



## Analysis of Jurisdictional Challenges in the Application of Humanitarian Law to the Protection of Victim's Human Rights in the Conflict Between Israel and Palestine

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### **Abstract**

The study aims to analyze jurisdictional challenges in the application of international humanitarian law to the protection of human rights victims of the Israel-Palestine conflict. Using qualitative and analytic approaches, the study describes a framework of humanitarian law designed to protect individuals in conflict situations, with a focus on the Geneva Convention and other international legal documents. In the context of the Israel-Palestine conflict, the study identified complex jurisdictional challenges, including sovereignty issues, international recognition, and conflict politicisation, all of which influence the effective application of legal norms. By combining analysis of legal documents, international organization reports, and related literature, this article offers insight into the gaps between legal and practical principles in the field, and suggests an approach to overcoming these obstacles to increase protection for victims. The study contributed to an understanding of humanitarian-law dynamics in a politicized geopolitical context and offered recommendations for international stakeholders in the face of existing jurisdictional challenges.

**Keywords:** *International Humanitarian Law; The Israel-Palestine Conflict; Human Rights Protection; Jurisdictional Challenge; The Geneva Convention*

### **Introduction**

The Israel-Palestine conflict has raged for decades and is one of the most complex and long-standing conflicts in the world. The impact of this conflict on human rights and humanitarian situations in both areas requires special attention from the international community, especially in context of the application of international humanitarian law. International humanitarian law, designed to protect individuals who are not involved or have stopped engaging in conflict, faces major challenges in its implementation in the field, particularly in the highly political conflicts of Israel-Palestine.<sup>1</sup>

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<sup>1</sup> Saputri, F. A. (2024). Pentingnya Regulasi Kejahatan Perang dalam Hukum Pidana Indonesia. *Journal of Strafvoording Indonesian*, 1(1).

The regulation on war crimes in criminal law, including the context of the israel-Palestine conflict, highlights the importance of applying more modern and comprehensive norms of humanitarian law. While international conventions and treaties have long existed, realities in the field indicate a gap between principles of law and practice. Cases of human rights and war crimes occurring during conflict indicate difficulty in effectively applying these principles.<sup>2</sup>

Legal protection against journalists in armed conflict, as in the case of the israel-palestine conflict, is one of the specific areas that need attention. Journalists working in areas of armed conflict are at high risk, and their protection under international humanitarians raises questions about how these values are applied in the field. The case study shows the importance of ensuring safety and protection for those who are trying to convey information from the conflict zone.

The challenge of application of international humanitism in the israel-palestine conflict is not only limited to the technical aspects of the law but also involves complex political dynamics and jurisdiction. Such issues as sovereignty, international recognition, and legal interpretation pose significant obstacles to protecting human rights and applying justice to victims of conflict.

Taking into account this complexity, the background of the study is aimed at deep examination of jurisdictional challenges and obstacles to the application of international humanitism laws in the context of the israel-palestine conflict, with the hope of providing insight into the more effective safeguard for human rights in the future.

### ***Problem Formulation***

Based on the background of the problem that has been described in the section above, there is a problem formulation that will be discussed in this writing, namely:

- 1) How does the legal protection arrangement for war victims have an international humanitarian law perspective?
- 2) What is the jurisdictional challenge in the application of humanitarianism regarding the protection of human rights in the israel-Palestine conflict?

### ***Research Methods***

This study USES Qualitative methods to analyze jurisdictional challenges in the application of international humanitarians' rights to the protection of human rights victims of the israeli-palestinian conflict. A qualitative approach is chosen for its ability to enter into it an understanding of the complexity and jurisdictional dynamics that influence the application of humanitarian laws. This approach allows researchers to dig deeper into how law norms are applied in such politically and fragmented contexts as the israel-palestine conflict.

#### 1) Data collection

Data is collected through analysis of documents, which include conventions, reports of international and non-governmental organizations, journal articles, and related case studies. Primary and secondary sources are chosen based on its relevance to international humanitarians law and the context of the israeli-palestinian conflict. Document analysis allows for identification of relevant legal norms and its interpretations and applications in specific cases.

