



IRSEM

INSTITUT DE RECHERCHE STRATÉGIQUE
DE L'ÉCOLE MILITAIRE

March 12, 2021

RESEARCH PAPER – No. 112

HUMAN SHIELDS IN CONTEMPORARY CONFLICTS

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ABSTRACT

Human shields embody the increasing thinning of the line between civilians and soldiers in asymmetrical wars. They have become key actors of the international strategic landscape in conflicts between States and renegade or terrorist groups. Their use raises a set of strategic, political, legal and ethical problems among the armies that have to face them.

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INTRODUCTION

Human shields are civilians and other people that are protected by the Geneva Convention (ill or injured combatants, prisoners of war, members of medical staff...) and who are placed in front of military targets to deter enemy strikes. They are used more and more often in operational theatres. These past few months, several incidents involving human shields were observed during conflicts between state armies and insurgent groups. On October 5, 2020, Burmese armed forces allegedly forced a group of farmers, among which there were children, into walking in front of their troops in order to clear a mined path as a part of an operation in Rakhine State¹ against the army of Arakan – a group of rebels in Rakhine State. On November 25, the Indian army was accused of having used young locals as human shields during a cordon-and-search operation in South Kashmir, in the village of Narwa.² A few days earlier, several American NGOs that were working in the camps of Tindouf in Algeria reported the recurrent use of children and women as human shields by separatist militias of the Polisario Front³ in a letter addressed to the general secretary of the United Nations and to the United Nations High Commissioner for Refugees.

Involved in the Chammal and Barkhane operations – respectively in the Middle East and in sub-Saharan Africa – the French army often faces this phenomenon as well. Fighters of the Islamic State in Mosul held 100 000 civilians in their homes during an assault led by the coalition by setting explosive traps around their houses and by welding their doors so they could not escape.⁴ In Raqqa in 2016, ISIS moved its arm depots to the most crowded neighbourhoods and held their meetings in the city's hospitals and mosques.⁵ Likewise, Boko Haram used school girls kidnapped in 2014 as human shields in Nigeria as a protection against air strikes.⁶

The growing number of human shields accompanies the mutations of war, mutations that are defined by the development of asymmetrical conflicts in urban environments, in which the line between civilians and fighters tends to be blurred. Though the figure of the human shield has become unavoidable in the international strategic landscape, there are still only very limited studies on the subject apart from its implications concerning international law. We will present in this paper the different aspects and stakes of this war tactic to which our soldiers may be increasingly confronted in the next few years. After a perspective of its history and a reminder of the legal rules, we will set out the tactic and strategic issues linked to the use of human shields and to the semantic use of this denomination.

1. [“CTFMR expresses grave concern over circumstances of two children killed in fighting between the Tatmadaw and Arakan Army in Buthidaung, Rakhine State”](#), United Nations Myanmar, October 14, 2020.

2. [“Indian troops use civilians as human shield in Pulwama”](#), *Pakistan Observer*, November 27, 2020.

3. Jasper Hamann, [“NGOs: Polisario Provokes War, Uses Women, Children as Human Shields”](#), Morocco World News, November 18, 2020.

4. [“À Mossoul, plus de 100 000 civils sont retenus comme ‘boucliers humains’ par l’État islamique”](#), *Huffington Post/ AFP*, June 16, 2017.

5. [“Daesh se sert des habitants de Raqqa comme bouclier humain”](#), RTL/ AFP, Novembre 27, 2015.

6. Harriet Agerholm, [“Kidnapped schoolgirls ‘used as human shield’ by Boko Haram”](#), *Independent*, December 28, 2016.

Finally, we will analyse the dilemmas to which the States are confronted when human shields are involved.

HUMAN SHIELDS IN HISTORY

Even though the term only appeared after the Second World War, the practice is not new. In the 7th century, Chinese people would use members of “barbarian” tribes as human shields on the Turco-Mongolian border and Mongolians would use prisoners of war to the same end during their conquests.⁷ In the 12th century, Arab jurist Ibn Khalil denounced the enemy’s disgraceful practice consisting in positioning themselves so as to make a “rampart of their women and children”.⁸ In 1668, Welsh privateer Henry Morgan used Spanish Jesuit clergymen he had just kidnapped as human shields in order to conquer the stronghold of Portobelo in Panama.⁹ During the American Civil War, priests and clergymen were put on trains by the Unionist Army to prevent confederate unlawful combatants from attacking them.¹⁰ Such events also occurred during the Franco-Prussian War in 1870, the second Boer War, both world wars, the Sino-Japanese war and the Vietnam war.¹¹ For instance, on May 25, 1940, several dozens of Belgian prisoners of war (POWs) were used by the German army as human shields to take the village of Vinkt.

