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On May 15, 2021, early in the afternoon, the Israeli Defense Forces (IDF) informed residents of the Al Jalaa tower that it planned to [destroy](#) their building. The building had 11 floors, around 60 residential apartments, and offices for doctors, lawyers, and journalists including Al Jazeera and the Associated Press. Residents grabbed what belongings they could carry and ran down the stairs. Children and the elderly took turns using the single working elevator. An hour later, the IDF levelled the building and crushed everything inside. The now-former residents joined more than 77,000 Gazans displaced from their homes amidst ongoing airstrikes and the COVID-19 pandemic.

Initially, the IDF [claimed](#) that the building “contained military assets belonging to the intelligence offices of the Hamas terror organization.” Later, the IDF [t weeted](#)

that Hamas members took “items” out of the building before it was destroyed. The IDF said it was “willing to pay that price to not harm any civilians.” Officials who were involved in the decision

[reportedly](#) now “completely regret” it. Hamas operatives [simply moved their computers out](#), leaving only [empty offices](#) behind.

The IDF killed at least 230 people, including 62 children, and injured almost two thousand in less than two weeks. Hamas killed at least a dozen people, including two children, in the same period. Why focus on an airstrike that levelled a building but killed no one? Why not the IDF airstrike on a house in the Shati refugee camp that [killed ten members of the al-Hadidi family](#), including

[eight children](#) ? Why not the IDF airstrike in Gaza City that [killed forty-two people](#), including [ten children](#)

? Why not the Hamas rocket attack that killed [a five-year-old boy](#) in Sderot?

Given the sheer scale of destruction, suffering, and death, any starting point for legal analysis may seem arbitrary. But the IDF, a [former IDF legal adviser](#), and one leading [scholar](#) publicly defended the legality of the airstrike on Al Jalaa tower. Their legal claims call for a response. The IDF also destroyed four other residential towers, and [hundreds](#) of other residential units across Gaza. Examining the attack on Al Jalaa tower may shed light on these other attacks as well.

The airstrike on Al Jalaa tower was illegal for the simple reason that the tower was not a military objective (a “lawful target”) at the time of the airstrike. The expected harm to civilians and civilian objects was also excessive (or “disproportionate”) in relation to the military advantage anticipated from destroying any equipment Hamas may have left behind.

These conclusions are based on IDF statements and other publicly available information. More information may emerge, which may reinforce or qualify the legal analysis that follows. But only a fundamental change in the IDF’s explanation for the airstrike could show that it was lawful rather than unlawful.

The Tower

International law [prohibits](#) attacks on civilian objects. [Civilian objects](#) are all objects which are not military objectives.

[Military objectives](#) are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

According to the IDF and subsequent reports, Hamas members left with their equipment before the airstrike. They were not *using* the building or any part of it when it was destroyed. No one suggests that the tower made any effective contribution to military action by its

nature

or

location

. It follows that the tower was a civilian object unless Hamas members had the intent (

purpose

) to use the offices for military purposes in the future. Only then could the building's total destruction

in the circumstances ruling at the time

of the attack offer a definite military advantage.

This is doubtful. It was highly unlikely that Hamas members would return to the tower and resume military activities there. The IDF had just threatened to destroy the tower and would presumably keep it under surveillance. It was much more likely that Hamas members would move to a new location where their activities might evade detection—as they presumably did.

International law requires that, [in case of doubt](#), an object which is normally dedicated to civilian purposes must be presumed to remain a civilian object. Some States interpret this “rule of doubt” to mean that it is unlawful to attack an ordinarily civilian object unless it is

clear

that the opposing force is

[using](#)

it or

[intends to use](#)

it to make an effective contribution to military action. Other States take the view that an attack may only be carried out if it is

[more likely than not](#)

that a person or object is a lawful target and, in addition, any remaining doubts are outweighed by the consequences of not attacking. Even the United States—perhaps the

[only State](#)

that rejects the rule of doubt as formulated above—accepts that attacks may not be directed against civilians or civilian objects based on

[merely hypothetical or speculative considerations](#)

regarding their possible current status as a military objective.

The rule of doubt is extremely important when doubts exist regarding an ordinarily civilian object's current use. This rule is absolutely critical when doubts exist regarding an ordinarily civilian object's intended future use. In most cases, the intentions of the adversary to use ordinarily civilian objects in the future are matters of conjecture. The military advantage offered by destroying such objects is rarely definite but instead typically hypothetical or speculative. If attacking forces are allowed to level any building their adversary might intend to use in the

future, then the principle of distinction will lose much of its meaning and legal effect in urban warfare.

In this case, it was far from clear that Hamas members intended to resume military operations in the tower. It was hardly more likely than not that they would do so. The notion that they would do so was merely hypothetical and speculative. It follows that the IDF was required to presume that the tower was a civilian object and to refrain from attack. Instead, they destroyed it.

Abandoned Equipment

The IDF says that Hamas members removed items from the tower before the attack. The IDF has been less clear about whether military equipment was left behind. While some [reports](#) refer to “empty offices,” these statements may be imprecise. Suppose Hamas members left some military equipment in some offices, and that this equipment constituted a military objective. Then would the attack have been lawful?

No. Based on IDF statements as well as video of the attack, it appears that the attack was directed at the building's base, not at particular offices or their contents. Since the building was a civilian object at the time of the attack, it was unlawful to make the building as such the object of attack. Notably, even if Hamas members left military equipment behind, that would not convert the entire building into a military objective. Fleeing a building is not a way of using it. Abandoning equipment is not a way of storing it. The military equipment, if any, may have been a military objective. But the building as such was not.

