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VOLUNTEER HUMAN SHIELDS IN INTERNATIONAL HUMANITARIAN LAW

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The Volunteer Human Shields in International Humanitarian Law

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During armed conflicts IHL rules are subject to frequent and flagrant violations. States used to be the only dominant in implementing the International Humanitarian Law (IHL). The failure of such domination provoked individuals to take part in imposing the rules of IHL.

In times of armed conflicts, some individuals risk their lives in order to protect the life of others. They travelled long ways, and cross borders not to seek tourism, but to shield protected individuals and properties. Volunteer Human Shields (VHS) is not an easy issue, where some States may misused and direct them for their own interests. VHS tactic makes modern conflicts more dangerous to civilians; especially that IHL does not clearly address the VHS issue. Today, states and commentators struggle to interpret current law in light of new tactics, including VHS.

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United States of America and the Union European are the most concerned with the VHS issue, where these regions are considered as the main source for VHS. As a result to the absence of regulation, VHS members may be prosecuted, according to some national judicial systems, for committing the crime of treason.³ Therefore, VHS usage should be regulated, but never to be banned.⁴

Despite the fact that the usage of Human Shields (HS) during armed conflict was outlawed in IHL,⁵ the question of VHS is not yet resolved. Therefore, this paper will spotlight over the use of Voluntarily Human Shield (VHS) in IHL, the advantages achieved by VHS, the requirements for VHS, the protection attributed to VHS, and the procedures for such rule to be enacted in IHL.

⁴ US Senator Lindsey Graham of South Carolina proposed that should any Americans travel to Iraq to act as human shields that they should face trial for violating federal law. He is on record as stating “It is my opinion that any American who voluntarily engages in conduct to impede a potential American military operation, and who thereby endangers the lives of our nation's men and women in uniform, is participating in a program designed to weaken the power of the United States to wage war successfully. FoxNews.com, Senator Wants 'Human Shields' Punished, (March 5, 2003), available at <http://www.freerepublic.com/focus/news/857463/posts>, (last visited Aug. 22, 2009).
Chap. I: VHS in IHL:

The HS was defined in IHL as placing civilians in front of military objective so that his civilian status will deter the enemy from attacking that objective.\(^6\) This technique was used by criminals committing national crimes, such as rubbers,\(^7\) and often by individuals during armed conflicts, especially national ones.

In recent years, and as a result to the widespread media coverage, HS phenomena became familiar to the general public.\(^8\) There is a great belief that such tactic was used during multiple armed conflicts, such as the Afghan, Chechen, Israeli-Palestinian, former Yugoslavia, and Lebanon.\(^9\) It is believed that, in view to regain balance, this technique is used in asymmetric armed conflicts where there is a major discrepancy between the weaponry available to the parties in conflict.\(^10\)

\(^7\) Fischer, supra note (2) at 481.
\(^9\) Id., at 884.
\(^10\) Id., at 885.
The success achieved by HS deployment, encouraged individuals to develop a new tactic risking their lives in view to save other’s lives, which brought VHS phenomenon into existence.

In 2003, Human Rights activists willingly, traveled in a group to Bagdad, in view to express their disapproval for the possible war that may target Iraq and they believe of its injustice.\(^{11}\)

The HS usage ban was limited in the Third\(^ {12}\) and Fourth\(^ {13}\) Geneva Conventions of 1949, from which a protection was accorded only to POW and protected persons. In 1977, article 51(7) of the API extends the protection to the civilian population as a whole.\(^ {14}\)

It is believed that VHS is an issue that was unsettled yet by the IHL,\(^ {15}\) therefore it deserve more focus and detailed study that seeks establishing a theory regulating the use of such method in view to humanized armed conflicts.

\(^{11}\) It marks the first time that Americans have voluntarily gone to another country to act as human shield against American arms. Alfred J. Sciarrino & Kenneth L. Deutsch, *Conscientious Objection To War: Herros to Human Shields*, BYU J. PUB. L. 59, fn. 232 (2003), [hereinafter Sciarrino & Deutsch.]

\(^{12}\) GC IV, *supra* note (5), art. 28.

\(^{13}\) Convention Relative to the Treatment of Prisoners of War, 27 July 1929, 47 Stat. 2921, T.S. No. 846, art. 23.

