding of this section is clear: Surveillance governance removes the “civilian” from being a defined status and transforms it into a produced category; moreover, this production is both a technical and a political process. Therefore, the debate over the protection of civilians must focus not only on “are the rules correct?” but also on “what epistemology are the rules applied with?”

5. Findings II: Evidentiary regimes, secrecy, and public justification: The contestability of the “civilian”

Surveillance governance rendered the “civilian” a probabilistic classification output prior to the attack (Lyon 2003, Amore 2011, Badalič 2023). However, the most decisive production of civilian status often occurs after the attack: who was killed, who was recognized as a “civilian,” which deaths were recorded as “incidents,” which ones fell outside the statistics... The ethical debate of war is reduced here to a documentation technique: the killed body often becomes a “file” in the legal narrative; the file is a

gateway that decides who can speak and who is deemed “knowable” (Riles 2006, Latour 2010, Hull 2012).

The main finding of this section is this: Civilian status is not only a precondition for the principle of distinction; it is a product of regimes of evidence. Regimes of evidence do not merely reveal “truth”; they draw the boundaries of truth. This boundary is established primarily through three mechanisms: (i) the concentration of the monopoly on knowledge in state/coalition institutions, (ii) the conceptual veil drawn between civilian harm and legal violations, and (iii) the language of public justification repertoires that passivizes responsibility.

5.1. The sovereignty of the file: Monopoly on knowledge and the hierarchy of testimony

Evidence in liability debates is not only technical; it is about access. Remote warfare generates evidentiary records in sensors, platforms, and classified files, producing both “more records” and “less visibility.” Records also encode conditions of disclosure (Lieblich 2012). Demands to “show us the films” therefore confront a political fact: existence of footage does not entail disclosure (Lieblich 2012).

This hierarchy also reorganizes testimony. Field testimony (local press, families, health workers, civil society networks) is often considered “secondary,” while classified/institutional records are treated as “primary truth.” This creates an epistemic injustice: the narrative of those harmed is subjected to the evidence architecture of security institutions; the condition for being recognized as “civilian” is often compliance with “the form of evidence recognized by the institution” (Power 1997, Fricker 2007). This transforms civilian status from a human truth into a procedural permit.

The normative consequence is that local witnesses are not merely heard less; they are often required to translate loss into the evidentiary grammar of the institution that produced or authorized the strike. Victims’ families, local doctors and community organizations may possess situated knowledge of identity, routines and civilian relationships, but that knowledge is marginalized when only classified sensors, coalition records or officially formatted incident reports are treated as reliable. Epistemic injustice therefore becomes legal injustice: the people most directly harmed carry the burden of proving civilianhood with the least access to the files that define it (Fricker 2007, Krebs 2017, Airwars 2026).

Work done by Onțanu on documentation and evidence provides a useful conceptual basis at this point: the “normalization” of electronic evidence is not merely the entry of technology into the courtroom, but a normative reordering of which paths evidence can take to be considered “legitimate” (Onțanu 2022). A similar normalization operates in the context of remote warfare, in military files and civilian-harm assessments: any record gains value to the extent that it conforms to the institutional format, regardless of whether it comes from “outside”; to the extent that it does not conform, it remains an “allegation.”

5.2. The curtain drawn between “civilian harm” and “violation”: A conceptual distinction

The second mechanism of evidence regimes is institutional language that consciously distinguishes between civilian harm and legal violations. This distinction seems reasonable at first glance: not every civilian death automatically constitutes a violation of IHL; the proportionality and precautionary regime allows some harm to be framed as an “acceptable risk” within the law (Additional Protocol I 1977, arts 51(5)(b), 57). In practice, however, this distinction ties the recognition of civilian status to a two-step threshold:

First, “Was there civilian harm?”

Then, “Was there a violation?”

Between “civilian harm” and “violation” lies an institutional gate. DoDI 3000.17 states that civilian harm is not itself a legal violation and that “credible information” is needed to trigger violation assessment; it also separates harm assessments from investigations (U.S. Department of Defense 2023c, sec. 4). The institution largely controls what counts as credible and when review is reopened.