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<sup>2</sup> Dewi, G. K. S. (2024). PERLINDUNGAN HUKUM TERHADAP JURNALIS DALAM KONFLIK BERSENJATA (STUDI KASUS KONFLIK BERSENJATA ISRAEL-PALESTINA) (Doctoral dissertation, Universitas Pendidikan Ganesha).

## 2) Data analysis

Data obtained from these sources is analyzed using content analysis techniques. It involves a thematic encoding to identify patterns and themes in the data, primarily relating to the jurisdictional challenge and its effect on the application of humanitarian laws. These analyses helped outline the major challenges faced in protecting human rights victims of conflict and exploring potential solutions to overcome these obstacles.

## 3) Data Validation

To ensure reliability and validity of discovery, the study also relied on source and method triangulation. It involves comparisons of findings from various data sources and using various methods of analysis to verify the findings. Peer criticism and feedback from experts in international humanitarians and conflict studies are also used to strengthen analysis.

## 4) An Ethical Framework

In view of the topic sensitivity and the importance of maintaining high ethical standards, this study is committed to ethical principles in the study, including honesty, integrity, and respect for the rights of the research subject. These include public use of data and ensure that interpretation and inclusion do not harm certain individuals or groups.

The research methods are designed to provide an in-depth understanding of jurisdictional challenges in the application of international humanitarians within the context of the Israeli-Palestinian conflict, and to provide evidence-based recommendations for improving human rights protection in the conflict.

## *Discussion*

### **1. Legal Protection Arrangements For War Victims In An International Humanitarian Perspective**

#### a. The concepts and principles of international humanitarian law

International humanitarians, often referred to as the law of armed conflict, are a branch of international law designed to regulate behavior in armed conflicts and to protect those who no longer participate in combat. The essence of this law is contained in the Geneva convention and its added protocol, which provides the basis for the principles and regulations governing armed conflict and protecting its victims of war. The Geneva convention, first adopted in 1864 and last revised in 1949, together with its additional protocols in 1977 and 2005, arranged protection for war victims, including medical personnel, wounded soldiers, prisoners of war, and civilians.<sup>3</sup> Within the international humanitarianism framework are certain basic principles that all parties must adhere to in conflict. The principle of distinction requires conflicted parties to distinguish between combatants and non-combatants, as well as between military and civilian targets, with the aim of protecting civilian populations and civic infrastructure from the effects of conflict. The principle of proportionality prohibits attacks that may cause more civil harm than expected military benefits. Principles of discretion require conflicted parties to take all possible steps to avoid or at least minimise civilian losses and damage to civilian objects while performing military operations.<sup>4</sup>

The human rights of the victims of war, protected by international humanitarianism, include the right to be treated with humanity in all circumstances, the right to basic medical assistance, and protection from torture, inhumane treatment, and persecution. International humanitarianism also stipulated that victims of war should be treated without discrimination. These norms and principles not only reflect the international consensus on standards of behavior in armed conflict but also affirm the commitment of the international community to protecting human rights in conflict situations.<sup>5</sup> In practice, the application of the principles of international humanitarianism presents

<sup>3</sup> Otto, R. (2012). Part Two –International Humanitarian Law. 203-349.

<sup>4</sup> Durhin, N. (2016). Protecting civilians in urban areas: A military perspective on the application of international humanitarian law. *International Review of the Red Cross*, 98, 177 - 199.

<sup>5</sup> Ben-Naftali, O. (2011). *International Humanitarian Law and International Human Rights Law*.

significant challenges, especially in contemporary conflicts that often involve non-state actors and guerrilla tactics, which make distinction between combatants and non-combatants increasingly difficult. However, the importance of international humanitarianism remains unwavering as an effort to minimize the effects of armed conflict on humans and to ensure that humanity remains intact even in the most extreme conditions.

b. Civil sacrifice protection In armed conflict

In the context of armed conflict, civilian casualties are often the worst beneficiaries, with women and children as the most vulnerable group. International law, especially international humanitarian law and human rights (IHL), provides a broad framework for the protection of civil victims. The norms and principles embodied in the Geneva Conventions and their additional protocols, together with other conventions such as the Convention on the Rights of Children, emphasize the need to offer special protection to civil victims and reduce their suffering during armed conflict. This protection includes prohibitions against direct attacks on civil populations, the use of human shields, pillage, and forced expulsion. In addition, women and children are recognized as victims of special attention, in view of their vulnerability to sexual violence, exploitation, and other psychosocial effects of conflict. International law requires all parties in conflict to adopt specific measures to protect women and children, including forbidding the hiring of children as combatants and taking special actions to prevent sexual violence.<sup>6</sup>