\(^{14}\) Stéphanie Bouchié, *supra* note (8) at 886.

The HS tactic was treated in IHL only in the compelled portion; meanwhile, the voluntary HS was not examined by the IHL, except in the case of shielding combatants or military targets. Therefore, VHS shielding civilians or civil properties was completely out of reach of the IHL.

[T]he mere fact that voluntary shielding was not in the contemplation of the drafters does not necessary suffice to remove voluntary shielding from its reach. International humanitarian law is and must remain, responsive to the evolving nature of warfare.\(^{16}\)

There is a considerable difference between VHS shielding targeted personnel or properties, and VHS shielding protected personnel or properties. In the precedent, VHS will be treated as direct participant in the armed conflict, deprived from the protection as civilian. In the latter, VHS will maintain their protection as civilian, where they did not commit any act that may deprive them from such protection.

However, VHS members deserve more focus from the IHL, and special articles or document should address their protection.

\(^{16}\) *Id.*, at 316.
Chap. II: The advantages of VHS Deployment:

Number of advantages rise from the deployment of VHS in times of armed conflicts, which are:

1) VHS Deployment Slow or Prevent Military Strike Against Civilians and Civil Properties:

General Hermann Hoth, a German military official who commanded units against Soviet forces, wrote in his war diary during WWII:

The billeting of POW’s captured in the city and some of the inhabitants of the country in the buildings used by our own troops has proven to be a useful counter measure against time bombs put there by the enemy. It has been our experience, that, as a result of this measure, the time bombs were found and rendered harmless in a very short time by the prisoners and/or inhabitants of the country.\(^\text{17}\)

The confession made by Hoth, does not show his leadership, in contrary it prove his criminality, which was prosecuted before the U.S.A. Military Tribunals at Nuremburg. From pure military point of view, a civilian who takes up arms may well be less effective in deterring or defending against attack than one who shields.\textsuperscript{18}

Since the effectiveness of HS was proven during armed conflicts in deterring attacks against legal targets, it is fortiori to use similar tactics, such as VHS, to deter attacks against civilians and civil properties, who are already protected by IHL.

It is crucial to appraise armed forces that held back their attack for the sake of the safety of VHS. Unfortunately, the armed conflicts history is full of examples where military achievements predominate over humanitarian values scarifying HS with cold blood. For instance, Al-Aameriyah massacre in 1991, and Ghana massacre in South Lebanon in 1996.\textsuperscript{19}

2) VHS Deployment Push Towards Reconsideration of the Attack:

\textsuperscript{18} Schmitt, \textit{supra} note (15) at 318.  
\textsuperscript{19} 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, 498(2002), [hereinafter Emanuel Gross.]
Some scholars object any delay or obstruct caused by VHS to military operations. They deal with military activities as vain and saint.\textsuperscript{20} We believe that giving the military commanders to reconsider their decision in striking certain targets for the sake of innocent civilians and civil properties is an advantage deserves support. Army commanders, like every human, commit mistakes, and taking another round of thinking may avoid humanity more harm.

3) VHS Deployment Is Associated With Media Support:

VHS usage may slow down or prevent military strikes, \textsuperscript{21} and that always just a “may” which depends on the moral values of the attacking armed forces. However, in the absence of such values, VHS failure to prevent military strikes against civilians and civilian properties, will be followed by a negative publicity, \textsuperscript{22} damaging the reputation of the attacking armed forces and convulsing the international humanitarian values of the whole country.

4) VHS Deployment Will Support Judges Decision In Prosecuting War Criminals:

\textsuperscript{20} Sciarrino & Deutsch, supra note (7) at 98; Emanuel Gross, supra note (12) at 477-8.
\textsuperscript{21} Jonathan Weisman, “Human Shields” May Face Fines of $10.000 For Traveling To Iraq, Fort-Worth Star-Telegram, Aug. 12, 2003, at A.
\textsuperscript{22} Schmitt, supra note (15) at 297.
The main idea of VHS is pushing armed forces to reconsider abandoning attacks whenever civilians and civil properties are involved and there outstanding questions about the legality of such attacks. VHS’s main goal is to allow attacking armed forces to rethink and be positive from the legality of their position. However, they cannot debar armed forces, for unlimited time, from preceding their mission. The participation of VHS, whether succeed or failed in protecting civilians and civil properties, will be used by judges when prosecuting war criminals as supporting element, so attacking armed forces cannot claim unawareness of the illegality of the attack as long as HVS brought it to their attention.