It seems that the armed conflicts of the past twenty years express an amplification of the phenomenon. In the course of the first Gulf War, Saddam Hussein claimed that he was willing to use “nationals from aggressive nations” as human shields in order to prevent attacks on strategic sites. POWs and foreign hostages were placed on dams, refineries and factories to protect these infrastructures.¹² In 1995 during the siege of Sarajevo, observers from the United Nations were chained to military targets so as to dissuade the NATO coalition¹³ from carrying out air strikes. During the second Iraq war, the Iraqi regime used human shields as a counter-targeting technique against the US army. Saddam’s Fedayin purposely blended in with the civilian population and fought against their enemy whilst hiding behind women and children.

The phenomenon of voluntary human shields is also significant, even if less frequent. In February 2003, a few weeks before the beginning of the Iraqi Freedom operation, hundreds of peaceful activists from western countries went to Iraq to protect strategic Iraqi sites from American bombings and to stop the war. The same year, young activist Rachel Corrie was ran over by an Israeli bulldozer in the Gaza Strip while trying to place herself as an obstacle against the destruction of Palestinian houses.

7. Jonathan Skaff, *Sui-Tang China and its Turko-Mongol neighbors*, Oxford University Press, 2012.

8. Marcel André Boisard, “De certaines règles islamiques concernant la conduite des hostilités et la protection des victimes de conflits armés”, *Annales d’études internationales*, 8, 1977, p. 152.

9. Terry Breverton, *Admiral Sir Henry Morgan*, Glyndwr Publishing, 2005.

10. Neve Gordon and Nicolas Perugini, “Human shields: the weapon of the strong?”, *justsecurity.org*, October 22, 2015.

11. Neve Gordon and Nicolas Perugini, *Human Shields. A history of people in the line of fire*, University of California Press, 2020.

12. Central Intelligence Agency, *Putting noncombatants at risk Saddam’s use of “human shields”*, 2003.

13. “[U.N. Troops held as human shields](#)”, *Los Angeles Times*, July 18, 1995.

HUMAN SHIELDS AND INTERNATIONAL HUMANITARIAN LAW

In the context of international armed conflicts (IAC), human shields constitute an absolute conventional prohibition. Article 23 Section 1 of the third Geneva convention says that the presence of prisoners of war may not “be used to render certain points or areas immune from military operations”. Article 28 of the fourth Geneva convention and Article 51 Section 7 of the First Additional Protocol to the 1949 Geneva conventions take up the same phrasing as that of Article 23 Section 1 while this time including all the people protected as stated in Article 4 of the Convention (civilians, injured and ill people, medical staff, humanitarian workers...). Finally, since the 1998 Rome Statute, which instituted the International Criminal Court, the use of human shields during an international armed conflict is considered a war crime, in Article 8 (2) (b) (xxxiii).¹⁴

By contrast, in the context of Non International Armed Conflict (NIAC), there is no conventional law that explicitly forbids the use of human shields. Some jurists consider however that it could be possible to ban the use of human shields using Article 13 Section 1 of the second Protocol, which guarantees to the civilian population and to civilians “a general protection against the dangers caused by military operations”.¹⁵ They also mobilise common law to claim that a ban is as relevant in the context of IAC as in the context of NIAC:¹⁶ to them, this ban should stem from the obligation of distinction and of precaution when it comes to distinguishing military targets from civilians, obligations which are fundamental principles of the international humanitarian law and which are considered common laws in both IAC and NIAC. They underline also that a certain amount of military manuals forbid the practice of human shields in NIAC,¹⁷ that domestic law in several States condemns this practice as a criminal offense,¹⁸ that such deeds have regularly been condemned by the international community (States, UN and ICRC)¹⁹ and that no contrary practice has been consecrated as customary.