The political impact of this distinction is visible in the language of accountability. Civilian harm is accepted as an “unfortunate” outcome; violations, however, are elevated to a higher threshold and are often buried in technical ambiguities. Here, the production of civilianhood is not merely an issue of identity determination but the distribution of harm categories within an institutional classification economy (Espeland and Stevens 1998, Strathern 2000).

5.3. The duty to investigate: From legal obligation to institutional architecture

The third mechanism of evidence regimes is to transform the investigation itself from a “truth-finding” exercise into a governance technique. IHL, particularly in international armed conflicts, emphasizes criminal sanctions and the obligation to prosecute through the “grave breaches” regime (Geneva Conventions 1949, common arts 49/50/129/146; Additional Protocol I 1977, arts 85–87). However, the typical debate in modern warfare boils down to this: in cases that do not reach the threshold of war crimes but cause civilian harm, which investigation standard will be applied?

The strongest response to this question in the literature argues that an investigative obligation beyond the “grave breaches” regime, at the intersection of customary law, general principles of international law, and human rights law, is becoming increasingly apparent (Cohen and Shany 2011, Margalit 2012). This approach emphasizes that leaving the investigation of civilian harm incidents solely to the logic of criminal prosecution is insufficient in terms of both “access to the truth” and “prevention” (Margalit 2012).

The ICRC–Geneva Academy Guidelines on Investigating Violations of IHL translate the duty-to-investigate debate into process design, detailing standards for record-keeping, early steps, evaluation of external allegations, independence, speed, and transparency (ICRC 2019). Though not binding law, the Guidelines standardize what “effective” investigation can look like, linking post-strike civilian recognition to institutionalized evidentiary pathways.

The investigative approach of human rights law also influences this architecture. The Minnesota Protocol (2016) details the state's obligation to effectively investigate potentially unlawful deaths; it systematizes criteria such as evidence gathering, independence, family participation, and transparency (OHCHR 2016). The case law of the European Court of Human Rights in the context of military operations (e.g., *Al-Skeini and Others v. the United Kingdom*; *Jaloud v. the Netherlands*; *Hanan v. Germany*) establishes a framework for the minimum conditions of an effective investigation, even while stating that the investigation must be "realistically" implemented (ECtHR 2011, 2014, 2021).

Bringing this case law into the IHL debate is risky, but inevitable: the legal production of the civilian is now shaped not only by IHL categories, but by the hybrid field of investigation and evidence standards.

5.4. The transparency–secrecy conflict: The national security exception is an evidence technique

Counter-archives from civil society and field-based reporting also illuminate what the official file often cannot see: the relational and temporal spillovers of strikes. Reports documenting civilian harm and trauma among affected communities, while methodologically different from doctrinal sources, matter here as evidence of what operational categories routinely exclude (Center for Civilians in Conflict (CIVIC) 2012, Stanford Law School and NYU School of Law 2012).

Evidence regimes manage not only the "existence of evidence" but also the "circulation of evidence." In distant warfare, the fundamental obstacle to circulation is "national security"; however, national security is not merely an exception, it sometimes becomes a technique that shapes the evidence itself. Transparency demands seek to reveal how institutions count "civilian harm," what procedures they use to assess it, and what criteria they use to declare it "confirmed"; institutions, however, often withhold even procedural information on the grounds of classification.

A current and concrete example of this dynamic can be seen in a FOI dispute in the UK concerning requests for information on civilian harm assessment processes: while a tribunal acknowledged that keeping the processes secret could undermine public confidence, it limited the disclosure of information on grounds of national security (Graham-Harrison 2026). What is noteworthy here is not the singular event, but the structure it reveals: the recognition of civilian status often resides not in public debate, but within closed procedures and inaccessible files. This transforms civilian status from something "contestable" to a category "dependent on institutional approval."

5.5. Counter-archives: OSINT, civil society, and the "legalization of truth"

The monopoly on evidence is not absolute, because war is simultaneously an "age of visibility." Local images, satellite data, social media records, open-source intelligence (OSINT), and civilian casualty monitoring networks produce counter-archives against state records. Organizations such as Airwars attempt to link civilian casualty recording to a methodology by tracking and rating claim clusters with source diversity (Airwars 2026). Such counter-archives do not guarantee the "truth" claim on their own; however,

they demonstrate that the recognition of civilian status cannot be left solely to institutions.

