

## SYMPOSIUM ON CRITICAL PERSPECTIVES ON HUMAN SHIELDS

### BODIES AGAINST WAR: VOLUNTARY HUMAN SHIELDING AS A PRACTICE OF RESISTANCE

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International humanitarian law strictly prohibits the use of human shields and, through a well-known genealogy of supranational efforts that passes through the Hague Convention IV (1907), the Geneva Conventions III and IV (1949), the Additional Protocol I (1977), and, more recently, the Rome Statute of the International Criminal Court (1998), has sought to prevent this practice. However, both states and nonstate belligerents have deployed human shields in order to gain military advantages—to ward off attacks by placing civilians close to military targets or hiding military targets within areas inhabited by civilians. This is especially the case in asymmetric conflict, where the weaker party can use human shields to protect fighters, weapons, strategic sites, and critical infrastructures, and to delay, deter, and even discourage attackers from direct engagement that might lead to a high number of civilian casualties. On the other hand, the attacking party can allege that the “other” party is using civilians as human shields. Even in the absence of actual evidence, such an allegation has come to constitute a convenient excuse for attackers to justify civilian casualties and to relegate the responsibility for their deaths to the party that endangered them in the first place. In asymmetric conflict, therefore, parties are incentivized to resort to a politics of human shielding.

Meanwhile, the category of human shields is increasingly deployed within public discourse as an extension of armed conflict. For Neve Gordon and Nicola Perugini, this is [a politics of the strong](#): they worry that the strong’s increasing resort to allegations of the use of human shields by their antagonist is an attempt to rationalize and justify violence.<sup>1</sup> For them, the politics of human shielding concerns “the epistemic and political operations through which the deployment of the legal category of human shield legitimizes the use of lethal force, potentially against entire civilian populations and the spaces they inhabit.”<sup>2</sup> Similarly, [Judith Butler notes](#), “the discursive attribution of the status of human shield to a specific civilian population, operates to rationalize the destruction of that population, identifying the population with a weapon, or understanding the population as an extended version of a military target.”<sup>3</sup> What often accompanies these allegations is an accusation of complicity on part of the population. If human shielding is carried out under duress, i.e., if it is *involuntary* human shielding, or if it occurs without the proper knowledge of the population, i.e., if it corresponds to *proximity* human shielding, the civilian protection

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<sup>1</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 34 168, 183 (2016).

<sup>2</sup> *Id.* at 170.

<sup>3</sup> Judith Butler, [Human Shields](#), 3 LONDON REV. INT’L L. 228 (2015).

clause in international humanitarian law should still immunize the population against being targeted.<sup>4</sup> However, when the population supports being used as human shields—i.e., in the case of *voluntary* human shielding—international law provides a ground to make the case that civilian status is thus forfeited.

The allegation of human shielding shows how the domain of law is transformed into a new site in which politics becomes, as Michel Foucault once stated (inverting the famous dictum of Carl von Clausewitz), the “[continuation of war by other means](#).”<sup>5</sup> As warfare continues into lawfare, it is not simply that legal categories are instrumentalized for political purposes that in turn permeate and change their meaning. It is also that, in a temporal reversal, the stipulations of international law are anticipated on the battlefield and strategically deployed.<sup>6</sup> Both parties in conflict calculate to commit some war crime (whether by using human shields or by breaching civilian protections after alleging its use by the other) and count on the other to do the same. The decisive questions become when and how best to commit that crime, with the least reputational damage, with the broadest support, with the least harm to one’s own forces, and so on. Lawfare, like contemporary warfare, has become *anticipatory*: it is preemptive, strategic, and instrumentally calculative, and based on the assumption of mutual breach.

Regardless of whether human shields are actually used on the battlefield, the mobilization of human shields as a discursive category in this preemptive struggle nonetheless has immense consequences for the population in question. Not only does it justify violence, but it also affects proportionality considerations in assessing whether or not the violence against the population constitutes a war crime. Moreover, as Butler notes, there is often a time lag: by mobilizing the discursive category, the burden of proving that no human shields were used is shifted upon the attacked party and postponed until after the war. “Under conditions in which the evidence for the claim that a population is functioning as a human shield within the field of war is indefinitely postponed, the allegation is free to run wild, as it were,” Butler writes.<sup>7</sup> Even though such unproven allegations should not, in principle, entitle attackers to disrespect the rule of avoiding civilian casualties or to disrespect it with impunity, it often does. The discursive use of human shields thus transforms civilians into “killable subjects.”<sup>8</sup> Transmogrifying the spirit of the law, which was to ensure the protection of civilians, into a justification for the breach of that protection in the name of military necessity, this tactic repurposes a critical legal category to legitimize armed conflict while also helping to ward off allegations of war crimes. Hence, Gordon and Perugini contend, “the use of the *legal phrase* human shields should be understood not so much as a protective technology of the weak, but rather *as a necrotechnology deployed by the strong—a technology that recasts civilians as legitimate targets of lethal violence.*”<sup>9</sup>

