



Strategic Security Analysis

Addressing the Use of Human Shields

Tobias Vestner



Contents

Key Points	3
About the Author	3
1. Introduction	4
2. The Problem	5
3. The Legal Framework	6
3.1. Treaty Law	6
3.2 Customary International Law	7
3.3 Jurisprudence	7
3.4 State Practice	8
3.5 Statements by International Organizations	8
3.6 Addendum: International Human Rights Law	9
4. Potential Solutions	10
4.1 Strengthening the Normative Framework Against Human Shields	10
4.2 Strengthening the Enforcement of the Prohibition to Use Human Shields	10
4.3 Strategic Communication to Delegitimize the Use of Human Shields	11
4.4 Thematic Engagement to Prevent the Use of Human Shields	12
4.5 Operational and Tactical Measures to Circumvent Human Shields	12
5. Mechanisms to Implement the Solutions	14
6. Conclusion	15
Select Bibliography	16
References	17

Key Points

- Human shields are increasingly used in modern conflicts, exposing civilians and other protected persons to high risk of death and injuries.
- Using human shields is a violation of international humanitarian law (IHL) and a war crime under the 1998 Rome Statute of the International Criminal Court and customary international law.
- Armed forces confronted with human shields are faced with the dilemma between causing civil casualties that may undermine the legitimacy of their operations and refraining from attack which results in military disadvantages.
- To address the use of human shields, the respective normative framework and the enforcement of the prohibition could be strengthened. Strategic communication could also be deployed to delegitimize the use of human shields. Thematic engagement among states and with armed non-state actors could further prevent the use of human shields. Operational and tactical measures to circumvent human shields could further support states engaged in military operations and prevent incidental harm to civilians.
- Any action to address the use of human shields should be coordinated among states and international organizations.

About the Author

Tobias Vestner is Head of Security and Law Programme at GCSP. This paper was written during a Fellowship at the Office of Legal Affairs of Supreme Headquarters Allied Powers Europe. Special appreciation for support goes to Andrés Muñoz-Mosquera, Rodrigo Vazquez Benitez, Paula Camacho Aguilera, and Altea Rossi. The views expressed in the publication do not necessarily reflect those of anyone who provided input to, or commented on, earlier drafts.

The use of human shields is a violation of international humanitarian law (IHL) as well as a war crime under the 1998 Rome Statute of the International Criminal Court and customary international law.

1. Introduction

In modern conflicts, civilians are increasingly used to shield military targets from attack. This exposes civilians to high risks of death and severe injury. Those using human shields confront the opponent with a dilemma. While attacking the shielded military objective incurs civilian casualties that may undermine the legitimacy of the attacker's military operations, refraining from attacking results in military disadvantages. The use of human shields is a violation of international humanitarian law (IHL) as well as a war crime under the 1998 Rome Statute of the International Criminal Court¹ and customary international law.

To strengthen the respect of IHL, ensure the protection of civilians (PoC), and enable the attainment of strategic goals of military operations, increased efforts to prevent and combat the use of human shields should be undertaken. This paper analyses the problem of human shields and the respective legal framework as well as proposes concrete solutions. It proposes five lines of action, namely measures concerning (1) the normative framework, (2) the enforcement of the prohibition, (3) strategic communications, (4) thematic engagement, and (5) operations and tactics. The paper then identifies mechanisms to further develop and implement the proposed solutions.

2. The Problem

The rise of asymmetrical and urban warfare has led to increased fighting among the civilian population. At the same time, modern conflicts have witnessed the emergence of the use of human shields. This particular tactic consists of placing civilians and other protected persons next to legitimate military targets – and *vice versa* – to prevent attacks.² A clear IHL violation (see below, Section 3), the rationale is to gain a military advantage by benefitting from the protected status of civilians. The use of prisoners of war for shielding from attacks as well as placing military assets in medical facilities and schools occupied by civilians and persons *hors de combat* is based on the same rationale and intends the same result.

Human shields were reportedly used by the Islamic State of Iraq and the Levant (ISIS) in Syria and Iraq, leading to concerns by the international community expressed by the United Nations (UN) and Pope Francis, among others.³ They were also used, or reported to be used, in the conflicts in Afghanistan,⁴ the former Yugoslavia,⁵ Chechnia,⁶ and Sri Lanka,⁷ and are a feature of the fighting in Gaza.⁸ A common practice by Nazi Germany in World War II,⁹ Iraqi forces also placed air defence missile systems in and around civilian areas during the Iraq War in 2003.¹⁰ In addition, military assets have been placed in healthcare facilities¹¹ and schools¹² in several recent conflicts.

The use of human shields confronts opponents with a dilemma: both attacking and refraining from attacking the shielded military objective has negative consequences. An attack of a legitimate target that is shielded by protected persons incurs collateral damage. While this may be justified by the anticipated concrete and direct military advantage, thus would be lawful according to the principle of proportionality under IHL, civilian casualties may undermine an attacker's acceptance and support among the population where the fighting takes place, domestic constituencies, and the international community. If the collateral damage is not justified by the anticipated concrete and direct military advantage, the attack would even qualify as an IHL violation committed by the attacker. Refraining from attacking, however, may require additional efforts to combat the target and expose troops to higher risks. The restraints in military action resulting from human shields thus may significantly hamper the achievement of military objectives.