5) VHS Casualties Is Subject To International Accountability:

If attacking armed forces can cover the war crimes committed against compelled HS, by forecasting false images supporting their version of the story, they cannot do so with VHS, who came from different countries, NGO’s members, and their campaign often covered by the international media. Consequently, any casualties among VHS will raise the responsibility of the attacking armed forces responsible for war crime.

6) VHS Deployment Support the Application of Proportionality Principle:
IHL principle of proportionality bans attacks in which the number of civilians likely to be injured or killed during an attack becomes “excessive” relative to its anticipated “military advantage.” So, the pressure made by VHS reflects on military plans that target civilians and civil properties. VHS deployment minimizes the possibility of miscalculation in applying the principle of proportionality, where the presence of a sufficient number of them absolutely immunize target from attacks and, in the same time, minimize the military achievements from targeting civilians and civil properties.

7) VHS Deployment Supports the Application of Precautionary Principle:

The duty to take precautions in attack requires armed forces to be selective in using tactics; weapons and choosing targets to the limit that minimize civilian casualties. Accordingly, armed forces have no choice, but

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to avoid civilian targets shielded by VHS, tactics and weapons that may directly harm them.

8) VHS Is A New Tactic Subjected to Customary IHL:

VHS tactic is not codified in IHL, which keep it under the umbrella of the customary IHL.24 The customary law is not produced by a State or group of States, but by the international community that seeks to protect the values and humanity. Accordingly, the VHS field of application will not limited to international armed conflicts, but civil wars as well. This extension of VHS applicability to civil wars is supported by the subject VHS members are protecting, which is the civilians and civil properties, not the nature of the conflict and the enemy they face.

We conclude that number of advantageous outputs connected to the usage of VHS. Therefore, this tactic should be regulated and legalized in IHL rules.

Chap. III: The requirements for VHS:

Unlike HS defined in article 51(7) of the API, VHS is a voluntary technique directed to assure and reinforces already protected individuals and

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24 CIHL, supra not (16) rules 1, 6, 7, 9, 10, 14, 15, 17-19, 21, 24, and 97.
properties. To enjoy the status of VHS, the subject must be an individual who seek voluntarily to shield civilians or civil properties without showing any support to any of the parties in conflict, and have unconditioned freedom to abrogate the mission at any time.

1) Only civilians can enjoy the status of VHS:

The fact that individuals enjoy more freedom to act than governmental representatives is undeniable. They only act based on their conscience not interests. Combatant individuals cannot enjoy the status of VHS because they present a legal target, which can shield neither protected individuals nor properties.

Relying on civilian provokes the application of article 8 of the fourth Geneva Convention of 1949, which provides that

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.
Accordingly, interpreting the shielding of protected civilians and civil properties as denunciation to the protection accorded to VHS by the IHL has neither sense nor legal stand.

Citizens of the beneficiary party in the conflict should also be excluded from enjoying the status of VHS, and remain under the umbrella of civilian status, because they may subordinate to physical or mental pressure to act as a shield. Notwithstanding that civilians cannot be protect civilians. A group of civilians under attack joined by the similar group would not prevent attacks but increase military advantages. Meanwhile, shielding those civilians with a third party citizens’ will double the protection, civilian immunity supported by VHS protection.

Cases of shielding under pressure were recorded in Iraq, South Lebanon, Ghaza Stripe, Serbia, and Libya. Citizens of the attacking armed forces may act as VHS. For instance, in 2002-03, some Americans shielded locations from being targeted by American Aviation. Among them,

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25 Iraqis acted in multiple occasions as VHS to protect key installations and military figures, where they were motivated by the fear from the regime’s representatives. Saddam Thanks Human Shields, Announce Day of Victory BBC News, Nov. 20, 1997, <http://news.bbc.co.uk/1/hi/world/monitoring/33345.stm>, (last visited Aug. 14, 2009), [hereinafter Saddam Thanks Human Shields].
26 Palestinian civilians surrounding, former President, Yasser Arafat’s headquarter in Ramallah in 2003 to forestall a threatened attack by Israeli forces. Stéphanie Bouchié, supra note (8) at 884.
Kenneth Nichols, who fought against Iraq in 1990-91, and wanted to express his apology to the Iraqi people by risking his life in shielding their civil properties.²⁸

It is not a coincident that most active VHS members are citizens from Western countries, which enjoy democratic system. Two factors encourage Western Citizens participate in VHS campaigns; first: the importance of the freedom of speech within those countries, where participating in VHS is a sort of practice to the freedom of speech. Second: Those governments will be held nationally accountable for the safety of its own citizens, and will take any action to assure their safety and their return home.

