

**The Concept of Human Shields and its Challenges in the  
Realm of the Principle of Proportionality in  
International Humanitarian Law with an Emphasis on  
Israel's 2023-2024 Attack on Gaza  
(Original Research)**

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**Introduction**

Armed conflicts have been an inseparable part of human history and due to the new methods of war, once can observe the rules of Humanitarian Law changing. In recent years, the use of Human Shields has become a major concern in Armed Conflicts. This practice has been widely used throughout history and has faced many criticisms due to its ethical implications and lack of consideration for civilian lives. One of the most important principles governing the rules of International Humanitarian Law is the principle of separating military personnel from civilians. This principle is recognized in various International Humanitarian Law documents. Although the principle of distinction explicitly prohibits attacks against civilians, after this principle, one can appreciate the existence of another principle in International Humanitarian Law; namely, the principle of proportionality. What is clear is that the principle of proportionality has limited the principle of distinction and allows harm to civilians under certain conditions. The issue that arises in relation to the use of human shields is that if a State attacks military targets protected by human shields, has it violated the principle of distinction? Are attacks against human shields allowed in compliance with the principle of proportionality? This issue is especially aggravated after Israel's attack on Gaza, which took place following the October 7 attack by Hamas.

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### **Methodology**

In this article, authors seek to investigate the relationship between the principle of proportionality and the human shield with a descriptive and analytical method. Further, the challenges created in applying this principle when facing human shields are also analysed.

### **Results and Discussion**

The principle of proportionality is mentioned in Article 51(5)(b) and Article 57(2)(b) of the First Additional Protocol to the 1949 Geneva Conventions. It is stated in these articles that: “An attack that is expected to accidentally cause harm to civilians, damage to civilian property, or a combination thereof, in such a way that it is excessive compared to the objective and direct military advantage anticipated” is an attack not in conformity with the principle of distinction, considered as blind, and therefore prohibited. A “human shield” is the placement of civilians among military targets with the specific purpose of preventing the enemy from attacking these military targets, or limiting their options. The use of human shields is a gross violation of International Humanitarian Law, and its explicit prohibition can be seen under Article 51 of the First Additional Protocol and Article 28 of the Second Additional Protocol to the 1949 Geneva Conventions.

Human shields are often used by paramilitary (non-governmental) groups, who disguise themselves as civilians and use them as shields to protect against attacks. This not only exposes civilians to harm and death, but also makes it difficult to target legitimate military targets without causing collateral and incidental damage to civilians. An issue that has happened these days following the war between Israel and Hamas, in which both sides have condemned each other to use human shields. For example, Israel claims that Hamas hides its ammunition and military equipment near urban areas, or that it places them in mosques or residential and commercial buildings or hospitals. At the same time, due to the high population density in the Gaza Strip and the blockade of this coastal strip by Israel, there is practically no place for Hamas to run its daily affairs except in urban areas. Israel considers all the offices belonging to Hamas as its legitimate targets, which makes the claim of using a human shield against Hamas a serious challenge. On the opposite side, Hamas also accuses the Israeli Army of using human shields and states that the Israeli soldiers use Palestinian prisoners as shields for their infantry and tanks. Also, due to the presence of Israel as an occupying power in the Palestinian territories, there is an opinion that the Israelis who have settled in the occupied areas under the title of settlers have actually become human shields.

Human shields can be classified into two types: Voluntary and involuntary human shields. Voluntary human shields, on the one hand, are those who willingly put themselves in the way of protecting something or someone they

believe in. Involuntary human shields, on the other hand, are those who are forcibly used as shields, which can include hostages, abducted citizens, or even children placed in the line of fire by their families.

### **Conclusion**

Regarding the war between Hamas and Israel, if Israel's claims about Hamas's use of human shields are true, we should consider them as involuntary. This is because Hamas, as a military and political power in the Gaza Strip, has no other solution but to settle next to the civilians. The point here is that Israel considers the residences of Hamas leaders to be a legitimate target of its attack and considers the underground tunnels of Hamas to be a military target. Now the question is that, is it possible, without these tunnels, to enter food and medicine only through the Rafah crossing, which can be blocked at any time? This question is becoming more important now; Since Israel has targeted Rafah, the southernmost city of the Gaza Strip, and only mentions evacuation warnings, how can it claim that Rafah has become a legal military target and the presence of civilians in it is a voluntary human shield? Is there a way for this civilian population to escape from their homeland and take shelter?

While explaining the types of human shields, this research comes to the conclusion that in voluntary and involuntary human shields, civilians still maintain their civilian nature. Therefore, the principle of proportionality can be applied to all types of human shields. As a result, if the expected damage to the human shield is not excessive compared to the anticipated military advantage, the military target protected by the human shield can be attacked. A human shield loses its civilian nature only when it has voluntarily turned itself into an obstacle to a military attack, in which case it seems that due to the conscious active participation in the war, although it is not armed, its nature has been changed to military.

### **Keywords**

Human Shields; Principle of Distinction; Principle of Proportionality; Armed Conflict; Gaza Strip

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