Targeting Decisions Regarding Human Shields

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The use of human shields on the battlefield presents problems at all levels for U.S. military services. At the strategic level, the theater commander and his staff must make targeting decisions after considering political and strategic implications posed by the presence of human shields. This concern is not unique to major commands, however. Human shields on the battlefield could directly affect tactical units from battalion to platoon and present individual soldiers with specific targeting decisions.

Definition and Classification

Human shields are noncombatants whose presence protects certain objects or areas from attack. The use of human shields is illegal under international humanitarian law. Considering the political ramifications of striking targets where human shields are present, it might be beneficial to specify the types of human shields employed.

Proximity human shields. Proximity human shields, by their proximity to a legitimate military target, present such likelihood for collateral damage that a military planner would have to consider their presence before striking a target, as for an example, Iraqi air defenses located in an otherwise civilian neighborhood. Usually, proximity human shields have not been coerced to participate or have not volunteered to shield defenses. Sometimes, the enemy accomplishes countertargeting by bringing the potential object of the attack to areas where human shields are present.

Involuntary human shields/hostages. A second category of human shield is the involuntary use of civilians, noncombatants, or hostages to shield a legitimate military target, such as when Iraq threatened to use foreign journalists as human shields during Operation Desert Storm. The International Committee of the Red Cross defines hostages as “persons who find themselves, willingly or unwillingly, in the power of the enemy and who answer with their freedom or their life for compliance with the orders of the latter [the enemy] and for upholding the security of its armed forces.”

Voluntary human shields. The recent coalition war with Iraq witnessed this unique category of human shields. Before the war, foreign peace activists traveled from many nations to Iraq to act as human shields. Estimates indicate there were from 100 to 250 people from as many as 32 countries.

Some debate has arisen whether voluntary human shields have become a form of quasi-combatant by their active participation. Human Rights Watch called on both sides in the conflict to adhere to international humanitarian law and said, “Like workers in munitions factories, civilians acting as human shields, whether voluntary or not, contribute indirectly to the war capability of the state. Their actions do not pose a direct risk to opposing forces. Because they are not directly engaged in hostilities against the adversary, they retain their civilian immunity from attack. They may not be targeted” [emphasis added].

Some scholars argue that voluntary human shields forfeit immunity. In calling for the protection of civilians during the Iraqi conflict, a group of law professors and attorneys wrote, “Death or injury to human shields, whether Iraqi or non-Iraqi, who voluntarily take up positions at the site of legitimate military objectives, does not constitute civilian collateral damage, because those voluntary human shields have assumed the risk of combat and, to that extent, have compromised their noncombatant immunity.”

The debate is likely moot for a number of reasons. Iraq largely used voluntary human shields to immunize targets that were part of its infrastructure. The United States and its coalition partners had little
reason to destroy Iraq’s infrastructure, even targets with obvious dual-use potential, because of the relatively certain outcome of the war and the subsequent responsibility to rebuild the infrastructure.7

Given the political risk involved in doing so, the United States is unlikely to apply the principles of targeting to preclude considering the presence of voluntary human shields. The news media attention given to peace activists, their lack of military importance, and U.S. policy makes this unlikely.8

Examples of Human Shields

Recently, human shields have been used for a variety of purposes. Iraq, the most notable violator of international prohibitions against using human shields, used human shields during the Iran-Iraq war in the 1980s, Operation Desert Storm in 1991, allied bombings in 1997, and Operation Iraqi Freedom.9

Bosnian Serbs used human shields strategically to countertarget NATO forces during Operation Allied Force and tactically against Muslim and Croat forces to immunize themselves from indirect and direct fire. The International Tribunal for the former Yugoslavia indicted Radovan Karadzic and Ratko Mladic for violations of international humanitarian law around and in Srebrenica in 1995. Zatko Aleksovski was also convicted for using detainees as human shields and sentenced to 7 years in prison.10

Cambodia violated international humanitarian law, including the use of human shields, during the Vietnam war. Cambodian government forces used ethnic Vietnamese civilians as human shields as they advanced on Vietnamese positions.11 U.S. forces are likely to encounter this tactical use of human shields in future low-intensity conflicts. Enemy forces that cannot match U.S. forces’ firepower, mobility, and technology will rely on U.S. reluctance to engage civilians except when absolutely necessary.

