

## INTRODUCTION TO SYMPOSIUM ON CRITICAL PERSPECTIVES ON HUMAN SHIELDS

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This symposium is dedicated to the legal challenges posed by human shielding, a growing phenomenon intricately linked to the increasing “weaponization” of human bodies in contemporary warfare.<sup>1</sup> Human shielding refers to the deployment of civilians in order to deter attacks on combatants or military sites as well as their transformation into a technology of warfare. The dramatic increase of urban warfare has meant that civilians inevitably occupy the front lines, blurring the distinction between civilians and combatants. This, in turn, raises serious ethical and legal dilemmas relating to the use of violence. From Gaza City through Mosul in Iraq to Sri Lanka, accusations that combatants are using human shields as an instrument of protection, coercion, or deterrence have multiplied in the past few of years.

The word shield, in relation to human shield issues, first appears in the [1977 Additional Protocol I to the Geneva Conventions](#). Article 51(7) both prohibits the use of human shields and reiterates that it is legitimate for militaries to attack areas protected by human shields, provided that they abide by the principles of proportionality and military necessity.

The presence or movement 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, favor 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.<sup>2</sup>

More recently, the [1998 Rome Statute of the International Criminal Court](#) characterized human shielding as a war crime.<sup>3</sup>

Although international humanitarian law (IHL) does not explicitly distinguish among different kinds of human shields, [legal commentary tends to draw a distinction](#) among involuntary, voluntary, and proximate shields.<sup>4</sup> [Military and legal history](#) suggests that the introduction of the human shield clauses within the Fourth Geneva Convention and Additional Protocol was spurred by memories of the Nazi practice of transporting civilian

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<sup>1</sup> We began interrogating the weaponization of human bodies in warfare and the question of human shields in international law with some of the contributors to this thematic issue at Brown University, in “The Politics of Human Shielding” workshop (November 2015), which was cosponsored by the Middle East Studies Program and the Watson Institute.

<sup>2</sup> [Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts](#) art. 51(7), June 8, 1977, 1125 UNTS 3.

<sup>3</sup> [Statute of the International Criminal Court](#) art. 8(2)(b)(xxiii), July 17, 1998, 2187 UNTS 90.

<sup>4</sup> Matthew W. Ezzo & Amos N. Guiora, *A Critical Decision Point on the Battlefield-Friend, Foe, or Innocent Bystander*, in SECURITY: A MULTIDISCIPLINARY NORMATIVE APPROACH 91 (Cecilia Baillet ed., 2009).

prisoners on trains carrying ammunition to shield the tracks from aerial attacks.<sup>5</sup> Along similar lines, in numerous theatres of violence militants force civilians to enter buildings suspected of being booby-trapped or to walk in front of soldiers to shield them from gunfire. [Voluntary human shields](#), by contrast, are people who willingly use their bodies to deter violence through the invocation of a certain moral sensibility.<sup>6</sup> Least studied to date, proximate shields are the most widespread and more ethically challenging. This form of shielding involves civilians living in the midst of fighting who become shields simply by continuing to inhabit their homes, schools, or workplace. Literally hundreds of thousands of civilians from Fallujah and Mosul in Iraq to Raqqa in Syria have been categorized by the mainstream media as well as military and legal experts as proximate shields.

Despite the prominence of human shielding in contemporary armed conflicts, international law has remained relatively ambiguous. Rigorous analysis is urgently needed. Interrogating the legal origins and multifaceted implications of this phenomenon, the contributors to this special issue—anthropologists, lawyers, sociologists, historians, philosophers, and political scientists—investigate human shielding from a multi-layered multidisciplinary perspective. Indeed, the different scholars included here examine the historical processes through which human shielding became relevant and inscribed in the laws of war; interrogate the definitions of voluntary, involuntary, or proximate human shield; probe how militaries deal with human shielding practices; and, finally, discuss the legal and ethical implications of using the human shielding lens to understand contemporary forms of violence and warfare.

Banu Bargu opens the discussion by providing a theorization of voluntary human shielding, suggesting that such actions must be understood as part of the venerable tradition of civil disobedience.<sup>7</sup> For Bargu, voluntary shielding is a form of “counterpolitics,” whereby civilians assume agency in order to counteract war itself.<sup>8</sup> Helen Kinsella also provides a counterintuitive perspective, arguing that both the principle of distinction and the common conception of shields are gendered: the unspoken assumption is that shields denote mostly women and children.<sup>9</sup> For Kinsella, shields provide the chance for actors that are usually defined as passive by international law to become active agents in contemporary conflicts. The law constructs shields as mutable and unstable, she avers, thus producing a legal grey zone that can be mobilized for political ends.