TACTICAL USES

We will distinguish three types of tactical uses linked to the use of human shields. First, a defensive use, the goal of which is to protect strategic sites from the enemy’s fire (military base, arm factories, refineries, bridges...) by placing people near them, or to protect

14. According to the Statute, ‘war crimes’ are to be understood as “utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations.”

15. Stéphanie Bouchie de Belle, “Les boucliers humains en droit international humanitaire: une analyse”, Master’s thesis defended at the University of Geneva, 2007, p. 14.

16. Louise Doswald-Beck and Jean-Marie Henckaerts, *Customary international humanitarian law*, Cambridge University Press, International Committee of the Red Cross, 1, 2005, p. 337.

17. They quote Australian, German, Canadian, Colombian, Croatian, Ecuadorian, Italian and Kenyan manuals.

18. In Germany, Azerbaijan, Belarus, Georgia, Lithuania, Poland, the Democratic Republic of the Congo, Tajikistan, Peru and in Yemen.

19. In the context of conflicts in Liberia, Rwanda, Sierra Leone, Somalia, Tajikistan and in ex Yugoslavia.

combatants by placing them in densely populated areas, for instance in residential zones, in schools, in hospitals... The first option includes civilians being held hostages (if they haven't agreed to be used as such) and being transferred to military targets that are threatened by the enemy. On the contrary, in the second scenario, combatants enter urban environments to settle in the heart of civilian life. By bringing the fighting to the core of cities and populations, this second form alters the traditional categories of war, based on distinctions between civilians and combatants, the front and the rear and between war and peace.

The second type of use is offensive. In this case, human shields are used as a cover by offensive forces to avoid retaliation during an attack. They are forced to stay near military targets that are a direct threat to the enemy, for instance by being tied up on the roof of a tank or in front of snipers. In May 1940, SS Totenkopf Division used hundreds of civilians of Beuvry as human shields near the firing line in order to protect the deployment of their artillery against French and English soldiers.²⁰ This kind of shield constitutes an "innocent threat" according to philosopher Robert Nozick. It makes the offensive weapon even more threatening because of the enemy's supposed reluctance to retaliate: it is incorporated into the threat and cannot be separated from it.²¹

Thirdly, human shields can be used as cover during manoeuvres and non-offensive actions. The context can be that of transporting troops or equipment, leading reconnaissance missions, policing or cordon-and-search operations. Human shields are drawn from the local civilian population and accompany soldiers in their actions across the regions they are traveling through. Human shields are supposed to stop ambushes, traps and air strikes targeting their convoys and they can even be sent up ahead to clear a potentially trapped path. For instance, the Israeli army applied for years a "neighbour procedure" in Palestinian territories, a procedure which consists, in the context of the arrest of an alleged terrorist, in forcing a neighbour to convince the suspect to leave their house.²² In another case in 2017, the Indian army provoked a scandal in Kashmir after having tied a civilian to a military vehicle in order to deter protesters from throwing stones at Indian soldiers.²³

STRATEGIC FUNCTIONS

Even if human shields are sometimes deployed by States that are fighting against rebel groups, they also are considered as the favorite weapon of the "weak", who, because they are unable to fight back effectively with conventional means, try to neutralise the digital or technological advantages that the enemy has by setting fighting conditions that make the adversary unable to attack without violating the rules of *jus in bello*. This tactic enables the

20. Jean-Luc Leleu, "La division SS-Totenkopfface à la population civile du Nord de la France en mai 1940", *Revue du Nord*, 342:4, 2001, p. 821-840.

21. Robert Nozick, *Anarchie, État et Utopie* [1974], PUF, 2016, p. 54-55. To know more about innocent threats, see also Judith Jarvis Thomson, « A Defense of Abortion », *Philosophy & Public Affairs*, 1:1, Autumn 1971.

22. "The 'Neighbour Procedure': Israel's Use of Palestinian Human Shields, [Institute for Middle East Understanding](#)", November 15, 2012.

23. "Les images d'un homme utilisé comme bouclier humain par l'armée déchainent l'Inde", *Huffington Post/AFP*, April 17, 2017.