Besides obstructing the opponent's mission accomplishment, human shields put civilians at great risk. While some civilians might voluntarily participate in shielding military objectives, many civilians are coerced to do so, or may not even be aware that military assets are placed in their proximity. Yet, paramount to any human shield is the exposure of civilians to the risk of death and serious injury. Indeed, the effectiveness of human shields fully correlates with the human cost in case of attack. The higher the likelihood of civilian death or injury, the more effectively will the human shield deter attacks. Similarly, the higher the civilian losses in case of attack, the more effectively can the attacker be blamed for unethical or even illegal conduct of hostilities. Ultimately, however, even in cases of low collateral damage, those used as human shields suffer the consequences of an attack despite their protected status.

The problem of human shields is well resumed by the statement of the former UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, in March 2017: "ISIL's strategy of using children, men and women to shield themselves from attack is cowardly and disgraceful. It breaches the most basic standards of human dignity and morality. Under international humanitarian law, the use of human shields amounts to a war crime. [...]"

The use of human shields confronts opponents with a dilemma: both attacking and refraining from attacking the shielded military objective has negative consequences.

This is an enemy that ruthlessly exploits civilians to serve its own ends, and clearly has not even the faintest qualm about deliberately placing them in danger.”¹³

3. The Legal Framework

3.1 Treaty Law

International humanitarian law clearly prohibits the use of human shields. In the context of international armed conflicts, the prohibitions are principally set forth in the Third 1949 Geneva Convention relative to the Treatment of Prisoners of War¹⁴ and the Fourth 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.¹⁵ Article 23 of the Third Geneva Convention provides: “No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.” Article 28 of the Fourth Geneva Convention states: “The presence of a protected person may not be used to render certain points or areas immune from military operations.”

Article 12(4) of the 1977 Additional Protocol I to the Geneva Conventions¹⁶ complements these rules: “Under no circumstances shall medical units be used in an attempt to shield military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.” Furthermore, Article 51(7) of the 1977 Additional Protocol I establishes a more detailed prohibition:

“The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.”

The prohibition against using human shields covers only the “civilian population or individual civilians” but not civilian objects. Camouflage, such as hiding military assets in civilian objects or making them look like civilian objects, is permitted by IHL. Furthermore, the distinction between the use of human shields and a violation of the obligation to take passive precaution measures under Article 58 of the Additional Protocol I depends on the defender’s intent. A human shield is when the defender’s intermingling of military forces and the civilian population is based on the desire to obtain protection for its military assets arising from the enemy’s obligation to respect the principles of distinction and proportionality. An absence of passive precautions is when the defender simply wants to make it impossible to identify its military assets or lacks care for the civilian population.¹⁷

Neither the Geneva Conventions, nor the Additional Protocol I explicitly list the use of human shields as a grave breach.¹⁸ Yet this can be inferred as falling under “torture or inhuman treatment” as has been done by international jurisprudence.¹⁹ Article 8(2)(b)(xxiii) of the 1998 Rome Statute, in contrast, explicitly provides that “utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations” constitutes a war crime in international armed conflicts. The 1977 Additional Protocol II to the Geneva Conventions²⁰ does not refer to the use of human shields in non-international armed conflicts, although international jurisprudence has recognised such practice to amount to the war crime of “cruel treatment” or “outrage upon personal dignity.”²¹

Article 28 of the Fourth Geneva Convention states: “The presence of a protected person may not be used to render certain points or areas immune from military operations.”

State practice establishes the prohibition to use human shields as a norm of customary international law applicable in both international and non-international armed conflict.

The prohibition of human shields is complemented by Article 51(8) of the 1977 Additional Protocol I, which clarifies that any violation of the rules on the protection of civilians does “not release the Parties to the conflict from their legal obligations with respect to civilians”. Therefore, even if the enemy uses human shields, the attacker continues to be bound by the rules on distinction, proportionality and precaution. The presence of human shields may require additional efforts in terms of precautionary measures, including the suspension or abortion of the operation.²²

3.2 Customary International Law

According to the Customary International Law Study of the International Committee of the Red Cross (ICRC), “state practice establishes [the prohibition to use human shields] as a norm of customary international law applicable in both international and non-international armed conflict.”²³ The ICRC points to several factors supporting its conclusion that customary international law prohibits the use of human shields not only in international armed conflicts but also in non-international armed conflict. The ICRC notes that “with respect to non-international armed conflicts, Additional Protocol II does not explicitly mention the use of human shields, but such practice would be prohibited by the requirement that ‘the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations’”²⁴, which is set forth in Article 13(1) of the 1977 Additional Protocol II to the Geneva Conventions. The ICRC further points out that “deliberately using civilians to shield military operations is contrary to the principle of distinction and violates the obligation to take feasible precautions to separate civilians and military objectives.”²⁵

3.3 Jurisprudence

The International Criminal Tribunal for the Former Yugoslavia (ICTY) discussed the use of human shields as a war crime in three cases. The ICTY judged the use of human shields as inhuman treatment, cruel treatment and inhumane act.