Charles Dunlap provides a very different kind of critique.<sup>10</sup> Discussing the rise of new international political actors such as ISIS, he maintains that human shielding is a barbaric terrorist tactic aimed at exploiting the moral sensibility of Western countries. The deployment of human shields, he argues, is part of a lawfare strategy utilized by nonstate actors. If the tactic is to be stopped, he argues, international law must be adapted, reinterpreted, or revised to dull the tactic’s effectiveness and free the hands of the troops fighting those using it. Using the civil war in Sri Lanka as a case study, Beth Van Schaack echoes Kinsella’s claims, revealing how government and civilian agencies can deploy human shield clauses to the detriment of civilians.<sup>11</sup> In contrast to Dunlap, Van Schaack claims that international law provides the tools to deal with human shielding and that problems arise primarily due to the wilful misinterpretation of the law. Her conclusion is that militaries must “treat all human shields as civilians when it comes to calculating acceptable collateral damage, unless there is irrefutable proof of willing participation in hostilities.”<sup>12</sup>

<sup>5</sup> Neve Gordon & Nicola Perugini, *The Politics of Human Shielding: On the Resignification of Space and the Constitution of Civilians as Shields in Liberal Wars*, 34 ENV’T & PLAN. D: SOC’Y & SPACE 168 (2016).

<sup>6</sup> Banu Bargu, *Human Shields*, 12 CONTEMP. POL. THEORY 277 (2013).

<sup>7</sup> Banu Bargu, *Bodies against War: Voluntary Human Shielding as a Practice of Resistance*, 110 AJIL UNBOUND 299 (2016).

<sup>8</sup> *Id.* at 301.

<sup>9</sup> Helen M. Kinsella, *Gender and Human Shielding*, 110 AJIL UNBOUND 305 (2016).

<sup>10</sup> Charles J. Dunlap, Jr., *No Good Options against ISIS Barbarism? Human Shields in 21<sup>st</sup> Century Conflicts*, 110 AJIL UNBOUND 311 (2016).

<sup>11</sup> Beth Van Schaack, *Human Shields: Complementary Duties under IHL*, 110 AJIL UNBOUND 317 (2016).

<sup>12</sup> *Id.* at 322.

In an attempt to historicize the current debates about human shields, Vasuki Nesiiah compares colonial violence with current wars waged in the name of “humanity,” exploring how the figure of the human shield is marshalled to normalize contemporary forms of violence against civilians in a way that echoes our colonial past.<sup>13</sup> Nesiiah argues that the pre-emptive use of the notion of human shield “prepares us for the sacrifice of humans for the protection of humans.”<sup>14</sup> In a similar fashion, our concluding essay briefly examines the legal genealogy of human shielding in order to demonstrate how this legal figure was introduced to help legitimize sovereign violence.<sup>15</sup> We highlight the fact that the majority of actors currently mobilizing the notion of human shields are state actors and that this mobilization aims to justify the killing of civilians. Human shielding should therefore be understood not only as a form of lawfare used by nonstate actors, but as a form of state lawfare as well, one that is eroding and eviscerating the legal category of civilian.

We believe that the critical perspectives assembled in this thematic issue can provide us with greater insight into the growing phenomenon of human shielding, and its legal, political, and ethical implications. More specifically, the symposium offers numerous important and timely contributions, two of which we would like to underscore here. First, it pushes the debate on human shields beyond the strictly legal interpretation characterizing much of the existing literature in order to consider the broader theoretical questions the phenomenon generates. Second, the symposium suggests that through the prism of the legal figure of the human shield we gain a better understanding of how international law operates, and, more specifically, how its mobilization is intertwined with contemporary forms of political violence.

<sup>13</sup> Vasuki Nesiiah, *Human Shields/Human Crosshairs: Colonial Legacies and Contemporary Wars*, 110 AJIL UNBOUND 323 (2016).

<sup>14</sup> *Id.* at 327.

<sup>15</sup> Neve Gordon & Nicola Perugini, *Human Shields, Sovereign Power, and the Evisceration of the Civilian*, 110 AJIL UNBOUND 329 (2016).