At this point, Shiri Krebs' concept of the "legalization of truth" is powerful for understanding the political impact of evidence regimes: legal language produces an architecture of truth that determines "how events are understood" not only in court but also outside of it (Krebs 2017). Counter-archives attempt to reconstruct "truth" against this architecture; but they are often forced to rely on the categories of legal discourse (evidence, reliability, verification, independence). Thus, civil society needs the language of law to make civilianhood visible; this need reaffirms the symbolic power of law in the production of civilianhood (Bourdieu 1987, Krebs 2017).

Counter-archives face an evidence crisis. Digital material is manipulable, and trust becomes a methodological problem in the age of AI. McDermott *et al.* report ICC judges' concerns about user-generated evidence and judging with AI-era challenges, emphasizing that evidentiary value depends on institutional trust as well as technical verification (McDermott *et al.* 2026).

5.6. Narrative closure: Public justification draws the boundaries of civilianhood

Evidence regimes are not just about recording and investigation; they are also narratives. Public justification often indirectly establishes where civilianhood begins and ends. Three typical narrative techniques are visible here:

Passivization and depersonalization: The phrase "civilians were killed" leaves the perpetrator's place blank; death is presented as if it occurred in the natural course of events (Fairclough 1992).

Exception production: Frames such as "human shield," "terrorist infrastructure," and "dual use" narrow the effect of civilian status without contradicting the promise of protecting civilians; because the civilian figure is redefined through "enemy violation" (Kennedy 2006, Butler 2009).

Transfer of procedural legitimacy: Language such as "an investigation was conducted," "procedures were followed," and "standards were met" shifts the debate from normative responsibility to procedural correctness; thus, the ethical weight of civilian protection dissolves into administrative language (Power 1997, Strathern 2000).

The "strategic ignorance" discussed by Gould and Stel in the Hawija context is one of the sharpest forms of this narrative closure: institutions produce legitimacy by "not knowing" certain things, that is, by making ignorance an institutional strategy (Gould and Stel 2022). This shows that civilianhood is produced not only through "misclassification" but sometimes through "limiting classification": the recognition of the civilian depends not on the existence of knowledge but on the circulation of knowledge and the visibility permitted by the narrative.

Interim conclusion: surveillance governance ties civilianhood to probabilistic thresholds, while evidence regimes tie it to institutional recognition. The "civilian" is produced across recording, evaluation, investigation, and disclosure; protection can be narrowed at any point through secrecy and evidentiary hierarchies. Section 6 combines these findings into a model of civilian production, asking when protection shifts toward managerial harm control.

6. Discussion: The epistemic status of the “civilian”: A double-loop production model

Sections 4 and 5 show a coupled dynamic: surveillance produces probabilistic pre-strike classification, while evidence regimes shape post-strike recognition (Amoore 2011, Liebllich 2012, Gould and Stel 2022). Together, they make civilianhood an institutional knowledge product. The “epistemic status” thesis follows: civilian status depends on what can be known, recorded, and circulated (Scott 1998, Butler 2009, Latour 2010).