The question that might be posed is: How can one differentiate between civilian citizens who are not eligible for VHS status, and foreign civilians who are?

The answer to the question is not too hard, where foreigners cannot enter the territories of the hosting country unless permission was granted to them by local authorities, who should rake up their citizenship. Moreover, their countries will interfere in any moment they become in danger. Finally,

²⁸ Paul Harris, Human Shields Head for Iraq, The Observer (UK), at Educate Yourself, <http://www.educate-yourself.org/cn/knhumanshieldiniraq06jan03.shtml> (December 29, 2002).
the media campaign took along the deployment of VHS will reveal their citizenship.

2) VHS seeks to protect civilians and civil properties only:

Only individuals who seek to protect civilians and civil properties can enjoy VHS status. In contrast, those who take position to shield legal targets will automatically lose immunity and turn into targeted personnel, because they will be considered as direct participants in the hostility. Some scholars assimilate the shield of legal target by VHS to the anti-aircraft defense system. In consequently, if shielding military targets similar to an anti-craft system, then shielding civilians and civil properties would be similar to double protection such as civilian seek shelter in a religious place or hospital.

Some military manuals, explicitly, deprive individuals, shielding lawful targets, from their protection. For instance, United States Air Forces Document provides that “the use of human shields does not bar attack on lawful target.”

31 United States Air Force, Targeting, (Doctrine Document 2-1.9)(June 8, 2006), at 90.
According to some sources, in November 2006, Hamas radio issued an appeal for women to converge on a mosque in Beit Hanoun where Israeli security forces had trapped militants. The Palestinian women entered the mosque, clothed some of the militants in female attire, and acted as shields for them as they escaped.\textsuperscript{32} In this case, women will be deprived from their protection as civilians, and become a legal target, as long as they provide support, because they were direct participant in the conflict,\textsuperscript{33} as provided in Article 51 (3) of the additional Protocol I to the Four Geneva Conventions, where they protected combatants.

Some individuals may take action during armed conflict, such as visiting his enemy’s land,\textsuperscript{34} which may cause their capture and usage as compelled HS. Those individuals will be deprived from the protection accorded to VHS, especially, if they did such activities on their own seeking personnel credit and celebrity, not assuring the protection of civilians and civil properties.

\textsuperscript{33} The Israeli High Court cited that “if they do so [support party to the conflict] of their own free will, out of support of terrorist organization, they should be seen as persons taking direct part in the hostilities.” High Court of Justice of Israel, The Public Committee v. The Government of Israel, Judgment, 14 Dec., 2006, para. 36.
The decision to choose the civilians and civil properties to be shielded should not involve the beneficiary –hosting- government. Hosting government may only provide recommendations for VHS who, supposedly, do not know the nature and needs of the hosting country. Any intervention beyond this level may provoke VHS to abrogate their mission.

Some VHS were disappointed to find that Iraqi officials refused to let them shield their preferred site. They were directed to food storage and utility sites, including one with a large military camp around it.35

[T]he Iraqi government utilize the propaganda value of the Human shields’ willingness to protest the war at their own peril by placing human shields in areas that were both military important and likely bombing targets36

This is a violation to the status of VHS which entitle them to the status of compelled HS.

3) Taking Part in VHS Campaign Should be Volunteer Decision:

The decision to shield civilians or civil location should be taken in a free will, without any pressure, physical or mental. In 1997, Iraqi civilians were gathered (voluntarily) in Saddam Hussein’s palaces that were expected to eloign weapons under inspection by UNICOM. The former President, Saddam Hussein,

[t]hanked all the sons of the great Iraqi People who headed for the people’s palaces, factories and other installations to be a strong shield against the unjust aggression threatening our country.\(^{37}\)

In this example, even if it looks volunteer human shielding, yet, it is doubtless that the former dictator, Saddam Hussein, cause moral fear to Iraqis, which leads to physical pain if they do not stand for him.