### *Another Kind of Shielding*

The discursive deployment of human shields observed by Butler, Gordon, and Perugini often has little actual regard for either the knowledge or the intentions of the civilian populations in question. Similarly, this discourse has no use for their political agency. Despite references to the complicity of the population, there is scant discussion of whether these populations are aware of their instrumentalization and consent to it. Because the main

<sup>4</sup> Instead of the more common dual classification between *voluntary* and *involuntary* shields in legal discussions, Matthew V. Ezzo and Amos N. Guiora advance this tripartite classification in their [A Critical Decision Point on the Battlefield - Friend, Foe, or Innocent Bystander](#), in *SECURITY: A MULTIDISCIPLINARY NORMATIVE APPROACH* 91, 101–102 (Cecilia Bailliet ed., 2009).

<sup>5</sup> MICHEL FOUCAULT, “[SOCIETY MUST BE DEFENDED](#)”: LECTURES AT THE COLLÈGE DE FRANCE, 1975–1976 15, 16 (Mauro Bertani and Alessandro Fontana eds., David Macey trans., 2003).

<sup>6</sup> Butler, [supra note 3](#), at 226.

<sup>7</sup> *Id.* at 229–230.

<sup>8</sup> Gordon & Perugini, [supra note 1](#), at 184.

<sup>9</sup> *Id.* at 172.

purpose of this deployment is to “game” international law according to the interests of the warring parties, it also constricts the field of political possibilities to the struggle between them.

There is an alternative modality of human shielding, one that is conceived and performed as an act of *nonviolent resistance* against war. As a voluntary, collectively organized, and systematic strategy of political struggle, human shielding can be a critical intervention into the present.<sup>10</sup> With the intensified presence of bodies inserted into conflict zones, it articulates a resistance against organized violence by risking lives, and in this wager, of transforming those lives into the means of protecting others, whether these others are vulnerable populations, critical infrastructures necessary for civilian survival, or symbolic sites of cultural, religious, or political significance. What I am calling *voluntary human shielding*, thus understood, can be considered part of the venerable tradition of civil disobedience, even while it extends that practice outward from domestic politics into the international arena. Rather than a weapon of the strong or the weak (as Gordon and Perugini contend), it is a form of struggle that strives for peace. If the politics of human shielding refers to the actual or alleged use of civilians as human shields, its practice as part of resistance to war is, precisely, the *counterpolitics* of human shielding. Voluntary human shielding challenges the whole problematic of human shielding as it currently stands, insofar as it is constituted solely in binary form, i.e., in reference to the agency of the warring parties. By inserting transnational actors that are part of neither party’s war campaign into the war zone in an admirable effort to counteract the war itself, it reconstitutes the field of political action.

*Voluntary* human shielding is not a well-scripted repertoire of political action. Not only is its emergence relatively new, but it is also highly uncertain in its effects. Much scholarly work needs to be done to explore its potential fully. However, it is possible to highlight some important features that count as necessary conditions. First, voluntary human shielding as a practice of resistance requires that those performing this action be noncombatants. Second, it is necessary that their participation be *fully voluntary, without any coercion*, and with the knowledge of the potential risks involved.<sup>11</sup> As *Nada al-Duaij has cogently argued*, the non-native status of participants enhances the effectivity of the action, especially when it is conducted by citizens of the attacking force in the territory of the defensive force.<sup>12</sup> This criterion is important, she suggests, because nativity may raise doubts about whether civilians are being recruited by coercion. Third, the objects of their protection should also be limited to civilians, non-military sites, and infrastructures that support civilian life.<sup>13</sup> Finally, these volunteers should remain neutral to both parties and retain the freedom to terminate their action at any time.

For *voluntary human shielding to work*, it must rely heavily on *the power of publicity*, even though this power is dependent on media coverage and framing.<sup>14</sup> Publicity allows greater scrutiny of the practices exhibited in the war. It helps not only in tracking civilian casualties and documenting war crimes, rendering forces in conflict more accountable, but also in raising public questions about the morality of the war effort. It also acts as a generator of “*counter-publics*” that build greater solidarities against the war.<sup>15</sup> Such resistance is enabled by, and its success tied to, the value placed on civilian life (if not always registered locally, at least for the transnational public sphere

<sup>10</sup> Banu Bargu, *Human Shields*, 12 CONTEMP. POL. THEORY 277 (2013).