An Israeli-Palestinian conflict study highlights challenges faced in the protection of civilian victims. This conflict, which has been going on for decades, created a complex humanitarian situation, with civilian casualties on both sides. Problems such as bombing in densely populated areas, attacks on schools and hospitals, and blocking access to basic services, highlight the difficulties of ensuring protection for civilian victims. In addition, efforts to implement principles of international humanitarian law are often hampered by the intensity of conflict, actions on both sides that disregard international norms of humanitarianism, and challenges in application of international law.<sup>7</sup>

The challenge in the identification and protection of civilian victims comes primarily from modern conflict conditions, where the line between combatants and non-combatants is often blurred. This is complicated by the use of advanced military technology and asymmetric war tactics. In many conflicts, including Israel-Palestine, there is a tendency to increase in the urbanization of conflict, which means military operations often occur in heavily urban areas, increasing the risk for civilian casualties. Meeting these challenges requires strong commitment from all sides to respect and implement international law, as well as more effective enforcement mechanisms to ensure accountability for offenses.<sup>8</sup> The protection of civilian victims in armed conflict is a complex issue that demands serious attention from the international community. A collective and multidisciplinary effort is required to overcome barriers to the protection of civilian victims, with focus on strengthening international law and enforcement mechanisms, and sacrificial approaches to humanitarian relief and post-conflict recovery.

## 2. Jurisdictional Challenge In The Application Of Humanitarianism Related To The Protection Of Human Rights In The Israel-Palestine Conflict

a. Jurisdiction and sovereignty in the Israel-Palestine conflict

Jurisdiction and sovereignty are two aspects that profoundly influence the conflict dynamic of Israel-Palestine, creating significant complexity in the application of humanitarian law. This conflict area was characterized by an unresolved question of sovereignty and a controversial *judicium status*, particularly

<sup>6</sup> Klapouschak, D. (2023). Regarding the international legal protection of the civilian population during an armed conflict. *Uzhhorod National University Herald. Series: Law*.

<sup>7</sup> Mahwati, T., & Nanda, A. (2022). Analysis of the Palestinian and Israeli Conflict in the Perspective of International Humanitarian Law. *International Law Discourse in Southeast Asia*.

<sup>8</sup> Asqool, A., Ismail, S., & Nordin, R. (2023). THE PROTECTION OF CHILDREN DURING ARMED CONFLICTS: ISRAELI VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN THREE WARS IN GAZA. *UUM Journal of Legal Studies*.

with the occupied region. According to international law, particularly the Geneva convention, the region deemed "occupied" requires a dominating party to meet certain obligations, including protection from civil populations. However, disagreement over the status of the region and the interpretation of the law presents a major challenge in the application of the norms and principles of humanitarians.<sup>9</sup>

Israel, in many cases, rejects the character of the Palestinian territories as "colonized" in the sense of international law, affecting applications and acceptance of humanitarianism. On the other hand, Palestine, whose independence status is still international in recognition, is striving to obtain full rights within the context of international law, including the ability to demand protection under humanitarians and fight for justice for the victims of conflict. Recognition of Palestine's status as a non-member observer at the United Nations is an important step, but it still raises the question of how sovereignty and jurisdiction can be fought in the international forum.<sup>10</sup>

International court cases, including international court decisions and efforts on the international criminal court, try to deal with some of the legal aspects of the israel-palestine conflict. The international court's decision, for example, in its consultations regarding the boundary wall, raises international issues of sovereignty and law in the context of the construction of the wall by Israel. Meanwhile, the international criminal court has taken steps to investigate alleged war crimes in the Palestine region, marking significant efforts to implement international humanitarian laws. However, the challenge to the jurisdiction of the international criminal court and the controversy over sovereignty in this context highlights the difficulty of effectively applying international law.<sup>11</sup> Thus, the complexity of jurisdiction and sovereignty in the israel-palestine conflict creates not only a barrier to peace settling but also a complex application of the humanitarian law. The effectiveness of international law in this context depends greatly on mutual recognition of the status of stake law and on all parties' commitment to internationally agreed-upon principles of law.