Children and mentally disables do not possess the will to take responsible legal actions, and their actions should be approved by their guardians. They will maintain their protection as civilians treated as compelled HS, even if they were acting voluntarily, because their will is in question. According to some sources, Palestinian combatants used children

\(^{37}\) Saddam Thanks Human Shields, supra note (18).
as VHS in view to target Israeli military personnel and to prevent them from capturing them.\textsuperscript{38} Similarly, during “Operation Iraqi Freedom” in 2003, in some cases, Iraqi Fedayeen hid behind women and children.\textsuperscript{39}

Therefore, VHS should always be treated as such, unless their voluntarism was questioned.

In its judgment, the Israeli Supreme Court focused on voluntarism in view to distinguished between targeted HS and immune HS, where stated that

Certainly, if [human shield] are doing so because they were forces to do so by terrorists, those innocent civilians are not to be seen as taking a direct part in the hostilities. They themselves are victims of terrorism. However, if they do so of their own free will, out of support for the terrorist organization, they

should be seen as persons taking a direct part in hostilities.  

The Court in the occurrence case misjudged when generalized its decision over all VHS, without distinction between those who shield civilian targets and those who shield military targets, where only the latter can be targeted.

A tied connection lies between the will and knowledge, where VHS should have full knowledge of the nature of the individual/s or location/s that they are shielding. For instance, if they thought that they are willing to shield electric power station and end up shielding a nuclear bombs factory, then they should be treated as compelled HS. For instance, in 1991, Iraqi military built civilian shelters above military communication centers, which caused human casualties among civilians in Al-Aamiriyah Shelter attack in Baghdad.  

Even though, the Iraqi army did not force the victims to shelter the communication center, they did direct them to do so, which constitute a

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violation to second paragraph of articles 51 (7) and 58 (B) of the API,\textsuperscript{42} rules 23 and 24 of the Customary International Humanitarian Law,\textsuperscript{43} and criminalize by the ICC.\textsuperscript{44} Some scholars described the misled HS as passive, deserve to maintain protection of compelled HS.\textsuperscript{45}

Some protected categories in IHL, such as prisoners of war (POW), and civilian detainees who found themselves in the hands of a party of the conflict or occupying power of which they are not nationals, cannot enjoy the status of VHS, because they are captured against their will in the first place.

Practically, it is hard, for attacking armed forces, to differentiate between compelled and volunteer HS. Therefore, the rule of IHL is that any doubt will be interpreted in favor of the suspect.\textsuperscript{46}

\textsuperscript{42} Article 58 (B) of the API provides that “The Parties to the conflict shall, to the maximum extent feasible . . . (b) avoid locating military objectives within or near densely populated areas.” API, \textit{supra} note (6) art. 58 (B).

\textsuperscript{43} Rule 23 provides that “[e]ach party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.” Rule 24 requires parties “to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.”

\textsuperscript{44} International Criminal Court, art. 8(2)(b)(xxiii), U.N. Doc. PCNICC/2000/1/Add.2 (2000).

\textsuperscript{45} Schmitt, \textit{supra} note (15) at 302.

\textsuperscript{46} Article 5 of the GC II provides that “. . . Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy . . . such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.” Article 45 of the Additional Protocol I to the Four Geneva Conventions provides that “any doubt arise as to whether any . . . person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.” Article 50 of the API provides that “In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.” API, \textit{supra} note (6) art. 50;
4) VHS should not show any support to any of the parties in conflict:

VHS members are not holding arms with one part against the other, and have no objection to protect civilians and civilian properties within territories of all parties in conflict without any distinction. However, the usage of VHS, often, takes place in the territories of weak and attacked party in the conflict.

It is very important to assert that the action of VHS should not augment to the level of direct participation in the armed conflict, which will cause, according to Article 51 (3) of the additional Protocol I to the Four Geneva Conventions, the loss of their protection.

