

PROTECTION OF CHILDREN IN ARMED CONFLICTS
UNDER INTERNATIONAL LAW: WITH SPECIAL
REFERENCE TO THREE ISRAELI WARS ON GAZA
STRIP IN (2008), (2012) AND (2014)

BY

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ABSTRACT

Children are one of the most vulnerable categories during armed conflicts. Although there are several international instruments exist to protect them and civilians in general during armed conflicts, there are still many violations committing against children in several armed conflicts around the world. Between 2008 and 2014, Israel launched three wars against Gaza Strip the 2008 war, the 2012 war and the 2014 war. These three wars had caused many violations which was committed by Israeli troops against civilians and children in particular. In this regards, this dissertation aims to highlights the Israeli violations committed during the three wars in Gaza Strip, especially those against children, and analysing these violations from perspective of the International Humanitarian Law on children protection. It also aims to identify the legal characterisation of the Israeli violations under the Rome Statute of International Criminal Law in order to determine the available mechanisms for prosecuting the Israeli leaders before the International Criminal Court for the committed crimes. This dissertation which is a purely doctrinal research provides a historical overview on the Arab-Israeli conflict. It further provides an overview of the International Humanitarian Law. It also discusses whether International Humanitarian Law provides special protection for children during armed conflicts. Then, it analyses the Israeli violations committed during the three wars against civilians in general in Gaza Strip with special reference to the violations committed against children from International Humanitarian Law perspective, with a view to clarify whether Israeli forces had violated the protection of children provided by International Humanitarian Law and its other principles regarding protecting civilians in general during armed conflicts. The dissertation provides an overview of the international criminal court and children protection under the Rome Statute. It further discusses the Israeli violations of International Humanitarian Law during the three wars from the Rome Statute, to determine whether these violations constitute international crimes. In addition, it also provides discussion on the mechanisms of prosecuting the Israeli leaders before the International Criminal Court for the crimes committed in Gaza Strip during the three wars. Finally, the dissertation concludes that Israel during its three wars in Gaza Strip had already violated the principles of International Humanitarian Law in relation to children protection, as well as, the protection of civilians in general. Furthermore, the Israeli violations during Gaza wars constituted war crimes, crimes of genocide and crimes against humanity, which requires an international accountability.

خلاصة البحث

الأطفال من أكثر الفئات عُرضة للعنف أثناء النزاعات المسلحة، وعلى الرغم من الاتفاقات الدولية التي تنص على حمايتهم وحماية المدنيين بعامة أثناء النزاعات المسلحة؛ لا يزال هناك عدد من الانتهاكات تُرتكب ضد الأطفال في النزاعات المسلحة حول العالم، فما بين عامي 2008-2014م شنت إسرائيل ثلاث حروب على قطاع غزة؛ حرب 2008م، وحرب 2012م، وحرب 2014م، وتضمنت هذه الحروب انتهاكات ارتكبتها القوات الإسرائيلية بحق المدنيين بعامة، والأطفال بخاصة، ومن ثم يهدف هذا البحث إلى بيان الانتهاكات الإسرائيلية التي ارتكبت خلال الحروب الثلاث في قطاع غزة، ولا سيما تلك التي ارتكبت ضد الأطفال، وتحليل هذه الانتهاكات من منظور القانون الدولي الإنساني في حماية الأطفال، كما يهدف إلى تحديد التوصيف القانوني للانتهاكات الإسرائيلية بموجب نظام روما الأساسي للقانون الجنائي الدولي؛ من أجل تحديد الآليات المتاحة لمحاكمة القادة الإسرائيليين أمام المحكمة الجنائية الدولية عن الجرائم المرتكبة، ويقدم هذا البحث العقائدي الصِّرف لمحة تاريخية عن الصراع العربي الإسرائيلي، ونظرة عامة عن القانون الدولي الإنساني، ويناقش ما إذا كان القانون الدولي الإنساني يوفر حماية خاصة للأطفال أثناء النزاعات المسلحة، ويقدم نظرة عامة عن المحكمة الجنائية الدولية وحماية الأطفال بموجب نظام روما الأساسي، ثم يناقش الانتهاكات الإسرائيلية لقواعد القانون الدولي الإنساني خلال الحروب الثلاث وفق ما نص عليه نظام روما الأساسي؛ لتحديد ما إذا كانت هذه الانتهاكات تمثل جرائم دولية، ويناقش أيضاً آليات محاكمة القادة الإسرائيليين أمام المحكمة الجنائية الدولية عن الجرائم المرتكبة في قطاع غزة خلال الحروب الثلاث، وقد خلص البحث إلى أن إسرائيل خلال حروبها الثلاث في قطاع غزة انتهكت مبادئ القانون الدولي الإنساني فيما يتعلق بحماية الأطفال بخاصة وحماية المدنيين بعامة، وأن الانتهاكات الإسرائيلية خلال حروب غزة مثلت: جرائم حرب، وجرائم إبادة جماعية، وجرائم ضد الإنسانية، وتتطلب مساءلة دولية.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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LIST OF ABBREVIATIONS