<sup>11</sup> Michael N. Schmitt, *Human shields in international humanitarian law*, 47 COLUM. J. TRANSNAT’L L. 292 (2009); Emanuel Gross, *Use of Civilians as Human Shields: What Legal and Moral Restrictions Pertain to a War Waged by a Democratic State against Terrorism?*, 16 EMORY INT’L L. REV. 445 (2002); Nada Al-Duaij, *Volunteer Human Shields in International Humanitarian Law*, 12 OR. REV. INT’L L. 117 (2010).

<sup>12</sup> Al-Duaij, *supra* note 11, at 123, 125.

<sup>13</sup> *Id.* at 126–27; Schmitt, *supra* note 11, at 316–322.

<sup>14</sup> Bargu, *supra* note 10, at 280–82; Michael Skerker, *Just War Criteria and the New Face of War: Human shields, Manufactured Martyrs, and Little Boys with Stones*, 1 J. MIL. ETHICS 3 27 (2004).

<sup>15</sup> Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy*, 25/26 SOC. TEXT 56 (1990).

that it takes as its audience). Overall, voluntary human shielding embodies the aspiration of international humanitarian law to contain the violence of war and works in that spirit.

### *Limitations, Political and Discursive*

Voluntary human shielding makes use of the calculations of warring parties in order to carve itself an alternative discursive and practical space in the midst of war. In so doing, it exacerbates some of the existing contradictions of contemporary warfare. Voluntary human shielding as a civilian peace action rests on the distinction between civilian and combatant. However, by challenging the hegemonic construction of the [civilian as a passive and voiceless, often feminized victim of violence](#) and by espousing an active, dissident role, human shields expose themselves as always-already in excess of what the civilian signifies.<sup>16</sup> Especially in asymmetric warfare, where the distinction between civilian and combatant is already destabilized, the resignification of the civilian is both dangerous and difficult.

At the same time, in asymmetric warfare, voluntary human shields further run the risk of being discursively enlisted for the support of one of the warring parties. When one of these parties is a proto-sovereign insurgency that can also resort to terrorist tactics, voluntary human shields risk being implicated in their politics. Hence, we find a [strong critique of this form of shielding](#) as further eroding the civilian-combatant distinction, connected with the argument [to criminalize their actions](#).<sup>17</sup> Advocates of criminalization may concede that voluntary human shields as participants of nonviolent resistance are not combatants themselves but contend that their actions, insofar as they “aid and abet” the enemy, especially if they protect military targets, enter into the range of practices that can be considered “participation in hostilities,” which would then allow their treatment as combatants or, at the very least, grant their exclusion from proportionality considerations. Often this argument is stretched to include any practice that, whether purposefully or not, ends up serving the military *interests* of one party over the other. Ironically, while these activists try to hold the attacker more responsible for its actions and to press back on the logic of military necessity often used to justify civilian casualties, advocates of their criminalization try to discount the civilian status of these peace activists to take away their right to protection. Obviously, the ground on which voluntary human shields operate is incredibly fragile and precarious.

Voluntary human shielding as a form of resistance is vulnerable to other objections as well. Butler [voices two distinct objections](#): one concerns the question of subjectivity and the other the issue of nomenclature. For Butler, to conceptualize voluntary human shielding as a strategic form of resistance that calculates advantages of the action, takes risks, and wagers lives, [as I have done](#), points to an economic conception of action.<sup>18</sup> The implication is that this instrumentalist subjectivity partakes in the logic of war, approximates a form of speculation with the body, placing us on the terrain of “human capital” in complicity with neoliberalism, and involves a reductive conception of freedom that tries to calculate the “incalculable.”<sup>19</sup> Butler juxtaposes this “cost-benefit rationality” with the absolute value of principles, of standing for these principles and standing with others, without any calculation of the effects of such action. In the former reading, activists appear to be moral consequentialists, or war strategists; in the latter, their actions are motivated by *a priori* principles and hope.<sup>20</sup>

<sup>16</sup> The discursive roots of the “civilian” are forcefully demonstrated by HELEN KINSELLA, [THE IMAGE BEFORE THE WEAPON: A CRITICAL HISTORY OF THE DISTINCTION BETWEEN COMBATANT AND CIVILIAN](#) (2011).

<sup>17</sup> Richard D. Rosen, [Targeting enemy forces in the war on terror: Preserving civilian immunity](#), 42 VAND. J. TRANSNAT’L L. 683, 771 (2009). Also, Ezzo & Guiora, [supra note 4](#), at 100.