Throughout the civil war in Sierra Leone during the 1990s, members of the Revolutionary United Front routinely abducted children and used them as human shields against government forces.12

Israel charges that Palestinian militants routinely commingled with civilians to protect themselves from attack. When Palestinian gunmen positioned themselves among demonstrators and began firing on Israeli troops at Qana, Israel’s response had tragic results.13

Chechen rebels used ethnic Russian civilians as human shields during the brutal war in Chechnya. Also, civil war in Colombia between the National Liberation Army and paramilitary forces supporting the Colombian government has raged for a number of years. Voluntary human shields from the London-based Peace Brigade were used to protect government personnel under the threat of death from the rebels.14

Some uses of human shields are not as instantly recognizable as the examples in Iraq or Kosovo. A classic example of the passive use of proximity human shields is the bloody Rwandan genocide in 1994, when refugees fled the civil war to Zaire. Remnants of the defeated extremist government and militia staged attacks into Rwanda from the camps and then sought refuge there using refugees as shields from counterattacks.15

In 1993, the United States attempted to apprehend warlord Mohamed Farrah Aidid in Somalia in order to restore order to the country. During a raid on a meeting of Habr Gidr leaders, elements of the 75th Ranger Regiment and Operational Detachment Delta were forced to withdraw to the U.S. compound at the Mogadishu airport. Somali gunmen interspersed among the crowd engaged U.S. forces, stepping out of large crowds of civilians, then retreating into the crowd, using the civilians as human shields. The gunmen also used hospitals and other civilian buildings as places from which to direct fire at U.S. forces. This engagement underscores the unique challenges of military operations on urban terrain with an enemy that disregards international humanitarian law or uses tactics to mitigate U.S. superiority.16
Applicable International Humanitarian Law

Various provisions of treaties and protocols under international humanitarian law prohibit the use of human shields by a party to a conflict. Article 3 of Geneva Convention III, relative to the Treatment of Prisoners of War, makes the taking of hostages illegal.17 Article 23 specifically states that a prisoner of war is not to be used “to render certain points or areas immune from military operations.”18 Article 28 of Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War, makes the practice of employing human shields illegal as a matter of international humanitarian law, stating that “the presence of a protected person may not be used to render certain points or areas immune from military operations.”19

Additional Protocol I to the Geneva Conventions, Article 51(7)–Protection of the Civilian Population, which contains the key rule regarding human shields, states, “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, 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 objectives.”20 This provision applies to passive and active human shields whether they are considered proximity, involuntary, or voluntary human shields. Article 51 notably does not excuse considering the presence of human shields during the targeting process.21

Article 52(2), General Protection of Civilian Objects, states that attacks shall be limited strictly to military objectives and defines military objectives as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”22 Article 52(1) says, “Civilian objects are all objects which are not military objectives as defined in paragraph 2.”23

Article 58, Precautions Against the Effects of Attacks, creates a duty against the passive creation of proximity human shields: “Parties to a conflict, to the extent feasible, shall remove the civilian population and material under their control from the vicinity of military objectives, avoid locating military objectives within or proximate to densely populated areas, and take other necessary precautions to safeguard the civilian population and civilian objects under their control against the dangers of military operations.”24

The United States is not a signatory to Additional Protocol I and, thus, not bound by it, but the United States has accepted many of its provisions as customary international law and, therefore, adheres to
its norms. In 1987, U.S. State Department Deputy Legal Advisor Michael J. Matheson enumerated many of the principles in Additional Protocol I that the U.S. considers customary international law, including Articles 51 and 52. The 1998 Rome Statute of the International Criminal Court (ICC) has the jurisdiction to prosecute war crimes, including “utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military objectives.”