API	Additional Protocol I to Geneva Conventions
APII	Additional Protocol II to Geneva Conventions
APIII	Additional Protocol III to Geneva Conventions
Art.	Article
GCVI	Geneva convention IV
HRC	Human Rights Council
HRW	Human Rights Watch
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International committee of Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
OPT	Office of the Prosecutor
PCHR	Palestinian Center for Human Rights
PLO	Palestinian Liberation Organization
RS	Rome Statute
UN	United Nations
US	United States
Vol.	Volume

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Throughout history, several wars have been launched by Israeli against Palestinian, last of which was the three wars on Gaza strip 2008 war, 2012 war, and 2014 war. On 27 December 2008, Israel waged first its three wars on Gaza or so-called (Operation Cast Lead). The Israeli troops began the war by a wide airstrikes attack targeted the governmental headquarters, especially the police stations, killing 248 policemen. After one week of the airstrikes, Israel decided to proceed with ground invasion into Gaza Strip. Israeli military operations continued until 18 January 2009. In this war, Israeli used most of its military arsenal against unarmed people, which led to the killing of 1390 Palestinian, including 344 children, as well as thousands injured. Israeli troops used the white phosphorus weapon against civilians, which constitutes a violation of international law.¹

On 14 November 2012, Israel has assassinated Mohammed Al Jabari, the commander of the military wing of Hamas, leading to the conflagration of the 2012 war. Israeli troops in this war relied only on the airstrikes. As a result of the big efforts that have been made by Egypt, the 2012 war lasted only eight days, which made it the shorter war comparing with the other two wars and this war left 167 Palestinian dead.²

¹ Rebecca Stead, "Remembering Israel's 2008 War on Gaza," Middle East Monitor (MEMO), <https://www.middleeastmonitor.com/20181227-remembering-israels-2008-war-on-gaza/> (accessed 11 June, 2019)

² BBC, "Gaza crisis: Toll of operations in Gaza," BBC, <https://www.bbc.com/news/world-middle-east-28439404> (accessed 11 June, 2019)

The third Israeli war on Gaza Strip started on 7 July 2014, which is the longest and most violent war comparing with the 2008 war and the 2012 war, where this war went 51 days. Israel in the war used unprecedented violence against everything in Gaza. This war was accompanied by a ground invasion inside the strip. The number of victims was the highest in the 2014 war comparing with the other two wars on Gaza, in which 2200 Palestinian were killed, including 521 children. This war has led to worsening the humanitarian crises in Gaza Strip, due to the targeting of the already fragile infrastructure by Israeli forces during the war.³

As such, several violations have been committed by Israeli forces during the three wars in Gaza, which were against civilians, particularly on the children. From the figures mentioned above, it is to be submitted that the children victims constitute approximately a quarter of the total victims of each war. Thus this research is conducted to address the violations committed during the three Gaza wars specifically against children and civilians in general.

1.2 STATEMENT OF THE PROBLEM

The repetition of three Israeli wars on Gaza Strip during six years, and the violations committed in these wars had caused in killing hundreds of civilians, many of them are children, and thousands wounded. All this had made the Palestinian people that as if they are living in a barbaric state of lawlessness and wonder on the effectiveness of international laws in protecting the people in Gaza.

³ Said Shehadeh, "The 2014 War on Gaza: engineering trauma and mass torture to break Palestinian resilience", *International Journal of Applied Psychoanalytic Studies*, vol. 12, no. 3 (2015): 278-279.

It would be noticed that a large number of Gaza wars victims were children, which indicates that targeting children was not mistakenly. Therefore, it is important to explain the IHL perspective on Children protection, and analyzing the Israeli violations against children and civilians in general, to prevent such violations in the future.

It is noted that until today no prosecution to the Israeli leaders before the ICC over the crimes committed against children during the three wars in Gaza, which requires identifying the legal characterisation of Israeli violations during Gaza wars, as well as mechanisms of prosecuting under the Rome statute.

1.3 RESEARCH QUESTIONS

- i. What is the historical background of Arab-Israeli conflict?
- ii. How did Israel violate international humanitarian law relating to the children protection in the three Gaza wars during 2008-2014?
- iii. How did the Israeli violation of international humanitarian law amount to war crimes, crimes against humanity and genocide under the Rome Statute of the International Criminal Court?
- iv. What are the mechanisms available to prosecute the Israeli perpetrators responsible for committing these international crimes during the three Gaza wars from 2008-2014?