6.1. The double-loop model: Pre-strike classification, post-strike recognition

FIGURE 1

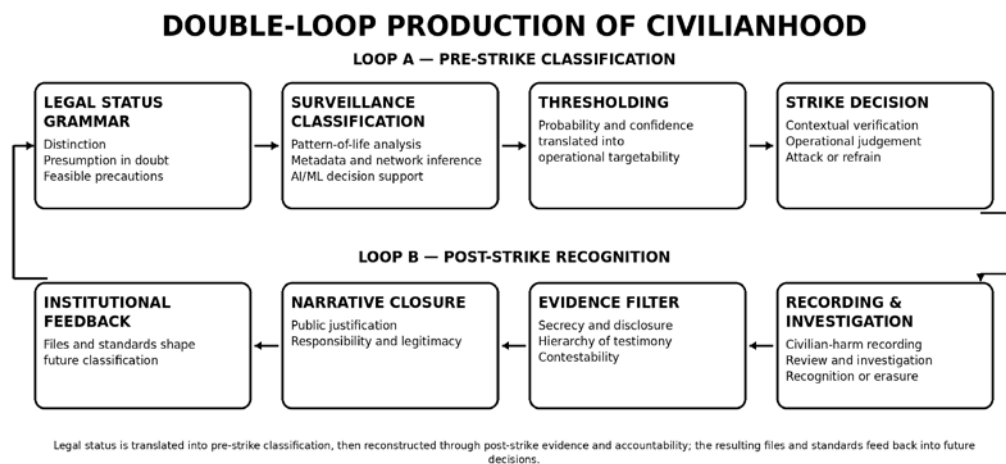


Figure 1. Double-loop production of civilianhood: pre-strike classification and post-strike recognition.

The model proposed in this article does not compress civilian status into a single moment of decision (the moment of targeting). “Civilian” is established in a two-loop production line:

Loop A, targeting (pre-strike):

- Status grammar (“civilian” normative framework): distinction, presumption in doubt, duty of precaution (Additional Protocol I 1977, arts 48, 50, 57).
- Epistemic engine (surveillance governance): from identity to pattern; from pattern to probability (Gregory 2011, Franz 2017, Badalič 2023).
- Thresholding (the transformation of probability into procedure): the incorporation of policy standards such as “near certainty” into the language of legal diligence (Der Derian 2000, Siemion 2017).

Loop B, accountability (post-strike):

- Recording and classification (civilian harm becomes an “incident”): what gets recorded, what remains an “allegation” (Power 1997, Onțanu 2022).
- Evidence filter (secrecy and evidence hierarchy): images exist but access is denied; access exists but there is no avenue for appeal (Liebllich 2012, ICRC 2019).

- Narrative closure (legitimacy production): the correctness of the procedure replaces responsibility; “not knowing” becomes a strategy (Strathern 2000, Gould and Stel 2022).

The critical power of this model rests on this simple but unsettling conclusion: Civilianhood depends on the organizational form of “information” both before and after the attack. Status grammar alone does not produce protection; because status is converted into probability in the targeting chain; probability is then converted into procedure in the accountability chain. Thus, the category of “civilian” ceases to be a normative boundary and becomes an administrative one (Bourdieu 1987, Kennedy 2006, Weizman 2012).

6.2. The reversal of doubt: Overcoming presumption by technical means

Humanitarian law determines a direction in favor of civilians in cases of doubt; however, modern security epistemology codes doubt as “manageable uncertainty” and generally distributes the institutional cost of uncertainty in the direction of “not missing the threat” (Aradau and van Munster 2007). The clash between these two rationales becomes entangled not in the text of the presumption-of-civilian-status rule, but in how it is processed in the epistemology of implementation.

Here, two movements occur simultaneously:

(i) The “invisibilization” of doubt

Surveillance and data-analytical rationality do not eliminate uncertainty; rather, they transform uncertainty into a degree of confidence that is “sufficient for decision-making.” This transformation can remove doubt as a protective brake and embed it in a sense of “technical confidence” (Amoore 2011, Kaufmann *et al.* 2019). Thus, presumption is effectively disabled: there is no doubt, because the system produces “reasonable certainty” without generating doubt.

(ii) The “redefinition” of doubt

Discussions surrounding the DoD Law of War Manual update reveal how the normative status and formulation of doubt translate into practice (van Coller 2024). This debate reveals not so much the existence of presumption as the following: the effect of presumption depends on how “information” is defined. The formulas of “information available” and “good faith judgment,” while linking legal assessment to the nature of information, also carry the risk of sanctifying institutional preferences in information production (Breeze 2024, Daniele 2024).

The “feasible precautions” regime therefore has political bite: precautions concern not only weapons or timing but also information production and reliance. When verification depends heavily on probabilities and data derivatives, “feasible” can slide from a protective standard to one of technical adequacy (Amoore 2011, Breeze 2024). Civilian protection is then subordinated to institutional capacity and probability management.

6.3. The evidence regime is an “inequality machine”: The cost of objection is a condition of recognition

The accuracy of a targeting decision is not the same as the appealability of that decision. Evidence regimes can increase the cost of challenge rather than enable it. This cost focuses on access and transparency, particularly under the banner of “national security” (Lieblich 2012).