“weak” to turn the tables to their advantage by deterring the enemy from launching their attack or by pushing them to break the law. In these cases it is a cynical game that is at play involving the weak’s own civilian population, the opponent’s conscience, international law and public opinion. On the strategic level, the use of human shields takes on several functions. On the one hand, their function of deterrence offers physical protection to those who use them, by giving shelter to the fighters or by turning a military target into an almost untouchable sanctuary. On the other hand, they can symbolically delegitimise the enemy: casting opprobrium upon their army by deliberately provoking them and pushing them to commit necessarily disproportionate attacks and war crimes. This plan then functions as a “martyrs factory” in order to spread their war propaganda.²⁴

In that sense, the use of human shields induces a strategic use of law on the part of enemy combatants, who use it in order to harm their opponents and as a means to discredit them in the eyes of public opinion. This is part of the logic of lawfare, which Charles Dunlap qualifies as “the use of law as a means of war”.²⁵ Law is here thought as the mere continuation of war by other means. It is used as a substitute to traditional military means in order to obtain strategic gains. Human shields form a “legal fortress” for the side which uses them, by offering an indirect legal protection to their combatants and their strategic infrastructures. The principle of reciprocity, on which warfare was built, weighs in their favour. The obligation to respect international humanitarian law subsists even in the case of non-reciprocity.²⁶ Nowadays, this tactic is even more efficient than in the past.²⁷ Human shields possess a stronger dissuasive power thanks to the increasing sensibility for the value of human lives, but also thanks to the growing role of civil society on the international scene.²⁸ Besides, current information technologies did not exist during past conflicts. Warring parties did not have enough technical means to exploit as quickly and efficiently the death of human shields as they can nowadays.

A CONTROVERSIAL TERM: THE DENOMINATION ISSUE

States that are facing human shields can also lead lawfare policies to provide an ethical and legal guarantee to their strikes. The stake here concerns the denomination as “human shields” of civilians that are present on targeting areas. The discursive attribution of the human shield status to civil population entails normative effects. This category is not just a neutral statement, which describes objectively a pre-existing reality. Giving a population the label of human shield is a true “speech act” according to Philosopher John Austin, that is to say a means used by the speaker to act on the environment with words, to produce

24. Michael Skerker, “Just war criteria and the new face of war: Human shields, manufactured martyrs, and little boys with stones”, *Journal of Military Ethics*, 3:1, 2004.

25. Charles J. Dunlap Jr., “Lawfare Today”, *Yale Journal of International Affairs*, Winter 2008, p. 146.

26. https://ihl-databases.icrc.org/customary-ihl/fre/docs/v1_rul_rule140.

27. Charles J. Dunlap Jr., “The DoD Law of War Manual and its Critics: Some Observations”, *International Law Studies*, 92, 2016, p. 89.

28. Ariel Colonosmos, *Un prix à la vie. Le défi politique de la juste mesure*, PUF, 2020; Neta Crawford, *Accountability for Killing: Moral Responsibility for Collateral Damage in America’s Post-9/11 Wars*, OUP, USA, 2013.

effects on reality thanks to a semantic denomination.²⁹ The semiotic power of attributing the human shield status to civilians and of imputing to them intentions enables a re-conceptualisation of their bodies as weapons and a rationalisation of the violence that is imposed on them by identifying them as extension of legitimate military targets. Innocent civilians are turned into a subject that can potentially be killed.

Killing human shields is not the same as killing civilians. The discursive construction of civilians as human shields supposedly allows a slackening of the rules of proportionality and of distinction and legitimises a higher level of collateral damage by transferring the responsibility of civilian losses to enemy forces and sometimes even to the people themselves if they are presumed to have consented to be used as shields. The mobilisation of this category functions as a form of “preemptive legal defence”, a semantic and legal technology which protects the attackers from potential accusations of war crimes.³⁰ It contributes to structure a moral economy of war by accusing the enemy of fighting in an unfair and immoral manner and by redefining the balance between legitimate violence and illegitimate violence.