“Direct participation” was defined by the commentary to the Additional Protocol I as

[implying] a direct casual relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place . . . acts which by their nature and purpose are

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intended to cause actual harm to the personnel and equipment of the armed forces.\textsuperscript{47}

VHS protecting civilians and civil properties would never reach the level of direct participation, otherwise will not be considered as so. They do not hold any kind of arms, and do not shield any military personnel or targets.

Among the confusions and misunderstandings of VHS in IHL, the provision in the Manual on Non-International Armed Conflict which states that

Should civilians voluntarily elect to shield a military objective or obstruct military operations, they would in almost all circumstances be taking an active (direct) part in hostilities, and, for the purpose of this manual be treated as fighters.\textsuperscript{48}

This text mixes between shielding military objective and obstruct military operation, where clear support to one party of the conflict shown by

\textsuperscript{47} International Committee of the Red Cross, Commentary on the Additional Protocols of 8 June, 1977 to the Geneva Conventions of 12 August, 1949, (Yve Sandoz et al. eds., 1987), at 516 & 618.

\textsuperscript{48} NIAC Manual, supra note (16) cmt. to P 2, 3, 8.
shielding its military targets. Meanwhile, in the latter, military operation was obstructed, but, the question that should be posed is: in favor of whom? If it was in favor of civilians and civil properties, then the VHS will still be immune, but, if it was in favor of the opponent armed forces, then VHS should be treated as direct participants in the armed conflict as provided in Article 51 (3) of the additional Protocol I to the Four Geneva Conventions.

Similarly, in view to show support against Allies’ attacks, Iraqis accumulated in the former Iraqi President’s palaces in 1997, shielding installations of their home land. Accordingly, they should not be treated as VHS, however, treated as compelled HS.

5) VHS should have the freedom to renounce mission at any time:

Since VHS are foreigner civilians in the territory that they are shielding, they should enjoy the status of aliens in the territory of a party in the conflict provides in Articles 35 and 36 of the Fourth Geneva Convention of 1949. Articles 35 and 36 are examining the departure of aliens during armed conflicts, which is applicable to VHS, as well.

49 Saddam Thanks Human Shields, supra note (18).
As a rule, no one is permitted on the lands of any part in the conflict unless permission is granted. Some States accord permission to VHS members if they need their support. VHS support is, frequently, needed in asymmetric armed conflicts where there is a major discrepancy between weaponry available to the two sides. The weaker party use VHS members to make it difficult or impossible for the adverse party to violate protected individuals or properties’ immunity. For instance, the Iraqi authorities granted permission to VHS to enter Iraq in 2002-03, hoping that they succeed in minimizing the risk of a possible attack. Hosting countries are under the legal and moral duty to assure the safety of VHS members, by preventing them from shielding legal targets.

In all cases, VHS enjoy extreme freedom to abort their mission at any time. The local authorities, according to articles 35 and 36 should facilitate their departure. For instance, most of VHS hosted by Iraq in 2002-03, had either fled Iraq, or were invited to leave by Iraqi authorities.

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50 Article 10 of the Fourth Geneva Convention provides that “The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.”

51 Stéphanie Bouchié, supra note (8) at 885 & 888.

52 Sciarrino & Deutsch, supra note (7) at 97.
Despite the fact that VHS members are shielding protected civilians and civil properties, attacking armed forces are under the obligation to warn them before undertaking the attack. If, for any reason, local authorities requested the departure of VHS members, they should be bound by such decision and comply with it without any delay, otherwise, hosting country will not be held responsible for their safety after that.

Unfortunately, some scholars are extreme and anti-VHS to the level they call for their killing. In ignorance to the humanitarian mission VHS scarify their lives to achieve; they proclaim that VHS members “might have to be taken out quickly by either persuasion at best or by weapons at worst,”\textsuperscript{53} without questioning the nature of the shielded individuals and properties.

In return to the sacred mission VHS scarify themselves to, they deserve protection and assurance for their safety.

We conclude that not any individual can enjoy the status of VHS. Number of requirements should be met in view to provide an individual the immunities and protection that VHS should enjoy, which are:

\textsuperscript{53} Sciarrino & Deutsch, supra note (7) at 106.
civilian, do not support any of the parties, take his decision in a free will and can abort his mission at any time without any restriction.