In the *Karadžić and Mladić* case in 1995, the ICTY judged that taking hostage of UN peacekeepers and using them as human shields to protect potential North Atlantic Treaty Organization (NATO) air targets, including ammunition bunkers, a radar site and a communications centre, to render them immune from further NATO air strikes would constitute grave breaches of the 1949 Geneva Conventions (inhuman treatment).²⁶ In 1996, the ICTY Trial Chamber upheld the charges and stated that these acts could “be characterised as war crimes (taking UNPROFOR soldiers as hostages and using them as human shields).”²⁷

In the 2001 *Naletilić and Martinović* case, the ICTY ruled that forcing detainees to act as human shields would qualify as grave breaches of the 1949 Geneva Conventions (inhuman treatment), violations of the laws or customs of war (cruel treatment), and crimes against humanity (inhumane acts), all punishable under the ICTY Statute. The two accused were sentenced to 20 and 18 years of imprisonment, which was subsequently confirmed by the Appeals Chamber.²⁸

In the *Blaškić* case in 2004, the ICTY Appeals Chamber confirmed its prior judgements. It clarified that: “Using protected detainees as human shields constitutes a violation of the provisions of the Geneva Conventions regardless of whether those human shields were actually attacked or harmed. Indeed, the prohibition is designed to protect detainees from being exposed to the risk of harm, and not only to the harm itself.”²⁹

In a resolution adopted in 2003 on assistance to unaccompanied refugee minors, the UN General Assembly condemned “all acts of exploitation of unaccompanied refugee minors, including their use as [...] human shields in armed conflict.”

National jurisprudence of particular relevance are the 2008 *Ribic* case in Canada,³⁰ the 2010 *Democratic Forces for the Liberation of Rwanda* case in Germany,³¹ and the 2006 *Public Committee against Torture in Israel* case in Israel.³²

3.4 State Practice

The prohibition to use human shields is contained in numerous military manuals. Military manuals of the following states provide the prohibition: Argentina, Australia, Belgium, Burundi, Cameroon, Canada, Chad, Colombia, Cote d'Ivoire, Croatia, Dominican Republic, Ecuador, France, Germany, Ireland, Israel, Italy, Kenya, Mexico, Netherlands, New Zealand, Peru, Russian Federation, Sierra Leone, South Africa, Spain, Switzerland, United Kingdom, and United States of America. This includes states that are not party to the Additional Protocol I, nor the Rome Statute, such as the United States of America.³³

The legislation of the following states criminalizes - either explicitly or implicitly by reference to the Geneva Conventions or the Rome Statute - the use of human shields: Australia, Azerbaijan, Bangladesh, Belgium, Belarus, Burundi, Canada, Congo, Croatia, Democratic Republic of the Congo, Denmark, Finland, France, Georgia, Germany, Iraq, Ireland, Lithuania, Mali, Netherlands, New Zealand, Norway, Peru, Poland, Republic of Korea, Rwanda, Senegal, South Africa, Spain, Switzerland, Tajikistan, United Kingdom, United States of America, Uruguay and Yemen.³⁴

States extensively condemned the use of prisoners of war and civilians as human shields by Iraq in 1990 and 1991. The United States of America, among others, declared that such use amounted to a war crime. Australia, Chile, El Salvador, France, Germany, India, Israel, Italy, Kuwait, Rwanda, Senegal, Spain, Tajikistan, United Kingdom and United States of America also condemned the use of human shields at numerous other occasions, including the use of human shields in non-international armed conflicts, notably with respect to the conflicts in Liberia, Rwanda, Sierra Leone, Somalia, Sri Lanka, Tajikistan and the former Yugoslavia.³⁵

3.5 Statements by International Organizations

International Organizations have repeatedly condemned the use of human shields. In the context of the Afghanistan conflict, the UN Security Council has included a sentence condemning the use of human shields by the Taliban “and other extremist groups”³⁶ in 17 resolutions.³⁷ The Security Council has also condemned the use of human shields in Sudan, Syria, and with regard to children worldwide.³⁸ In addition, the Security Council has condemned the use of human shields without using the term in four other resolutions.³⁹

In a resolution adopted in 2003 on assistance to unaccompanied refugee minors, the UN General Assembly condemned “all acts of exploitation of unaccompanied refugee minors, including their use as [...] human shields in armed conflict.”⁴⁰ On 26 June 2018, the United Nations General Assembly condemned the use of human shields in its updated “United Nations Global Counter-Terrorism Strategy Review” resolution, which was adopted unanimously. Specifically, the resolution “strongly condemns the use of civilians to shield military objectives from attacks.”⁴¹

The Council of Europe Parliamentary Assembly, the European Community and the European Council as well as other international institutions also condemned the use of human shields notably in the conflicts in Iraq

and former Yugoslavia.⁴² So did the UN Commission on Human Rights on several occasions.⁴³

3.6 Addendum: International Human Rights Law

International human rights law does not explicitly prohibit the use of human shields. The use of human shields may, however, constitute a violation of the non-derogable right to life according to Article 6(1) of the 1966 International Covenant on Civil and Political Rights⁴⁴ and Article 2 of the 1950 European Convention on Human Rights.⁴⁵ The Human Rights Committee stated that using human shields could result in the arbitrary deprivation of life.⁴⁶ The right to life does not only cover the protection from arbitrary deprivation of life but also includes the duty of states to take measures to protect life.⁴⁷

In the *Demiray v. Turkey* case in 2000, in which the applicant submitted that her husband had been used as a human shield, the European Court of Human Rights stated that: “The text of Article 2 [of the 1950 European Convention on Human Rights], read as a whole, demonstrates that it covers not only intentional killing, but also the situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. Article 2 may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual for whom they are responsible”.⁴⁸ Absent sufficient evidence, the Court could not establish that the security forces used the person as human shield, however.