For instance, intense debates are taking place regarding the qualification of Palestinian civilians in Gaza as human shields. For years, the Israeli Army has been leading communication campaigns which aimed at accusing Hamas’ fighters of hiding among the population of Gaza and of using them as human shields to cover their activities. The civil casualties of the Tsahal air strikes could thus be the responsibility of Hamas, which deliberately sacrificed its own population to achieve strategic goals. This Israeli narrative is contested by some observers and humanitarian NGOs who criticise the abusive use of the category of human shields which justifies a disproportionate use of force.³¹ We can see here that beyond the practice, the term itself can be employed as a weapon which enables the development of increased violence and the reassignment of the responsibility for civilian deaths to the enemy’s side.

DILEMMAS OF THE STATES

Political and strategic dilemma

The use of human shields poses many dilemmas to States. On the one hand, if they decide not to change the targets of their strikes, they can put the lives of many innocent civilians at risk and as a consequence tarnish their image in the eyes of the international community and public opinions, with all the political costs this entails. Regarding the conflict itself, States might stir up hostility from the local population and the enemy can use civilian deaths as a recruitment tool to their cause’s benefit, making the operation longer

29. John J. Austin, *Quand dire, c’est faire* [1962], Seuil, Paris, 1991.

30. Neve Gordon and Nicola Perugini, “[Using human shields as a pretext to kill civilians](#)”, Al-Jazeera, August 30, 2016.

31. Neve Gordon, Nicola Perugini, “The politics of human shielding: On the resignification of space and the constitution of civilians as shields in liberal wars”, *Environment and Planning D: Society and Space*, 34:1, 2016, p. 168-187.

and more dangerous. On the other hand, if the army decides to cancel the air strikes planned on that area, it gives in to the moral blackmail of the enemy who benefits from the democratic States' respect of ethical and legal laws thus turning these laws against them. It would also encourage the enemy to use this tactic again in the future because abandoning the air strikes would be proof of its dissuasive efficiency. Finally, by tying their own hands when faced with enemy's human shields, armies can put the lives of their soldiers at risk.

Ethico-legal dilemma

From the legal point of view, the violation of international humanitarian law by one of the sides involved in the hostilities does not exonerate their opponent from their own obligations. States' commitments regarding international humanitarian law are unilateral and non-reciprocal.³² The obligation for a State involved in the conflict to respect civil populations and to take measures to that effect does not depend on the opponent's respect of the obligation not to use human shields even when this obligation derives from the same treaty. However, States are not under the absolute obligation to cancel their air strikes when human shields are present. They have to respect the principles of military necessity, distinction and proportionality, as usual. But the interpretation of these norms in the light of the use of human shields raises strong legal and ethical debates. Do human shields have to be considered as civilians or can they be treated the way fighters are? The notions of consent and of direct participation in hostilities are at the center of these discussions.

• *The criteria of consent*

The distinction between voluntary human shields and involuntary human shields is often put forward as a relevant criteria to find an answer to this question. Some authors thus consider that by voluntarily becoming a human shield, the concerned individuals lose their civil immunity.³³ They should then be excluded from the calculation of proportionality and would thus become legitimate targets. The Israeli Supreme Court thus introduced in its jurisprudence the notion of "free will", which weakens the legal protections granted to supposedly voluntary human shields.³⁴ On the contrary, involuntary human shields keep all of their immunity since innocent lives' value cannot be diminished by unfair acts committed by someone else.³⁵ This approach deserves to be developed because the line between voluntary and involuntary is sometimes blurred. Let's take an example: civilians living in a building where an armed group has set up its headquarters. Are these civilians aware of the situation? And even if they have been warned beforehand by the attackers (as the Israeli army usually does),³⁶ is the fact that they want to stay where they are enough to make them voluntary human shields and so accomplices of the attackers? It seems hazardous to

32. Eric David, *Principes de droit des conflits armés*, Bruylant, 2019 (6th ed.), p. 553.

33. Michael Schmitt, "Human Shields in International Humanitarian Law", *Columbia Journal of Transnational Law*, 47:2, 2011, p. 292-338.