## b. Polyization of humanitarianism

The polyization of humanitarianism is a phenomenon in which political and diplomatic aspects significantly affect the interpretation and application of humanitarianism. This often happens in the context of armed conflict, where international law is manipulated or reinterpreted to serve a particular political agenda, not simply to protect human rights or victims of war. In the case of the conflict of israel-palestine, this polyization became obvious through the use of law as a means to justify military action, influence international public opinion, and safeguard diplomatic support.<sup>12</sup>

The use of law as a political tool in this conflict can be seen in a variety of ways, including through a narrative promoted by both sides. Israel often stresses her right to defend herself from terrorist attacks as a justification for her military ACTS in the Palestine region, while Palestine highlights Israeli violations of human rights and international laws for sympathy and international support. Both approaches reflect how humanitarianism can be interpreted and used for political purposes, often sacrificing objectivity and principles of pure law.<sup>13</sup>

The effect of these politicians on the protection of war victims is significant. First, it can cause neglect or denial of norms of humanitarians, with warring parties using politicized interpretations of the law to justify actions that should be forbidden. Second, polytheization can affect international enforcement mechanisms and accountability, with countries using their political influence to avoid criticism or sanctions. Third, it also reduces the likelihood of reaching international consensus on

<sup>9</sup> Kontorovich, E. (2013). Israel/Palestine . The ICC's Uncharted Territory. *Journal of International Criminal Justice*, 11, 979-999.

<sup>10</sup> Hall, C. (2018). To Throw a Stone in Palestine: The Principle of Proportionality and Children in the Israeli Military Justice System. , 46, 91

<sup>11</sup> Keane, D., & Azarov, V. (2013). UNESCO, Palestine, and Archaeology in Conflict. , 41, 309

<sup>12</sup> Amir, M. (2017). Revisiting politicicide: state annihilation in Israel/Palestine. *Territory, Politics, Governance*, 5, 368 - 387.

<sup>13</sup> Bisharat, G. (2013). Violence's Law: Israel's Campaign to Transform International Legal Norms. *Journal of Palestine Studies*, 42, 68-84.



conflict management, given different and often conflicting interpretations of the law.<sup>14</sup> In the context of israel-palestine, the polyization of humanite-law not only complicates efforts to establish international law but also deepening the gap between law and field reality. Solutions to address the negative effects of politicization involve strengthening the independent of international institutions, promoting objective humanitarianism, and promoting dialogue that focuses on legal principles rather than on the political agenda. With this approach, the international community can seek to minimize political influence in the application of humanitarian laws and improve protection for victims of war.

c. Difficulties in law enforcement

International humanite-law enforcement and accountability for its transgressions face significant obstacles, especially in the context of complex armed conflicts such as israel-palestine. One of the major challenges is the state's jurisdiction and sovereignty, which often limits the ability of international agencies to investigate and prosecution of violations of humanitarian law. Moreover, countries' reluctance to turn their citizens over to international courts and the political influence of the legal process also complicate law enforcement efforts.<sup>15</sup>

The international criminal court played a major role in the enforcement of humanitarian law, with a mandate to prosecute individuals for war crimes, crimes against humanity, and genocide. However, the international criminal court faces substantial challenges, including strict jurisdictional restrictions and dependence on member states' cooperation. For example, the international criminal court can investigate and prosecute crimes only in the region of the parties or if the case is referred to by the United Nations security council, which is often hampered by international politics of power. A real example of the difficulties in the enforcement of humanitarian laws is the situation in Palestine, where the international criminal court proclaims an inquiry into alleged war crimes. This process, however, was impeded by jurisdictional matters, for Israel was not a party to the Roman statute that established the international criminal court. Additionally, logistical and political challenges, such as access to locations and witnesses, as well as political pressure from other countries, affect the ability of the international criminal court to effectively demand offenses.<sup>16</sup>