The use of human shields may constitute a violation of the non-derogable right to life.

4. Potential Solutions

Addressing the problem of human shields allows strengthening the respect of IHL, ensuring and implementing the protection of civilians, as well as attaining strategic goals of military operations. There are different measures to reduce the use of human shields in current and future conflicts. Potential measures concern (1) the normative framework, (2) the enforcement of the prohibition, (3) strategic communication, (4) thematic engagement, and (5) operations and tactics.

4.1 Strengthening the Normative Framework Against Human Shields

Since some of the national regulations do not explicitly mention human shields, but merely refer to grave breaches, it would strengthen the prohibition, and facilitate its interpretation and application, if states would explicitly express that they consider the use of human shields as constituting a grave breach.

The international legal prohibition to use human shields is clearly enshrined in IHL, both in treaty and customary law (see above, Section 3). States can further strengthen the normative force and application of this prohibition.

States can issue statements that they consider the prohibition to be customary international law. This normative commitment facilitates the identification of *opinio iuris*. Notably states that have not adhered to the Rome Statute can also publically communicate or endorse in domestic legislation that the use of human shields constitutes a war crime under customary international law. Similarly, states can commit to the view that the prohibition under customary international law does not only apply to international armed conflicts but also non-international conflicts.

Under Article 1 of the Geneva Conventions, states are obliged to respect and ensure respect of IHL.⁴⁹ States can explicitly stress that they perceive the obligation to ensure respect of IHL as the obligation to refuse any support – such as providing material or financial support – to actors that use human shields. This would clarify that this is a widely-shared interpretation of Article 1 of the Geneva Conventions or even customary international law.

Also, states can provide clarity on their interpretation of the use of human shields as a grave breach of the Geneva Conventions or as a war crime. Since some of the national regulations do not explicitly mention human shields, but merely refer to grave breaches, it would strengthen the prohibition, and facilitate its interpretation and application, if states would explicitly express that they consider the use of human shields as constituting a grave breach, or even specifically list it as a war crime in their national legislations.

States can further provide clarity on how they interpret and apply the principle of proportionality.⁵⁰ Indeed, state practice regarding targeting decisions is not well documented and states have so far not specified how they qualify collateral damage and relate this to the military advantage of an attack. More clarity on the application of the proportionality rule would inform which situations, in states' views, amount to human shields that prevent an attack due to excessive civilian casualties, and which do not. This would clarify the conditions under which shielded military objectives can lawfully be attacked.

4.2 Strengthening the Enforcement of the Prohibition to Use Human Shields

Strengthening the enforcement of the prohibition to use human shields is another category of possible measures to prevent and halt the violation of the norm.

States that have adhered to the Rome Statute are obliged to adopt laws which prohibit their nationals and any persons falling under their jurisdiction from using human shields. They also must prosecute the persons that have committed such a crime. States not having enacted respective national legislation should do so, even if not party to the Rome Statute. In addition, when the use of human shields falls under grave breaches under the Geneva Conventions and Additional Protocol I, states need to fulfil their obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, even if they do not have territorial or active nationality jurisdiction over the suspected persons. They also need to adjudicate or extradite the suspect if in their custody.⁵¹

Furthermore, states can extend the criminalization of the use of human shields to also include the organization, financing, sponsoring, and provision of material support to actors that use human shields when the supporter has knowledge thereof. This would be in line with the broad interpretation of Article 1 of the Geneva Conventions (see above, Subsection 4.1).

States can also foresee sanctions against foreign persons who order, control, or otherwise direct the use of human shields. This has already been established by the 2018 U.S. Sanctioning the Use of Civilians as Defenseless Shields Act,⁵² for instance. Similarly, the UN Security Council could also enact sanctions in conjunction with its condemnations of human shields.

Moreover, states can commit to strengthen their multi- and bilateral cooperation regarding the enforcement of the prohibition. This includes sharing information on actors using human shields, providing international assistance for criminal prosecution, reporting on measures and actions undertaken regarding criminalization as well as coordinating sanctions (see also below, Subsection 4.4).

4.3 Strategic Communication to Delegitimize the Use of Human Shields

Although the use of human shields is a violation of IHL, its underlying rationale is to confront the attacker with the dilemma between refraining from attacking and causing civilian casualties. The latter may lead to losing political support to military action at the international and domestic level as well as among people of where the fighting takes place.

Strategic communication and public diplomacy may counter this effect. It may reverse the blame for putting civilians at harm by showing that those who use humans as shields are the faulty. The message to be communicated would be that they are committing war crimes, whereas the attackers are abiding by international law and respecting IHL. Public communication could also demonstrate the precautionary measures that those confronted with human shields undertake, including aborting attacks, as well as costs associated with these measures.

Notably international organizations can further contribute to the general discourse and perception on human shields by condemning such actions, notably because of their broad state membership and absence of immediate interests. The UN, NATO, African Union (AU), Organization for Security and Co-operation in Europe (OSCE), and other international organizations could generally condemn the use of human shields. The UN General Assembly, for instance, could dedicate a special resolution to the issue.