**Chap. IV: The protection attributed to VHS:**

VHS is a new term which does not yet entitle its status holders any special protection. However, VHS members may enjoy general protection accorded by IHL to other civilians. In another meaning, civilians should enjoy general protection against the effects of hostilities and may not be an object of attack.

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of
violence the primary purpose of which is to spread terror among the civilian population are prohibited.  

This protection is conditioned to the fact that the civilians do not take direct part in the hostility. Shielding legal targets may be interpreted as a direct participation in the hostility; however, shielding civilians and civil properties can never be as so.

Over and above, since VHS members are citizens to States other than the beneficiary from their campaign, they enjoy the protection accorded, in articles 35 and 36 of the Fourth Geneva Convention of 1949, to the Aliens in the territory of a party to the conflict.

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54 API, supra note (6) art. 51.
55 Article 35 of the Fourth Geneva Convention provides that “All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use. If any such person is refused permission to leave the territory, he shall be entitled to have refusal reconsidered, as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.” Article 36 of the Fourth Geneva Convention provides that “Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connection therewith, from the point of exit in the territory of the Detaining Power, shall be borne by the country of destination, or, in the case of accommodation in a neutral country, by the Power whose nationals are benefited. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned. The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.”
Article 35 accorded aliens with the right to depart the territories of the party in conflict. They will be permitted with the necessary funds for their journey, reasonable amount of their effects and articles of personnel use. Refusal to grant them permission to depart will be examined by the competent court or designated board. All decisions must be acquainted with.

Article 36 confirms the conform conditions of the departure, safety, hygiene, sanitation and food. The coasts of the trip from the departure to the arrival should be covered by the destination country or the country whose citizens are benefited.

They, even, might be subject to repatriation among States if an agreement was concluded between the concerned countries.

Human Rights Watch went further by calling for the maintaining VHS members the civilian’s protection even if they attempt to shield military targets.

[Like workers in munitions factories, civilians acting as human shields, whether voluntary or not, contribute indirectly to the war capability of a state. Their actions do not pose a direct risk to opposing forces. Because they are not directly engaged in
hostilities against an adversary, they retain their civilian immunity from attack. They may not be targeted, although a military objective protected by human shields remains open to attack, subject to the attacking party's obligations under IHL to weigh the potential harm to civilians against the direct and concrete military advantage of any given attack, and to refrain from attack if civilian harm would appear excessive.  

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This point of view has no legal stand, and we confirm that any shielding to military targets should be legally interpreted as direct participation depriving VHS from their protection.

Hosting country must forbid VHS from approaching targeted military personnel or properties, otherwise they will be held criminally responsible for not fulfilling their international responsibility towards VHS safety.

War criminals that target VHS should be prosecuted and their punishments must be impediment, because they targeted civilians or civil

properties despite the attempts of the VHS members to confirm of the illegality of the strike. According to article 8(2)(b)(xxiii) of the Rome Statute, the Court prosecutes acts targeting VHS. However, this competent, is, unfortunately, limited to international armed conflicts only.

The focus in IHL should not be directed to the prevention of VHS from holding such campaigns; however, it should be directed more on the punishment of criminals who ignore the calls of VHS to reconsider attacks targeting civilians and civil properties.

National judicial systems only provide VHS with protection if they ever were subject to national laws and regulations’ violations. For instance, some Americans held in Iraq against their well sued the Iraqi government before the American judicial system.57

National and international systems should encourage the saint mission of VHS, and never inculpate such initiatives. Prosecute VHS members as traders has no sense, especially, if they were shielding only civilians and civil properties. It is irrational to compare the participation of American VHS in Iraq in 2002-03 to the participation of the American Ex Parte Quirin, during WWI, in the German Army, against the U.S.A., and John Walker

Lindh, trained by Taliban, in 2002, to attack the U.S.A. VHS members only shield civilians and civil properties, and do not take any direct nor indirect participation in the armed conflict, meanwhile Quirin and Lindh held arms and were part of the military operation.\(^{58}\)

Since VHS members are civilians, both parties in conflict will be held responsible for casualties among VHS.

Attackers are under the customary duty to protect civilians from harm by exercising ordinary care in undertaking strikes. Defenders are under the customary duty to separate military objectives and control the civilian population to minimize injury.\(^{59}\)

It is very crucial that the international community enact a new document or modify the existing documents to provide effective and special protection to members of VHS.