These barriers to law enforcement and accountability point to the importance of international support and political commitment in the efforts of humanitarian law enforcement. To address these challenges, more cooperative approaches between countries and strengthening the mechanisms of international law are needed. These include increasing support for international criminal court and similar institutions, extending ratification and application of international law instruments, and developing a national capacity to investigate and demand violations of humanitarians. Through these efforts, the international community can improve the effectiveness of humanitarian law enforcement and ensure that offenses are not passed without accountability.

d. Alternate mechanism for victim protection

In the face of difficulties in law enforcement and accountability for violation, alternative mechanisms have emerged as crucial solutions to protecting human rights and war victims. This non-traditional approach often involves active participation from international non-government organizations and civil societies, which play a crucial role in filling the vacancy left by international formal institutions. Through advocacy, education, and direct intervention, these entities contribute to protection and human rights promotion in the midst of conflict.<sup>17</sup> Non-governmental organizations and civil society groups have taken initiative in various forms to protect victims of war and promote

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<sup>14</sup> Klapouschak, D. (2023). Regarding the international legal protection of the civilian population during an armed conflict. *Uzhhorod National University Herald. Series: Law*.

<sup>15</sup> Hansen, T. (2018). Opportunities and Challenges Seeking Accountability for War Crimes in Palestine under the International Criminal Court's Complementarity Regime. 9, 1.

<sup>16</sup> Bosco, D. (2016). Palestine in the Hague: Justice, Geopolitics, and the International Criminal Court. *Global Governance*, 22, 155-171.

<sup>17</sup> Ademi, M., & Vula, V. (2023). The Role of Civil Society for Prevention and Combat of Violent Extremism and Radicalization Leading to Terrorism-war. *Access to Justice in Eastern Europe*.

human rights. One of their strategies is to use information technology and communication to document the issuance and disseminate information about the human rights situation to the international community. By doing this, they are assisting in building a data base breach that can be used for legal advocacy and policy development. In addition, human rights education and humanitarianism for local communities and human rights fighters empower individuals and communities to claim their rights and protect themselves and others from transgressions.<sup>18</sup>

Local and international initiatives have shown the ability to overcome jurisdictional challenges and other barriers in the enforcement of humanitarian law. For example, a transnational solidarity network that facilitates the exchange of knowledge and resources between activists and lawyers in various jurisdictions has strengthened the capacity to deal with human rights abuses. Other examples include symbolic public trials or tribunals, which, although lacking the power of formal laws, can increase public consciousness and suppress stakeholders in action.<sup>19</sup> This alternative mechanism suggests that, while there are significant obstacles to traditional enforcement of human rights, there are other ways to promote the protection of human rights and victims of war. Cooperation between non-governments, civil societies, and international institutions, along with innovative USES of technology and law, offers a new hope for increasing accountability and providing more effective protection for those most vulnerable in armed conflict.

e. Recommendations and steps ahead

(1) A more effective humanitarian law enforcement strategy

To improve the effectiveness of humanitarian law enforcement, comprehensive strategies involving increased international cooperation, transparency and accountability are essential. Stronger international cooperation between countries, international agencies, and non-governmental organizations can help in broader and more effective propagation and application of humanitarian laws. These include cooperation in breach investigations, target prosecution, and in the development and strengthening of legal and institutional capacities in nations prone to conflict. Through cooperation like this, frequent jurisdictional and political barriers to law enforcement are overcome, enabling for a more coordination and uniform response to violation.<sup>20</sup> Transparency in military operations and law-enforcement activities is also crucial to building trust and credibility in the eyes of international communities and civil society. This means that countries and international agencies should commit to disclose information about their actions and ensure that military operations are carried out in accordance with humanitarian laws. This openness not only strengthens accountability but also facilitates greater surveillance of the international community and monitoring agencies, reducing possible infractions.

Accountability is another important pillar of this strategy. This requires countries to enforce the law fairly and indiscriminately, including through a transparent legal process to demand those responsible for violations of humanitarian laws. The creation of a just and effective judicial mechanism, both at the national and international levels, is a key step in ensuring that offenses are not only identified but also convicted. In addition, compensation and support for victims of abuse must be an integral part of the law enforcement effort, providing restoration and restoration for those affected.<sup>21</sup> In order to achieve more effective humanitarian law enforcement strategies, multilateral approaches and mutual commitment to principles of international law, transparency, and accountability must be strengthened. It will require continuous cooperation and dialogue between countries, international

<sup>18</sup> Sharma, G. (2020). Implementation of Information and Communication Technology for Human Rights Awareness and Promotion. , 1, 33-38.