Targeting Principles

Given the modern nature of war and the transition of most societies to an industrialized economy with urban centers as their focal point, it seems likely that legitimate military targets will be located near civilians or civilian objects simply out of efficiency or because of urban growth. The Geneva Conventions and Additional Protocol I still mandate a duty on a party to a conflict to remove civilians from such an area, but that might not be practical in all situations. Regardless, U.S. war planners confronted with the enemy’s use of involuntary or voluntary proximate human shields, remain under a duty to apply basic targeting principles to ensure the minimal loss of civilian life.

Targets protected by human shields might still be attacked subject to the attacking party’s obligations under international law to minimize collateral damage. Collateral damage usually occurs when attacks targeting military objectives cause civilian casualties and damage to civilian objects. It often occurs when military targets are located in urban areas.

Principle of military necessity. Any attack must be justified by military necessity, which means attacks should be limited to legitimate military targets such as armed forces and civilian combatants; positions or installations occupied by armed forces, as well as objectives that are directly contested in battle; and military installations such as barracks, war ministries, munitions or fuel dumps, storage yards for vehicles, airfields, rocket launch ramps, and naval bases. Legitimate but not purely military targets are commonly referred to as dual-use targets and include infrastructure, communications, and military-industrial, military research, and energy production facilities.

A more succinct definition of targeting is the use of “measures of regulated force not forbidden by international law which are indispensable for securing the prompt submission of the enemy, with the least possible expenditures of economic resources.” Failure to adhere to this principle could have serious consequences. The Rome Statute for the ICC lists “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” as a grave breach.

Principle of discrimination (distinction). Commanders must distinguish civilians and civilian objects from combatants and military objects under the principle of discrimination. Civilians enjoy immunity insofar as they “enjoy general protection against dangers arising from military operations” and “shall not be the object of attack.” The principle of discrimination is codified in Additional Protocol I, Articles 51(4-5) and 57(2)(a)(i), which prohibit indiscriminate attacks. Attacks must be directed at specific military objectives and cannot “employ a method or means of combat which cannot be directed at a specific military objective.” Examples of indiscriminate attacks are carpet bombing and Iraqi Scud launches during Operation Desert Storm.

Principle of humanity. This principle, applicable to all targets, simply means parties are forbidden from employing arms, projectiles, or materiel calculated to cause unnecessary suffering. It most closely ties in with the principle of necessity in that it extends to unnecessary destruction of property.

Principle of proportionality. The U.S. Army’s definition of the principle of proportionality states that the “anticipated loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.” This definition is clearly based on Additional Protocol I, Article 51(5)(b), which states that when collateral damage is expected or unavoidable, it must be proportionate to the military advantages of striking the target.

Targeting Decisionmaking

When a commander is presented with the decision to strike a target that is being illegally protected by human shields, the principles of targeting and international humanitarian law mandate a “balancing test.” The commander must evaluate—

- The mission.
- Time available.
- Military advantage or purpose for destroying the target.
- Intelligence available.
- Assets available to attack the target.
- The political ramifications of striking the target.
- All likely collateral damage, including the human shields likely to be killed in the attack.
Any alternative courses of action (COAs).39

The standard of care a commander must employ is a reasonable one, and he will be judged by what is known at the time of the attack, not what is known in hindsight, and two questions will be asked regarding a commander’s decision to attack. Did the commander reasonably gather information to determine whether the target was a military objective and that the incidental damage would not be disproportionate, and did the commander act reasonably based on available information?40

The commander and his staff assess and give a numerical value to individual criteria based on their relative significance. The end result is an empirical analysis to assist in the final decision whether or not to attack the target. The higher the overall score, the more confident a commander could be in his decision to attack the target. The model accounts for the principle of necessity in the mission and alternative COA categories. The principle of proportionality is analyzed by the collateral damage estimate and target composition categories compared with the mission. The target composition evaluation would also ensure that the commander and his staff take the principle of discrimination into account. The principle of humanity would be considered through discussion and assignment of assets available. Political considerations are weighted by the international and national support for the war with the assumption that the higher the level of support for a war, the higher the level of tolerance for collateral damage.