More importantly, condemnations can be issued when confronted with concrete cases to shape the public narrative and put the given facts into

Engagement of states through diplomatic means as well as awareness-raising and dissemination of knowledge related to human shields may also prevent the use of human shields.

perspective. The UN General Assembly, UN Security Council, Council of Europe Parliamentary Assembly and European Community have done so already both directly and indirectly. The Human Rights Council, for instance, and notably states could do the same. Israel, for instance, actively tries to counter information on incidents publicized by its opponents – and *vice versa*. Yet, to uphold the conceptual clarity and meaning of human shields, it is important that situations not amounting to human shields, such as a mere co-location of military objectives and civilians in densely populated areas, are not called a violation of the prohibition to use human shields.

4.4 Thematic Engagement to Prevent the Use of Human Shields

Getting opponents to respect IHL is difficult, notably when the opponent is a non-state actor which does not enjoy the same rights as states under IHL and thus can hardly be influenced through reciprocal behaviour. Geneva Call, a Swiss-based non-governmental organization, as well as others, continuously engage non-state armed groups to commit to respect IHL. Such engagement could emphasize and focus on disseminating the prohibition of human shields. It could also commit non-state actors to refrain from using human shields, potentially with a similar instrument like the “Deed of Commitment on protecting health care in armed conflict” which was launched by Geneva Call in November 2018.⁵³

Engagement of states through diplomatic means as well as awareness-raising and dissemination of knowledge related to human shields may also prevent the use of human shields. States could further commit themselves and others to not use human shields, as requested by IHL. This would strengthen the norm guiding state action and signal to non-state armed groups that using human shields is unacceptable. Integrating the theme prominently into military training, as done by states such as the United States of America, might also sensitize (future) decision-makers.

Multilateral engagement on the issue may be coordinated and fostered within existing international organizations, such as the UN, NATO, AU, and OSCE. It might also be strengthened by the establishment of a specific, tailored-made forum on human shields that regularly meets to share information, exchange experiences, and develop common guidance⁵⁴ and action plans.

4.5 Operational and Tactical Measures to Circumvent Human Shields

Besides measures intended to influence the behaviour of opponents, i.e. prevent and stop others from using human shields, there are also measures that can support operational decision-making when faced with human shields. From a legal perspective, this would correspond to precautionary measures.⁵⁵

Weapons and tactics can be employed such that harm to civilians used for shielding military objectives is minimized or completely avoided. States may use bombs without explosives to minimize collateral damage, for instance. Warning before an attack is also a common precautionary measure.⁵⁶ This alerts civilians and other protected persons, especially when they are not aware that they are being used as human shields, and gives them time to get away from the target. Warnings might, however, be counterproductive because they may give the opportunity to assemble further civilians to increase the incidental harm. Delaying or suspending an attack may be the only option in this case.

Similarly, when confronted with convoys of opponents who have placed civilians in their vehicles, a tactical measure can be to not target the convoys but the roads to stop the convoy from advancing. Similarly, instead of air strikes, armoured vehicles may block further passage. Regarding military processes, states could decide that only senior commanders are allowed to authorize deadly force against shielded military objectives. This has been done by International Security Assistance Force (ISAF) in Afghanistan in 2011 regarding the entry of medical facilities by military forces, for instance. It shows that human shields are not absolute obstacles to military operations yet may require additional military efforts and the renunciation of technological or tactical advantages.

5. Mechanisms to Implement the Solutions

Several mechanisms are available to address the problem of human shields and implement the proposed solutions.

At the multilateral level, the adoption of an amendment to existing IHL conventions is neither realistic, nor necessary. A soft law document that recalls the existing legal obligations of states, clarifies legal ambiguities such as the regulation of human shields in non-international armed conflicts, and provides recommendations regarding national policies and operational measures could be an effective tool to advance state action.⁵⁷ Such a soft law document could be supplemented by a permanent multilateral forum on human shields.

Declarations and statements could also indicate states' commitment to joint action. The UN General Assembly and Security Council as well as regional organizations are adequate mechanisms to coordinate and issue such statements. NATO and other organizations could issue policies, handbooks, and directives that establish common rules and procedures to properly address human shields, both in operations and other activities. This includes strategies and measures for strategic communication.

At the national level, states which have not done so should issue national laws that criminalize the prohibition to use of human shields. National legislation, regulations, and policies regarding military operations could further be expanded to include and foster the proposed measures. Finally, the ICRC and non-governmental organizations, such as Geneva Call, can support addressing the problem through its ongoing activities with state and non-state actors.

NATO and other organizations could issue policies, handbooks, and directives that establish common rules and procedures to properly address human shields, both in operations and other activities.

6. Conclusion

Human shields expose civilians to high risks of death and severe injuries. They also restrain military operations of the user's adversary. The identification of the problem of human shields is the first important step to properly address the issue. While there are no easy solutions to prevent and counter this increasingly employed tactic, this paper has developed several options for action.

The challenge now is to raise the awareness among policy- and decision-makers, create support for commitments in line with the proposed solutions, and engage relevant actors. Any such process should be ambitious yet at the same time cautious, allowing flexible adaptations according to further insights and political imperatives. Many initiatives to support the respect of IHL, ensure the protection of civilians and improve the effectiveness of military operations have succeeded in the past. The time is now ripe to address the use of human shields.

The challenge now is to raise the awareness among policy- and decision-makers, create support for commitments in line with the proposed solutions, and engage relevant actors.