<sup>19</sup> McGregor, W., & Webster, E. (2021). Building a regional solidarity network of transnational activists: An African case study. *Tempo Social*.

<sup>20</sup> Sungi, S. (2020). Addressing violations of international humanitarian law through the international criminal justice system: A criminologist's contribution. *South African journal of criminal justice*, 33, 670-684.

<sup>21</sup> Fathun, L. M. (2017). Intervensi ICRC dalam Krisis Kemanusiaan di Palestina Tahun 2011. *Jurnal Internasional & Diplomacy Universitas Satya Negara Indonesia*, 2(2), 247-264.

institutions, and civil societies to ensure that humanitarian laws are not only respected but also universally enforced.

## (2) Increased local capacity and international support

Increased local capacity for treating conflict victims is a critical element in ensuring the effectiveness of humanitarian aid and post-conflict social-economic rehabilitation. Strong local abilities not only accelerate responses to the immediate needs of victims but also strengthen community summaries on the long-term effects of conflict. These include local professional training, such as medical workers, psychologists, and social workers, which are equipped with knowledge and skills to give special support to victims. In addition, building local capacities involves strengthening government and non-governmental agencies to manage aid and development programs, and facilitating dialogue and reconciliation in conflict-affected communities.

International support and cross-country cooperation play an important role in this process, providing the resources, knowledge, and expertise needed to build and strengthen local capacities. It can be technical assistance, project funding, and technology transfers tailored to specific needs of conflict affected communities. International cooperation is also important in facilitating access to global platforms and networks, allowing for the best intergovernmental experience and practice that face similar challenges. In addition, international support can help overcome political boundaries and resources that often hamper local capacity-building efforts. Through multilateral or bilateral partnerships, international communities can put constructive pressure on those in conflict to conform to international law norms and promote protection and recovery for victims of conflict. Further, international cooperation in this context can strengthen the justice system and accountability mechanism to ensure that perpetrators of violations of humanitarianism are tried, supporting the principles of justice and reparation for victims. Therefore, building local capacities together with getting strong international support is a synergistic strategy for tackling the effects of conflict. This approach focuses not only on short-term restoration but also on building resilience and sustainable development in conflict-affected communities, ensuring that victims of conflict receive protection, support, and an opportunity to rebuild their lives with dignity.

## ***Conclusion***

The conclusion can be drawn from an analysis of the jurisdictional challenge in the application of the humanite-based law regarding the human rights protection of the victim's human rights in the israel-palestine conflict highlights deep complexity and challenges faced. This conflict, with its long historical background and geopolitical complexity, shows the limits and difficulties in the implementation of humanite-law, particularly in view of its encumbent jurisdiction and sovereignty. In this context, the importance of international cooperation, transparency, and accountability is significant. The enforcement of humanitarian law requires collective effort and coordination between various parties, including countries, international agencies, and non-governmental organizations, to overcome the existing obstacles,

The active role of civil society and non-government organizations, together with alternative and innovative approaches, has offered a new pathway to protecting human rights and supporting victims. This suggests that, despite great challenges, it is possible to further the protection of war victims through cooperation and innovation. Moreover, building and strengthening local capacities, along with continuing international support, are crucial to this effort. By reinforcing justice systems and accountability mechanisms, as well as clarifying the jurisdiction and increasing operations transparency, a significant step forward can be created to protect victims of conflict.

The case study also emphasizes the importance of supporting dialogue and reconciliation as a foundation for long-term solutions, pointing to the need for common commitment to principles of international law and humanity. In the face of these complex challenges, it takes a concerted effort to



overcome political and jurisdictional barriers, to ensure the application of effective humanite-laws, and finally, to promote protection and human rights for all victims of conflict. In conclusion, with closer international cooperation, increased local capacity-strengthening, and adoption of innovative approaches, the international community can move toward greater effective enforcement of humanitarian laws and broader protection for victims of conflict.

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