Here, inequality arises at two levels:

(i) Epistemic inequality

The claims of civilians and civil society often come through “field testimony”; the state’s claim, on the other hand, is based on sensor recordings, targeting reports, and classified documents. Whose evidence is considered “primary”? This hierarchy is a product not only of information quality but also of institutional trust in information (Fricker 2007, On̄tanu 2022).

(ii) Procedural inequality

The existence of investigation and review mechanisms does not automatically produce transparency. The logic of auditing tends to substitute the phrase “an investigation was conducted” for legitimacy; the existence of the process can stifle discussion of the outcome (Power 1997, Strathern 2000). Therefore, civilian harm assessments can sometimes become an administrative ritual that replaces legal accountability: harm is “accepted,” but the discussion of the violation becomes invisible (Margalit 2012, Daniele 2024).

This finding confirms a critical point in the sociology of law: Law does not merely answer the question “what happened?”; it also delineates the boundaries of the question “what can be debated?” (Bourdieu 1987, Latour 2010). Civilianhood becomes contestable only to the extent that claims can be recognized within these boundaries.

6.4. Humanitarian politics and the “lesser-evil” logic: The administrative management of civilianhood

The legal production of civilianhood is not merely a matter of norms and evidence; it is also the legitimacy economy of modern warfare. Eyal Weizman’s reading of the “lesser evil” shows how contemporary humanitarian discourse can become a rationality of governance: the claim of reducing evil makes evil measurable and manageable; what is measurable becomes politically sustainable (Weizman 2012). In this framework, “civilian harm” can circulate as an “optimizable variable” rather than a sign of a violation.

Shaw’s “risk-transfer militarism” clarifies this legitimacy economy: political acceptability is secured by shifting risk onto civilians in conflict zones (Shaw 2002). Law and narrative help organize that transfer: proportionality and caution can be framed as legitimate accounts. Der Derian links this to the ethical aesthetic of virtuous/virtual war (Der Derian 2000), while Butler highlights its consequence: some deaths are recognized and mourned, others never enter official counts (Butler 2009).

When read alongside this literature, the article’s findings converge on this point: The category of civilian is not weakening; it is being recoded. The law continues to protect

the “civilian”; however, the form of protection can shift towards a logic of “manageable harm” within regimes of surveillance and evidence (Kennedy 2006, Daniele 2024). This shift does not automatically devalue the normative ideal of humanitarian law; however, it shifts the realization of the ideal to a battleground over information infrastructures and accountability architectures.

6.5. Legal implications: Epistemic obligation before doctrine

The wrong move here would be to seek the solution solely in doctrinal clarifications. DPH/CCF debates are certainly important; however, findings show that much of the fragility in the production of the “civilian” lies in non-doctrinal areas, surveillance epistemology, evidence circulation, transparency, and recording techniques (Onțanu 2022, Badalič 2023, McDermott *et al.* 2026).

Therefore, it is possible to frame the debate more productively through three “legal levers”:

Epistemic precautions (precautions-as-knowledge): The “feasible” obligation must be linked not only to the attack technique but also to the information sources and model assumptions for target verification (Breeze 2024).

Recording and investigation standard: For the post-attack recognition of civilian status, civilian casualty recording and effective investigation are not secondary but foundational tools (Margalit 2012, Breau and Joyce 2013, ICRC 2019, OHCHR 2019).

Evidence justice: The rise of OSINT and user-generated evidence can make civilian status visible; however, it also exacerbates the “evidence crisis.” Therefore, the debate is not about “more evidence” but about “how evidence is evaluated in which procedure” (McDermott *et al.* 2026).

These levers require viewing the production of the “civilian” not as a question of truth, but as a question of institutional design. The promise of legal protection can only be functional when institutional obligations regarding information production and information sharing are strengthened.

To close, the “civilian” is neither an obsolete ideal nor a self-executing guarantee. It persists within a two-cycle production chain, pre-strike classification and post-strike recognition, that can protect or manage civilian life. The concept of “epistemic status” names this tension: civilianhood is constructed through regimes of knowledge, not only through legal text.