We conclude that VHS as civilians enjoy the basic protection accorded to all civilians. In plus, as foreigners in the country their mission

\(^{58}\) Sciarrino & Deutsch, \textit{supra} note (7) at 99-101.

takes place, they are entitled to the protection accorded to the citizens of a third party. Last but not least, in order to encourage voluntarism and protect volunteers, number of proposed advantageous should be attributed by the IHL to the VHS members.

Chap. V: The Codification of VHS In IHL:

Codifying customary rules as written document make it easy to prove their existence. Therefore, the ICRC finished in 2005 the process of codifying the customary rules of IHL. Incorporating VHS protection in a codified document will contribute in preventing more casualties among VHS and deter the perpetrators from using VHS for military purposes.

In the present time, the usage of VHS is not completely regulated. It is only subjected to the rules of customary IHL.\(^{60}\)

The ICRC should be partner in the codification process, where it is in charge of the development and publication of the IHL. It should call and host an international conference to codify new rules protecting VHS in times of armed conflicts.

\(^{60}\) Schmitt, supra note (15) at 306.
The proposed rules should include the establishment of a new non-governmental organization to take charge of VHS deployment during armed conflicts. This organization, similar to Medicines sans frontières and journalists sans frontières, protects its members who provide service to the victims during armed conflicts. There should be no difference between medicines and journalists from one part and the VHS from another part, where both seek to protect victims, prevent effects or minimize possible effects of armed conflicts.

This organization may contact parties in conflict to indicate the exact locations of civilians and civil properties that VHS need to be shielded.

This organization may officially inform the attacking armed forces of civilian locations sheltered by VHS, which will eliminate any future pretence regarding the knowledge of the existing of VHS in attacked locations, and consequently, raise the international criminal and civil responsibility for casualties among VHS members.

An international organization protecting VHS may receive classified information regarding some locations that may appear as civilian; meanwhile they serve pure military goals. The organization can order its personnel to move to other location or to quit the country.
National laws and regulations should not obstruct individuals from joining VHS campaign when their security and safety are assured by hosting countries and the international community. In view to join VHS campaign, all members are required to obtain permission from competent authorities in the concerned countries. Last but not least, in order to assure the safe departure of the VHS members and in the right time, an evacuation plan should be in place.

Finally, it is crucial to amend the statute of the ICC, in view to include the crimes committed against VHS members in the competence of the court.

Conclusion

If HS deployment was banned in IHL, VHS usage is not yet codified. IHL only deprives civilians who take part in combat from their protection. VHS members do not take part in the armed conflicts; they only try to impose over military commanders another round of thinking or reconsidering attacking civilians and civil properties.

Strict requirements should be met in view to accord someone the status of VHS. Only non-citizens’ individuals, who deliberately and
neutrally attempt to protect civilians and civil properties, with an open choice to abrogate the mission at any time can be describes as VHS.

Therefore, those individuals who are risking their lives for the sake of others deserve to be treated as heroes, braves, courageous and life savers. They might not achieve what they sought, but, their unfruitful attempt to prevent war crime or crime against humanity will be considered by judges when examine the case against the perpetrators, and confirm the presence of the premeditation element.

The international community should take a new trend by abstaining from combating VHS campaigns; instead, legal regulations would be useful to fill in the gap in IHL. A new additional protocol annexed to the four Geneva Conventions of 1949 regulating the rules of usage, requirements, and protection accorded to VHS became inescapable. A specialized NGO to examine applications from volunteers all over the world, communicate with their governments, the concerned governments and combatants to grant them permission to access lands under their control, discuss the best civilians and civil locations to be sheltered, receive reports from VHS and act based on them, provide them with the necessary protection, escort them in the right time out of the battlefield, and assure their immunity from prosecution after
the termination of their mission should see the light. Until the establishment of such organization, the ICRC is required to establish a new department under the title of VHS, take care of such task.

IHL should be developed to meet the needs of armed conflicts victims, including the VHS members. Armed conflict will be more humanized, with fewer casualties among civilians and civil properties will take place, better chance for the application of proportionality and the precaution principles. Moreover, international criminal judges will have clearer vision in prosecuting criminals for committing crimes of war and against humanity, and more volunteers will join the international efforts.