Select Bibliography

- Bargu, Banu, "Bodies against War: Voluntary Human Shielding as a Practice of Resistance", *AJIL Unbound*, 11 January 2017, pp. 299-304.
- Blank, Laurie R., "Taking Distinction to the Next Level: Accountability for Fighter's Failure to Distinguish Themselves from Civilians", *Valparaiso University Law Review*, Vol. 46, No. 3, 2012, pp. 765-802.
- Bouchie de Belle, Stephanie, "Chained to Canons or Wearing Targets on their T-shirts: Human Shields in International Humanitarian Law", *International Review of the Red Cross*, Vol. 90, No. 872, 2008, pp. 838-906.
- Butler, Judith, "Human Shields", *London Review of International Law*, Vol. 3, No. 2, 2015, pp. 223-234.
- Corn, Geoffrey, "Targeting, Distinction, and the Long War: Guarding against Conflation of Cause and Responsibility", *Israel Yearbook on Human Rights*, Vol. 46, 2016, pp. 135-170.
- Dinstein, Yoram, "Distinction and Loss of Civilian Protection in International Armed Conflicts", *Israel Yearbook on Human Rights*, Vol. 38, 2008, pp. 1-16.
- Dunlap, Charles J., "No Good Options against ISIS Barbarism? Human Shields in 21st Century Conflicts", *AJIL Unbound*, 11 January 2017, pp. 311-316.
- Fischer, Douglas H., "Human Shields, Homicides, and House Fires: How a Domestic Law Analogy Can Guide International Law Regarding Human Shield Tactics in Armed Conflict", *American University Law Review*, Vol. 52, No. 2, 2007, pp. 479-521.
- Gordon, Neve and Nicola Perugini, "Introduction to Symposium on critical perspectives on Human Shields", *AJIL Unbound*, 11 January 2017, pp. 296-298.
- Gordon, Neve and Nicola Perugini, "Human Shields, Sovereign Power, and the Evisceration of the Civilian", *AJIL Unbound*, 11 January 2017, pp. 329-334.
- Gordon, Neve and Nicola Perugini, "Distinction and the Ethics of Violence: On the Legal Construction of Liminal Subjects and Spaces", *Antipode*, Vol. 49, No. 4, 2017, pp. 1385-1405.
- Gordon, Neve and 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*, Vol. 34, No. 1, 2015, pp. 168-187.
- Gordon, Neve and Nicola Perugini, "Human Shields: The Weapon of the Strong", *Just Security*, 22 October 2012.
- Gross, Emanuel, "Use of Civilians as Human Shields: What Legal and Moral Restrictions Pertain to a War Waged by a Democratic State against Terrorism?", *Emory International Law Review*, Vol. 16, 2002, pp. 445-524.
- Haque, Adil Ahmad, "Human Shields" in Helen Frowe and Seth Lazar (eds), *Oxford Handbook of the Ethics of War*, 2018, pp. 383-400.
- Hovsepian, Eduard, "Legality of Attacks against Human Shields in Armed Conflict", *UCL Journal of Law and Jurisprudence*, Vol. 6, No. 1, 2017, pp. 168-195.
- Nesiah, Vasuki, "Human Shields/Human Crosshairs: Colonial Legacies and Contemporary Wars", *AJIL Unbound*, 11 January 2017, pp. 323-328.
- Rubinstein, Amnon, and Yaniv Roznai, "Human Shields in Modern Armed Conflicts: The Need for a Proportionate Proportionality", *Stanford Law & Policy Review*, Vol. 22, No. 1, 2011, pp. 93-128.
- Sassòli, Marco, "Human Shields and International Humanitarian Law", in Andreas Fischer-Lescano, Hans-Peter Gasser, Tilo Marauhn and Natalino Ronzitti (eds), *Paix en liberté, Festschrift für Michael Bothe zum 70. Geburtstag*, Baden-Baden & Zürich: Nomos & Dike, 2008, pp. 567-578.
- Schmitt, Michael N., "Human Shields in International Humanitarian Law", *Columbia Journal of Transnational Law*, Vol. 47, No. 2, 2009, pp. 17-59.
- Schoenekase, Daniel P., "Targeting Decisions Regarding Human Shields", *Military Review*, 2004, pp. 26-31.
- Skerker, Michael, "Just War Criteria and the New Face of War: Human Shields, Manufactured Martyrs, and Little Boys with Stones", *Journal of Military Ethics*, Vol. 3, No. 1, 2016, pp. 27-39.
- Van Schaack, Beth, "Human Shields: Complementary Duties under IHL", *AJIL Unbound*, 11 January 2017, pp. 317-322.
- Van Schaack, Beth, "Human Shields in International Humanitarian Law: A Guide to the Legal Framework", *Just Security*, 7 December 2016.
- Whetham, David, "Response to Michael Gross: Human Shields, Participatory Liability, and Different Sets of Rules", *Journal of Military Ethics*, Vol. 14, No. 3-4, 2015, pp. 255-259.