7. Conclusion: Protecting the “civilian” or producing the “civilian”?

This paper reads the civilian, not as a status at the heart of humanitarian law, but as a production relationship at the heart of contemporary warfare: who is considered a civilian is to be less determined by what the normative text ‘says,’ but also by what knowledge is produced, how it is shared and by what means. Consequently, the term “civilian” evolves from being a subject that the law wishes to protect to an epistemic threshold that determines whether protection can ever take place.

This threshold runs through two loops. Surveillance produces civilianhood via behavior and relationality, translating status grammar into procedural thresholds (Amoore 2011,

Gregory 2011, Franz 2017). Evidence regimes then determine post-strike recognition through recording, investigation, and disclosure (Power 1997, Liebllich 2012, ICRC 2019).

Core thesis: in contemporary warfare, “civilian” is a regime of knowability rather than a self-standing status. Protection depends on the kinds of information institutions produce and treat as verifiable. The presumption of civilian status in doubt (AP I, art. 50(1)) therefore does not operate in a vacuum; doubt is shaped by epistemic tools and verification practices (Additional Protocol I 1977, Breeze 2024). Doubt can be converted into “reasonable certainty” by data derivatives and pattern analysis, making protection disappear under the authority of technical confidence (Amoore 2011, Kaufmann *et al.* 2019).

At this point, the fragility of the “civilian” arises not so much from the weakness of the law, but from the law operating alongside another logic: the logic of security exists not to reduce uncertainty, but to manage it. Managed uncertainty sometimes protects civilianhood; sometimes it transforms civilianhood into a manageable damage parameter (Aradau and van Munster 2007, Weizman 2012). This transformation does not automatically invalidate humanitarian law; however, it shifts the promise of humanitarian law from “the accuracy of the text” to “the justice of institutional epistemology.”

7.1. Contributions: A socio-legal set of conclusions

The contribution of this study is not to produce a normative aspiration but to establish an explanatory framework on three levels:

Contribution to the IHL debate: By moving beyond the approach that confines “civilian” within the DPH/CCF debate, it shows that civilian status is produced at the intersection of “doctrine + surveillance + evidence.” It thus argues that the question of protection is not only about the scope of categories but also about how they are operated (Melzer 2008, Daniele 2024).

Contribution to classification sociology: It treats the “civilian” category as a classification situation that produces lethal consequences; it shows, through a model, how the language of probability and procedure actually transforms legal status (Bowker and Star 1999, Fourcade and Healy 2013).

Contribution to political theory: It argues that humanitarian discourse could shift towards a logic of governance that increases the sustainability of war under the claim of “reducing evil”; this shift is visible in struggles over transparency and the circulation of evidence (Butler 2009, Weizman 2012).

Together, these three contributions shift the issue of “civilian protection” from a purely legal right-wrong test to a problem of information production and accountability architecture.

7.2. Limitations and future research: Where do we stand?

This study deliberately did not produce operational data “from within”; it did not penetrate targeting practices through methods such as interviews or momentary observation. This is not a shortcoming, but rather the logic of the research question: the legal production of the “civilian” is institutionalized precisely in texts, manuals,

reporting formats, and investigation standards (Riles 2006, Latour 2010). Nevertheless, two limitations are apparent:

Practice–text gap: Texts may not fully represent practices; however, practices are explanatory to the extent that they establish their legitimacy through texts. Future studies may narrow this gap through institutional ethnography or FOI-based document mining (Hull 2012, Gould and Stel 2022).

Diversity of conflict contexts: This article did not confine itself to a single geography; however, it generalized at the mechanism level. Future studies comparing how the same model changes across different conflict types (IAC/NIAC; occupation/counter-terrorism; urban warfare/remote warfare) could typologize contextual variants of “civilian” production (Lubell and Derejko 2013, Heyns *et al.* 2016).

“Civilian” is a test of IHL. The relevant question is no longer only whether a rule exists, but how the information needed to apply it is produced, monopolized, and made contestable, and who bears the costs of uncertainty. Without answers, civilian protection risks becoming rhetoric; with them, civilianhood can function as an accountability right embedded in the conduct of war.

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