This model might be useful to commanders at brigade and higher levels because the assets available to them allow for destruction on a larger scale and, concomitantly, greater effect on international humanitarian law because their decisions lead to systematic practices.41 The decisions regarding human shields at these levels differ little from other targeting decisions except for possible media exposure before the attack.

For units at battalion and lower levels, however, engagements involving enemy use of human shields are more likely to involve single-event situations that resemble those in Somalia in 1993. The most important principle for the individual soldier is the right to self-defense. Commanders will issue rules of engagement that will vary depending on the strategic and tactical situation, but the right to self-defense remains a constant. Self-defense, the central theme of the standing rules of engagement (SROE) that the Joint Chiefs of Staff produced in 2000, is addressed to all levels, from national self-defense to individual self-defense.42

The SROE lists two elements of self-defense: necessity and proportionality. Necessity exists when a hostile act occurs or when a force or terrorists exhibit hostile intent. Proportionality is force used to counter a hostile act, and demonstrated hostile intent must be reasonable in intensity, duration, and magnitude to the perceived or demonstrated threat based on all facts known to the commander at the time. Should soldiers encounter a situation as in Somalia where enemy forces were shooting from civilian areas or using civilians as human shields, they must apply the same principles of international humanitarian law and attempt to minimize collateral damage.

We must inculcate the principles of targeting into soldiers in a similar manner as other skills. Soldiers can be trained to deal with human-shield tactics through advanced marksmanship training that emphasizes target detection, acquisition, discrimination, and engagement.

The presence of human shields on the battlefield is a manageable targeting situation for a com-
mander; however, it is unique and challenging because of the media attention they receive and the political visibility involved. The illegal use of human shields will not cease because forces with little resources have little incentive to comply with international humanitarian law. Although there is some debate about the quasi-combatant status of human shields, the requirement to minimize collateral damage to protect civilians has not changed. Perhaps the remedy for the use of human shields lies with the International Criminal Court, which has the power to indict and prosecute violators of international law.

CIVILIANS ON THE BATTLEFIELD

NOTES


5. Peterson and others; Peterson. Some volunteer human shields left Iraq before the war began because they were being located near purely military targets. See Crimes of War Project, “In America’s Sights: Targeting Decisions in a War With Iraq,” on-line at <www.crimesofwar.org/print/newsprint/iraq0303.htm>, accessed 6 March 2003.

6. Anderson.


8. Korisa Village on 14 May 1999 that killed approximately 87 civilians who might have been protected by international law. Although there is some debate about the quasi-combatant status of human shields, the requirement to minimize collateral damage to protect civilians has not changed. Perhaps the remedy for the use of human shields lies with the International Criminal Court, which has the power to indict and prosecute violators of international law.


20. See also Pro.

21. See also Pro. 35:1-52.

22. Additional Protocol I, art. 51(a)(b); Roberts and Guelff, 449-48.

23. Ibid. See also Pro.


25. See also Pro.

26. Ibid. See also Pro.


30. Protocol I, art. 51(a)(b); Roberts and Guelff, 449.

31. See FM 101-5-1, Operational Terms and Graphics (Washington, DC: GPO, 1997), 1-152. The Army’s definition of targeting is “the process of selecting targets and matching the appropriate response to them, taking account of operational requirements and capabilities. The analysis of enemy situations relative to the commander’s mission, objectives, and capabilities at the appropriate command level, to identify and nominate specific vulnerabilities that, if exploited, will accomplish the commander’s purpose through de-laying, disrupting, disabling, or destroying enemy forces or resources critical to the enemy’s mission.” See also Pro.

32. See Peterson, 9, 10.

33. Targeting analysis might occur in some form of doctrinal style, but at the battalion level it is usually done with a sole emphasis on the tactical decision rather than consideration of any strategic implications.

34. See Johnson. The actual document is Chairman of the Joint Chiefs of Staff Instruction 3121.01A, Standing Rules of Engagement (SROE) for U.S. Forces (portions of this document are classified SECRET) (Washington, DC: GPO, 15 January 2003).