References

1. Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6.
2. Human shields can be categorized into (1) proximity human shields, (2) involuntary human shields/hostages, and (3) voluntary human shields. See: Daniel P. Schoenekase, "Targeting Decisions Regarding Human Shields", *Military Review*, 2004, p. 26. For a legalistic definition of human shields based on Article 51(7) of the 1977 Additional Protocol I to the Geneva Conventions: The term "human shields" describes a method of warfare prohibited by IHL where the presence of civilians or the movement of the civilian population, whether voluntary or involuntary, is used in order to shield military objectives from attack, or to shield, favor or impede military operations. See: Marco Sassòli, Antoine Bouvier, Anne Quintin, and Julia Grignon, *How does law protect in war? Cases, documents and teaching materials on contemporary practice in international humanitarian law*, International Committee of the Red Cross, <https://casebook.icrc.org/glossary/human-shields>, accessed on 15 November 2019.
3. "Pope Francis distressed at use of boys as human shields in Mosul, Iraq", *Rome Report*, 24 October 2016, and "U.N.: ISIS using 'tens of thousands' as human shields in Mosul", *CBSNews*, 28 October 2016, both quoted at Neve Gordon and Nicola Perugini, "Symposium on Critical Perspectives on Human Shields: Human Shields, Sovereign Power, and the Evisceration of the Civilian", *AJIL Unbound*, 2017, p. 329, note 1 and 3. More recently, UN Office of the High Commissioner for Human Rights, "Mosul: Protection of civilians paramount as ISIL intensifies use of human shields", *Refworld*, 28 March 2017; Human Rights Watch, "World Report 2018: Syria", January 2018; Louise Pyne-Jones, "ISIS using women and children as human shields in final Syria battles", *International Observatory of Human Rights*, 4 February 2019.
4. Noor Khan, "Afghan Civilians Said Killed in Clash", *Washington Post*, 30 June 2007, quoted at Orde F. Kittrie, *Lawfare: Law as a Weapon of War*, Oxford: Oxford University Press, 2016, p. 18, note 75. See also: Eric David, *Principes de droit des conflits armés*, Brussels: Bruylant, 2002, p. 267.
5. See, e.g.: ICTY, *Karadžić and Mladić* case, First Indictment, 24 July 1995, Counts 15–16. See also: Michael Skerker, "Just war criteria and the new face of war: human shields, manufactured martyrs, and little boys with stones", *Journal of Military Ethics*, Vol. 3, 2004, p. 29.
6. Paolo Fusco, "Legal status of human shields", *Corso in diritto umanitario internazionale Comitato Internazionale della Croce Rossa e dalla Croce Rossa Polacca Varsavia*, Pubblicazioni Centro Studi per la Pace, 2003, p. 10.
7. Beth Van Schaack, "Human Shields: Complementary Duties under IHL", *AJIL Unbound*, 11 January 2017, p. 317.
8. Laurie R. Blank, "What the UN Report on Gaza Left Out", *The Hill*, 7 July 2015, quoted at Orde F. Kittrie, *op. cit.*, n. 5, p. 288, note 38. See also: Roland Otto, "Neighbours as human shields? The Israel Defense Forces' "Early Warning Procedure" and international humanitarian law", *International Review of the Red Cross*, Vol. 86, No. 856, 2004, p. 771.
9. Neve Gordon and 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*, Vol. 34, No. 1, 2015, p. 168.
10. Senior Defense Official, U.S. Department of Defense, Briefing on Human Shields in Iraq, 26 February 2003, quoted at Orde F. Kittrie, *op. cit.*, n. 5, p. 19, note 87.
11. Neve Gordon and Nicola Perugini, "Military Attacks on "Hospitals Shields": The Law Itself is Partly to Blame", *Just Security*, 20 October 2016.
12. Global Coalition to Protect Education from Attack, "Lessons in War 2015: Military Use of Schools and Universities during Armed Conflict", May 2015. For an updated map, see: <http://www.protectingeducation.org/restricting-military-use-and-occupation>.
13. Office of the UN High Commissioner for Human Rights, "Mosul: Protection of civilians paramount as ISIL intensifies use of human shields", 28 March 2017.
14. *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 12 August 1949, 75 UNTS 135.
15. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.
16. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3.
17. Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Cheltenham: Edward Elgar Publishing, 2019, p. 369.
18. See Articles 50 of the First Geneva Convention, 51 of the Second Geneva Convention, 130 of the Third Geneva Convention, 147 of the Fourth Geneva Convention, and 11 of the Additional Protocol I.
19. See, e.g.: ICTY, *Blaškić* case, Trial Judgment, 3 March 2000, paras. 713–716 and 738, and *Prlić* case, Trial Judgment, 29 May 2013, para. 115.
20. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609.
21. See, e.g.: ICTY, *Kordić and Čerkez* case, Trial Judgment, 26 February 2001, para. 256; ICTY, *Aleksovski* case, Trial Judgment, 25 June 1999, para. 229.
22. Article 57(2)(b) of the 1977 Additional Protocol I.
23. Rule 97 Human Shields, Customary International Humanitarian Law, International Humanitarian Law Database, International Committee of the Red Cross, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule97#Fn_B4BD78D7_00018, accessed on 15 November 2019.
24. *Ibid.*
25. *Ibid.*
26. ICTY, *Karadžić and Mladić* case, First Indictment, 24 July 1994, paras. 15–16.
27. ICTY, *Karadžić and Mladić* case, Review of the Indictments, 11 July 1996, paras. 13 and 89.
28. ICTY, *Naletilić and Martinović* case, Judgement, 31 March 2003; ICTY, *Naletilić and Martinović* case, Judgement on Appeal, 3 May 2006.
29. ICTY, *Naletilić and Martinović* case, Judgement on Appeal, 29 July 2004, para. 654.
30. Canada, Court of Appeal for Ontario, *Ribic* case, Judgment, 24 November 2008.
31. Germany, Federal Prosecutor General, *Democratic Forces for the Liberation of Rwanda* case, Press Release, 17 December 2010.
32. Israel, High Court of Justice, *Public Committee against Torture in Israel* case, Judgement, 14 December 2006.
33. *Op. cit.*, n. 22.
34. *Ibid.*
35. *Ibid.*
36. The resolutions have sometimes named Al-Qaida and ISIL (Daesh) affiliates alongside the Taliban. See: Orde F. Kittrie, unpublished working paper, accessed on 15 July 2019.
37. UNSCR 1776 (2007), UNSCR 1806 (2008), UNSCR 1833 (2008), UNSCR 1868 (2009), UNSCR 1917 (2010), UNSCR 1943 (2010), UNSCR 1974 (2011), UNSCR 2011 (2011), UNSCR 2041 (2012), UNSCR 2069 (2012), UNSCR 2096 (2013), UNSCR 2120 (2013), UNSCR 2145 (2014), UNSCR 2210 (2015), UNSCR 2274 (2016), UNSCR 2344 (2017), and UNSCR 2405 (2018). See: *Ibid.*
38. UNSCR 1828 (2008), UNSCR 1882 (2009), and UNSCR 2139 (2014). See: *Ibid.*
39. UNSCR 1894 (2009), UNSCR 2139 (2014), UNSCR 2143 (2014), and UNSCR 2143 (2014). See: *Ibid.*
40. UNGA Res 58/150, 22 December 2003, para. 8, adopted without a vote. See: *Ibid.*
41. The United Nations Global Counter-Terrorism Strategy Review, UNGA Res 72/284, 26 June 2018. See: *Ibid.*