1.4 IMPORTANCE OF THE RESEARCH

Supporting and defending the people's rights is one of the humanitarian values, how is that if those people are your people, in this case, it would be your duty to defend them and their rights.

The importance of the research lies in disclosing and exposing on the Israeli violations committed during the three wars against the Palestinians, particularly children, the most affected category by armed conflicts. These violations would be analyzed from the IHL perspective, by putting the international community before its responsibilities in relation to these violations.

The study will also include determining the legal characterisation of the Israeli violations under the Rome Statute, identifying whether they constitute international crimes, as well as, clarifying the mechanisms of legal prosecution of Israel before the ICC, which will facilitate the process of prosecuting the Israel whether by Palestinian authority or other bodies. In addition, future researchers can rely on this study in conducting relevant research.

Therefore, this study is important and crucial today, especially when the Palestinian in Gaza are still being threatened by a fourth Israeli war.

1.5 OBJECTIVES OF THE STUDY

This research is embarked upon for achieving the following objectives:

- i. To provide a historical overview about the Arab-Israeli conflict.
- ii. To analyse the Israeli violations during the three Gaza wars from perspective of the IHL, with special reference to children protection.

- iii. To identify the legal characterisation of the Israeli violations under the Rome Statute of the ICC.
- iv. To identify the available mechanisms for prosecuting Israel before the ICC for the crimes committed during the three wars.

1.6 HYPOTHESIS

This study hypothesizes that:

- i. Although the existence of clear international laws for governing behavior of parties of armed conflict, several violations that constitute an obvious breach to these laws have been committed by Israeli forces during its three wars in Gaza Strip.
- ii. Israeli practices during the three wars have constituted a breach of the protection provided by IHL to children and civilians in general.
- iii. Israel committed many international crimes provided by the Rome Statute, such as; war crimes, crimes against humanity and crimes of genocide.

1.7 SCOPE AND LIMITATION

The study will examine the violations that have been committed by the Israeli occupation in Gaza Strip, highlighting to violations committed against children. The research will cover only the Israeli violations during the period of the three wars that have been waged by Israel against the Strip; the 2008 war, the 2012 war, and the 2014 war. The study will address also the legal characterisation of Israeli violations under the Rome Statute, as well as, mechanisms of prosecution of Israel before the ICC for the crimes committed during the three wars.

The study which is a library-based research encompassing analyzing the content of research to achieve its objects. As such, the research will not include:

- i. Israeli violations committed generally against Palestinians in all locations of their presence, Gaza Strip, West Bank and overseas.
- ii. The daily Israeli violations against Palestinians in Gaza Strip outside the period of the three wars.

1.8 RESEARCH METHODOLOGY

The research is purely based on the doctrinal method which involves the use of instruments of international law. In addition, there are several articles, books, statistics that have been referred to whether from the internet or the library.

The analytical method of research is adopted too. The Israeli violations committed during the three Gaza wars, against civilians, particularly children category will be analyzed from the perspective of the IHL's principles and the protection they provides to children during armed conflicts. The research will analyse the violations in accordance with the Rome Statute, in order to achieve objectives of the research.

1.9 CHAPTERISATION

This research comprises of six chapters. Chapter one presents the background of the whole study, highlighting how important the subject matter of the research. This chapter also contains objectives, hypothesis, and scope and limitations of the research. As well as it includes the research methodology followed by the researcher in conducting the research, and the relevant literature review.

Chapter two explains about 'conflict' term and provides a historical overview of the roots and beginning of Arab-Israeli conflict and the history of the wars between Arab and Israel, as well.

Chapter three introduces generally about the IHL and its principles regarding armed conflicts. The chapter also briefly examine the legal position of Gaza Strip after the Israeli withdrawal in 2005, to determine whether the strip is still as an occupied territory or not.

Chapter four focuses on children protection in time of war under the IHL, as well as the protection provided to civilians in general. This chapter also discusses classification of Israeli violations committed against civilians and children in particular during the three Gaza wars 2008, 2012 and 2014 from the perspective of the IHL.

Chapter five introduces generally about the ICC, and children protection under the Rome Statute that established the ICC. This chapter also provides a legal characterisation of the Israeli violations committed during the three Gaza wars under the Rome Statute. The chapter will also highlight the mechanisms of prosecuting the Israeli leaders before the ICC for the international crimes committed by the Israeli forces during the three wars in Gaza.

