

Human Shields in International Humanitarian Law: an analysis

Stéphanie Bouchié de Belle

Executive Summary

Extensive media coverage has familiarized the general public with the term "human shield." The phenomenon, indeed, and especially the phenomenon of voluntary human shields, tends to develop in contemporary armed conflicts, characterized by the disequilibrium of capacities between belligerents. Notwithstanding the prohibition of this practice as a war crime, the legal implications of the presence of human shields in an armed conflict are the object of controversies, and the legal literature on the subject is scarce. What is in fact the scope of the prohibition? What protection do human shields benefit from? What behaviour must adopt an attacker who is confronted with this practice?

The prohibition of the use of human shields does not admit any exceptions. This absolute prohibition is further completed by certain number of feasible precautionary measures that the attacker must take, such as distancing civilians from military objectives. Even when it is not envisaged in the texts, *voluntary* human shields seem to fall equally, in terms of our analysis, under the scope of this prohibition.

The human shield, as a civilian, benefits from immunity against attacks. However, all civilians who take direct part in hostilities temporarily lose their protection. According to famous authors, this is precisely the case for voluntary human shields. Nonetheless, our study leads us to contest this opinion and to think that human shields should not be regarded as participating directly in hostilities. Generally, indeed, they do not represent an *immediate* threat. Thus they maintain their protection although when putting themselves before a military object, they become naturally exposed to an increased risk.

The goal of the practice of human shields is to prevent the attack of a military objective. Is this calculation nevertheless legally valid? The violation by the attacked of the prohibition to use human shields does not excuse the attacker from respecting his own obligations to take precautionary measures. Among those stands the principle of proportionality, which establishes that an attack that may be expected to cause injury to civilians cannot be launched if this injury is excessive in relation to the concrete and direct military advantage anticipated. Then, it is necessary to be aware that an attack will not be systematically prevented by the presence of human shields. Moreover, the voluntary character of their presence does not have any additional incidence on the evaluation of proportionality.

If IHL covers already all the cases of human shields, it would seem that the apprehension of the notions of direct participation in hostilities and of proportionality remain among the greatest actual challenges of the law of armed conflicts. Their clarification becomes indispensable for an efficient protection of the victims of war.