34. Israeli Supreme Court, *Public Committee against Torture in Israel*, Judgment, December 11, 2005.

35. Seth Lazar, "[On human shields](#)", *Boston Review*, August 5, 2014.

36. Roland Otto, "Neighbours as human shields? The Israel Defense Forces' 'Early Warning Procedure' and international humanitarian law", *International Review of the Red Cross*, 86:856, 2004, p. 771-787.

attribute to them certain intentions on so fragile a basis because there are other parameters constraining these civilians in the making of their choices, such as age, disability, lack of means of transportation or of alternative places to live... How could one evaluate the civilians' decision to become a human shield when the latter was taken under the effect of an ideological conditioning and continuous state propaganda, or in a terror climate set by the authorities? It appears difficult to know the mindset of each individual in the context of a singular and episodic event, even if it can be easier to establish their intentions on the bases of long term activities and engagement. For all these reasons, other specialists of international law deem consent as too blurry a criteria to be taken into account.³⁷

• *Participation criteria*

The level of participation in fights is an important criteria as well: whether human shields are providing a direct or indirect help to combatants affects their immunity. Indeed, commentators generally agree on the fact that civilians cannot participate directly in fights without renouncing their immunity.³⁸ The 1st additional Protocol to the Geneva Convention (1977) qualifies direct participation as "acts which by nature are initiated for the purpose of causing immediate damage to the enemy's equipment and soldiers".³⁹ Do voluntary human shields participate directly, and on this basis, should they be excluded from the calculation of proportionality? We could say that they do not provide direct support to combatants since they do not represent a direct and immediate threat to the opponent: they are shields, not weapons. Their function is defensive not offensive.⁴⁰ However, we could also consider that, even if they do not bear weapons on them, voluntary human shields contribute to the perpetration of acts of aggression of the side they support, by protecting their soldiers, their weapons system and their military infrastructures. With their actions, they support the attack capacity of their side and are in this sense directly involved in hostilities.⁴¹ The International Committee of the Red Cross (ICRC) suggests a more nuanced approach by taking as main criteria the level of impact on fights caused by their presence. When voluntary human shields constitute a physical obstacle to the conduct of military operations, for instance by blocking roads, that could be considered as a direct participation to fights. On the contrary, when they do not represent a physical obstacle but rather a moral one (for instance during air strikes), their participation could be considered as indirect.⁴²

There are also many debates on the question of the weight that should be given to human shields in the calculation of proportionality: should we value their lives as much as other civilians' lives? Or does their presence allow a slackening of the criteria of proportionality and thus a higher rate of collateral damages? What value should be given to human shields'

37. Nils Melzer, "Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law", ICRC, Geneva, Switzerland, 2009.

38. Michael Gross, *The ethics of insurgency*, Cambridge University Press, 2015, p. 132.

39. Additional Protocol to the Geneva Conventions (I), Article 51 [3], 1977.

40. R. Lyall, "Voluntary Human Shields, Direct Participation in Hostilities and the International Humanitarian Law Obligations of States", *Melbourne Journal of International Law*, 313, 2008, p. 321.

41. Amnon Rubinstein and Yaniv Roznai, "Human Shields in Modern Armed Conflicts: The Need for a Proportionate Proportionality", *Stanford Law and Policy Review*, 93, 2011, p. 96-98.

42. ICRC, *Interpretative guidance on the notion of direct participation in hostilities under international humanitarian law*, 2009, p. 56-57, available on <http://www.icrc.org/eng/assets/files/other/irrc-872-reports-documents.pdf>.

lives?⁴³ Should this value become universal or can it vary according to particular criteria such as age, gender, nationality (citizen of their country, of an ally or enemy country), their legal entity (civilian, war prisoner, sanitarian or humanitarian staff)?⁴⁴ Debates also focus on the level of risk that soldiers have to take in order to reduce the threat on human shields' lives: to what extent must a State protect soldiers' lives, even if it is at the expense of more losses among civilians?⁴⁵

CONCLUSION

Human shields will become key actors in the conflicts to come and must be the object of a deep strategic and normative reflection on the part of the States that are confronted to them nowadays and will be in the future. The problem of human shields intertwines ethics, law and politics and questions the principles of the States and especially the holly democratic principle of the equality in value of human lives. The passive bodies of these civilians who are often trapped in fights much bigger than them end up challenging political bodies themselves.

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43. Colonomos, *Un prix à la vie*, p. 137-149.

44. Avishai Margalit and Michael Walzer, "Israël et le statut des civils dans la guerre antiterroriste", *Esprit*, 369, November 2010.

45. Michael Walzer, "The Risk Dilemma", *Philosophia*, 44, 2016, p. 289-293.