<sup>18</sup> Butler, [supra note 3](#), at 230, 232.

<sup>19</sup> *Id.* at 227, 234, 231–32.

<sup>20</sup> *Id.* at 228, 232, 234.

In my view, while there is a significant strategic dimension to voluntary human shielding, in its aspiration to delay and deter attacks, even to prevent them where possible, and to lessen the damage to civilians in warfare, these activists are not only or, even mainly, motivated by cost-benefit calculations, nor are anti-war politics and the principles of nonviolence and freedom unimportant or somehow less determining to them than a calculative logic. To the contrary, voluntary human shielding, [as I have argued](#), exemplifies the willingness to uphold the *political* meaning of life, its relation to justice, against the putative value of biological survival.<sup>21</sup> Asserting the stance of a “just existence” in the [Benjaminian](#) sense is, I submit, the defiance of a simply economic logic that Butler imputes on my characterization.<sup>22</sup> Surely, no subjectivity, no act of resistance is completely immune to neoliberalism, its hegemonic practices of comportment, its dominant forms of thinking and acting. However, while both “hedging” in neoliberal finance and participating in human shielding involve a calculative rationality, the latter form of risk taking remains at a critical distance to hegemonic values.

Nonetheless, one should not neglect the very real cost-benefit calculations that help define when and where human shields will situate themselves, for example, or how many volunteers are distributed to each site, or even some sense of the potential impact of the action on a public sphere that might recognize and support what these activists attempt to achieve and condemn the attacker. Otherwise, we run the risk of idealizing this form of resistance as a purely moral act conducted only for an *a priori* good, one that is only valuable insofar as it conforms to a purist vision that moralizes politics.

In fact, insofar as human shields rely on the mainstream media and call on a humanitarianism, whether by calculation or out of principle or an intermingling of both, they already express a certain moralization of politics, which is at times complicit with or derivative of a hierarchized conception of “humanity” (one that is also mobilized by humanitarian warfare and the R2P discourse). This kind of activism tries to subvert this hierarchy, but it is enabled by that humanitarianism. Because there is a direct link between the effectivity of human shielding and the privilege of those who resort to it, the presupposition of a hierarchy of lives enables voluntary human shielding and constitutively permeates its practice. Stated differently, it is only because some lives are valued more than others that they can be mobilized in the service of protecting other lives. As [Didier Fassin has forcefully argued](#), the distinction between the lives that can be “willingly risked” and those lives “at risk” thus reproduces the “founding inequality of the humanitarian gesture.”<sup>23</sup> Through the strategic deployment of privilege in order to subvert the humanitarian hierarchy among lives, the same hierarchy is affirmed and recreated.

[Butler's second objection](#) is a nominalist one. She problematizes the adoption of voluntary human shielding as an appellation that designates this collective form of nonviolent resistance. She points to the “unwilled” consequences of this practice, especially in a discursive field in which the dominant use of the term often functions to reconceptualize a civilian population as a weapon or target.<sup>24</sup> Because this discursive function is part and parcel of a war strategy, her argument goes, nonviolent resistance calling itself a form of human shielding would implicate itself in the transformation of civilians into potential objects of violence through the extension of warfare into lawfare.

Such a danger of manipulation or distortion is ever present for resistance practices, regardless of the appellation chosen, as this is often a function of discursive hegemony. However, the discourse of voluntary human shielding is a new field of contention where the hegemony is far from settled. There is space to intervene and thus transform the meaning of human shielding through political and theoretical contestation. Just as voluntary human shielding

<sup>21</sup> Bargu, [supra note 10](#), at 289–90.

<sup>22</sup> Walter Benjamin, [Critique of Violence](#), in 1 WALTER BENJAMIN: SELECTED WRITINGS, 1913–1926, at 236 (Marcus Bullock & Michael W. Jennings eds., 2004).

<sup>23</sup> DIDIER FASSIN, [HUMANITARIAN REASON: A MORAL HISTORY OF THE PRESENT](#) 233 (2011).

<sup>24</sup> Butler, [supra note 3](#), at 231–32.

as a practice of resistance cuts across the dominant binary of the offensive and defensive uses of human shields in warfare in an attempt to claim the practice in a different way, conceptualizing and arguing for voluntary human shielding as a practice of resistance cuts across the binary of the accusatory mobilization of human shielding and its refutation to claim the appellation in a different way. In both cases, carving a space for voluntary human shielding enacts a *counterpolitics*, which destabilizes the established field of significations of human shielding and exposes how it is fraught with contention. This is why constructing a counterdiscourse of voluntary human shielding may help us reclaim some of the fraught definitional sites of war.