Proportionality

International law also [prohibits](#) attacks on military objectives which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. Since the tower was a civilian object at the time of the attack, this “proportionality rule” did not apply. Nevertheless, it is worth explaining why the expected harm to civilians was excessive in relation to the military advantage anticipated.

The civilian residents lost most of their belongings, their homes, and their offices. That much is certain. Many likely sought shelter in UN schools, already overflowing with tens of thousands of similarly displaced civilians. With COVID-19 spreading, vaccinations stopped, the only testing lab destroyed, and the doctor overseeing Gaza's pandemic response [killed](#) in another IDF airstrike, these civilians were and remain exposed to greater risk of illness and death. These "reverberating effects" were not certain at the time of the attack, and hopefully have not occurred. But they were reasonably foreseeable, quite likely to occur, and should carry substantial weight.

The military advantage anticipated from the attack is unclear. The IDF stated that military equipment was removed prior to the attack. Was any left behind? What was its value? Did Hamas members remove the most important equipment, or abandon it? We do not know. The IDF may not know either. But we know that uncertainty affects proportionality.

On [one view](#), a military advantage is "anticipated" only if the attacker reasonably believes that the attack will probably (more likely than not) obtain the advantage. The IDF says it knew that Hamas members removed equipment prior to the attack. Unless the IDF had information indicating that the most important equipment was probably (more likely than not) left behind, *no* military advantage could have been "anticipated" from its destruction.

On a [second view](#), a military advantage is "anticipated" as long as it is reasonably foreseeable. However, the *weight* of a military advantage depends on whether an attack is certain, likely, or unlikely to obtain it. Suppose it was reasonably foreseeable that Hamas members left important equipment behind. Nevertheless, the weight of the military advantage anticipated from the attack would be reduced to reflect the substantial likelihood that such equipment had been in fact removed.

The expected harm to civilians and civilian objects was excessive in relation to the concrete and direct military advantage anticipated. The IDF and its defenders do not argue otherwise. They do not deny that the destruction of dozens of civilian homes and offices would be excessive in relation to the destruction of whatever military equipment may have been left in the building. They argue that the civilian homes and offices were not civilian objects at all.

Shortly after destroying Al Jalaa tower, the IDF [tweeted](#) that “[w]hen Hamas uses a tall building for military purposes, it becomes a lawful military target” and that “[w]hen Hamas places military assets inside such a building, it becomes a lawful military target.” These statements reflect the IDF’s reported [position](#) that, if members of an armed group use *any* part of a civilian building for military activities, then the *entire* building—including *all* the civilian apartments inside—becomes a military objective. Since the proportionality rule only protects civilian objects, the IDF argues that expected damage to civilian apartments inside such a building carries no weight in determining the proportionality of an attack.

This view is grotesque. The value of a civilian apartment to the civilians who live there does not suddenly disappear because members of an armed group use some other part of a large apartment building for military activities. This view also produces absurd results. Destruction of personal belongings inside the civilian apartments counts, but destruction of the apartments themselves does not. Damage to nearby buildings counts, but total destruction of apartments in the same building does not.

Fortunately, a number of [States](#) , a [majority](#) of [experts](#) , and the [International Committee of the Red Cross](#) (ICRC) accept that civilian apartments retain their legal protection under the proportionality rule even if opposing forces put other parts of the building to military use.

Unfortunately, at least [one State](#) agrees with the IDF as a matter of law, though it instructs its forces “to recognise damage to the non-military ‘share’ of the [] object as collateral damage when the non-military share is of particular and direct importance to protected persons.” Some scholars also agree with the IDF as a matter of law, though at least

[one](#) suggests that the law is morally defective on this point and armed forces should look elsewhere for moral guidance. To my knowledge, no one thinks it is morally acceptable to destroy dozens of civilian apartments to obtain a minor or uncertain military advantage by destroying military equipment that the adversary has abandoned but may retrieve. The IDF may think it has found a loophole in the law. It hasn’t. But it is worth remembering that basic moral principles have no loopholes.

This question should be settled once and for all. But there is no need to do so here. No part of Al Jalaa tower, let alone all of it, was a military objective at the time of the attack. Hamas was not using any part of it, and it is highly unlikely that it intended to use any part of it while hostilities were ongoing. If Hamas left military equipment behind, then that equipment may have been a military objective. But the building was not. The civilian apartments remained civilian objects. Their *certain* destruction carried its full weight under the proportionality rule—more than enough to outweigh the *uncertain* military advantage anticipated from destroying whatever military equipment may or may not have been left behind.

Conclusion

The attack on Al Jalaa tower was so obviously illegal that one wonders how the IDF could have thought otherwise. The only answer that comes to mind is not reassuring. The IDF emphasized that it notified the civilian residents that it planned to attack. The IDF may have thought that the tower, or part of it, was a military objective *at the time of the notification* and therefore it must remain a military objective *at the time of the attack*.

. This inference is obviously invalid. Attacking forces do not acquire a legal right to carry out an attack at one moment in time, which they then retain even if circumstances change. The law of armed conflict applies at all times, but never more than at the moment an attack is carried out.

Suppose the Al Jalaa tower was a military objective at the time of the notification. While the total or partial destruction of a military objective may offer a definite military objective, so may its *neutralization*. The notification itself achieved that neutralization. Hamas members left the building, unlikely to return. The building made no effective contribution to military action. Its total destruction offered no definite military advantage. The IDF destroyed it anyway. It was an unlawful attack. One of many, and not the worst, I suspect.