References cont.

42. *Op. cit.*, n. 22.
43. *Ibid.*
44. *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171.
45. *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.
46. UN Human Rights Committee, *General Comment No. 36 (Article 6 of the International Covenant on Civil and Political Rights)*, CCPR/C/GC/36, 2018, para. 67.
47. See, e.g.: UN Human Rights Committee, *General Comment No. 6 (Article 6 of the International Covenant on Civil and Political Rights)*, HRI/GEN/1/REV.9(VOL.I & II), 2008.
48. ECHR, *Demiray v. Turkey* case, Judgment, 21 November 2000, para. 41.
49. According to the ICRC's Commentary, the obligation to 'ensure respect' requires states to ensure that IHL is respected by their own armed forces, de facto organs, and populations over which they exercise jurisdiction as well as by any other Party to the conflict. This obligation is twofold: On the one hand, states must not encourage, aid or assist in IHL violations (negative obligations). On the other hand, it requires states to take steps to bring violations to an end and to bring the erring party back to respect as well as prevent future violations when there is a foreseeable risk that they will be committed (positive obligations). See: Knut Dörmann, Liesbeth Lijnzaad, Marco Sassòli and Philip Spoerri (eds), *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Cambridge: Cambridge University Press, 2016, pp. 43-55.
50. For an account in this regard, see: Daniel P. Schoenkase, *op. cit.*, n. 2.
51. Marko Divac Öberg, "The absorption of grave breaches into war crimes law", *International Review of the Red Cross*, Vol. 91, No. 873, 2009, pp. 180-181.
52. U.S. Congress, "H.R.3342 - Sanctioning the Use of Civilians as Defenseless Shields Act", Public Law 115-348, 21 December 2018.
53. See: <https://www.genevacall.org/geneva-call-launches-an-innovative-new-deed-of-commitment-on-protecting-health-care-in-armed-conflict/>, accessed on 15 November 2019.
54. A potential inspiration for such guidance could be: International Committee of the Red Cross, *Promoting Military Operational Practice that Ensures Safe Access to and Delivery of Health Care*, Geneva, August 2014.
55. For an assessment of potential precautionary measures applicable to human shields in light of Article 57 of the Additional Protocol I, see: Stephanie Bouchie de Belle, "Chained to Canons or Wearing Targets on their T-shirts: Human Shields in International Humanitarian Law", *International Review of the Red Cross*, Vol. 90, No. 872, 2008, pp. 903-906. See also: Jean-François Quöguiner, "Precautions under the law governing the conduct of hostilities", *International Review of the Red Cross*, Vol. 88, No. 864, 2006, p. 815.
56. For an assessment of current practice in the context of human shields, see, e.g.: Roland Otto, *op. cit.*, n. 8.
57. A blueprint for such a soft law document could be the 2008 Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict (Montreux Document).



GCSP

Geneva Centre for
Security Policy

Where knowledge meets experience

The GCSP Strategic Security Analysis series are short papers that address a current security issue. They provide background information about the theme, identify the main issues and challenges, and propose policy recommendations.

Geneva Centre for Security Policy - GCSP

Maison de la paix
Chemin Eugène-Rigot 2D
P.O. Box 1295
CH - 1211 Geneva 1
Tel: + 41 22 730 96 00
Fax: + 41 22 730 96 49
e-mail: info@gcsp.ch
www.gcsp.ch

ISBN: 978-2-88947-097-6

The opinions and views expressed in this document do not necessarily reflect the position of the Swiss authorities or the Geneva Centre for Security Policy.