Chapter six as the concluding chapter summarizes this research and contains the suggestions and recommendations of the researcher in relation to the topic of the research.

1.9 LITERATURE REVIEW

Indeed, there are a number of literatures that are relevant and valuable to the subject and scope of this research.

Denise Plattner, in her article “Protection of Children in International Humanitarian Law, seeks to evaluate mechanisms of children protection in International Humanitarian Law”⁴. This study addressed mechanisms of children protection in general including the protection during armed conflicts in accordance with the rules of the IHL and adequacy of these mechanisms to achieve the protection to children. The study concluded that the IHL has established and developed special protection for children during armed conflict, and general protection for victims of armed conflict generally.

Qusay Mustafa Taa'yem, in his master dissertation “Effectiveness of international humanitarian law in international and non-international armed conflicts”⁵, addresses the IHL as the criterion and regulator that defines the dimensions of the conflict and seeks to terminate it by all available means, to reduce its destructive effects. The study concluded that the IHL should be applied, and urged States to amend their judicial and criminal systems in accordance with the IHL and the Statute of the International Criminal Court, considering that the IHL requires that.

Amanda Alexander, in her article “A Short History of International Humanitarian Law”⁶, generally discusses the origin and emergence of the IHL. This

⁴ Denise Plattner, “Protection of Children in International Humanitarian Law,” ICRC, <https://www.icrc.org/en/doc/resources/documents/article/other/57jmat.htm> (accessed 17 June, 2019).

⁵ Qusay Mustafa Taa'yem, “Effectiveness of international humanitarian law in International and non-international armed conflicts,” (Master dissertation, An-Najah National University, 2010).

⁶ Amanda Alexander, “A Short History of International Humanitarian Law”, *The European Journal of International Law*, vol. 26 no. 1 (2015).

study concludes that the IHL is a relatively new field that has been created, shaped and reinterpreted by several actors, both traditional and unconventional.

Ghanim Al-Najjar, in his master dissertation “The Protection Of Children in Armed Conflicts under the Rules of International Law”⁷, discusses whether the IHL provides special protection to children in situations of attack or not. Ghanim concludes that despite there are special provisions for children protection during armed conflicts in the IHL, violations against children persist, which means that the current legal regime of children protection during armed conflicts must be reviewed and the focus must be shifted to the children’s best interests rather than focusing on duties and rights of parties of armed conflicts.

Melanie O'Brien, in her article “International Criminal court (ICC)”⁸, briefly discusses the structure and jurisdiction of the ICC, as well as, the crimes fall within the jurisdiction of the ICC.

Erinda Duraj, in his paper “Protecting Children Rights under International Criminal Justice”⁹, introduces an overview on the issue of children and their participation in the international criminal justice and he focuses on giving a definition of 'children' according to the international norms, as well as addressing the international crimes that may commit against children or by them, and the criminal responsibility of children for these crimes. The paper concludes that there is an obligation over the states to prosecute the persons accused of committing crimes of genocide, war crimes, crimes

⁷ Ghanim Al-Najjar, “The Protection Of Children in Armed Conflicts under the Rules of International Law: Does International Humanitarian Law grant children special protection in situations of attack?,” (Master dissertation, University of Oslo, 2011), 71.

⁸ Melanie O'Brien, “International Criminal Court,” in *the Encyclopedia of Crime and Punishment*, edited by Wesley G. Jennings (Australia: Wiley and Sons, 2016).

⁹ Erinda Duraj, “Protecting Children Rights under International Criminal Justice”, *Academic Journal of Business, Administration, Law and Social Sciences*, vol. 1, no. 1 (2015): 92.

against humanity, enforced disappearances, and torture, especially that crimes committed against children.

Rhama abu Sneida, in her Master dissertation “Violation of the Israeli Occupation of Military Necessity Criteria in Its Attacks on the Gaza Strip and Its Legal Implications has introduced an overview of the principle of military necessity”¹⁰, She has discussed the Israeli violation of the principle during Israeli attacks in Gaza Strip. The study concluded that Israel forces violated the principle of military necessity during its attacks in Gaza Strip and it emphasized the need to initiate Palestinian claims regarding these responsibilities against the Israeli occupation.

Elinor Fry, in her article “The Nature of International Crimes and Evidentiary Challenges”¹¹ shows that international crimes have some certain features. Elinor think that identifying these features will provide relevant information, which eases the process of investigation, prosecution, and adjudication in these crimes, whether addressed by an international criminal tribunal, a domestic court or a hybrid court. Elinor in her article suggests to change the perspective of the law of evidence and provide a new different methodology which focuses on the crime not on the court.

Sabin Guţan, in his article “Ukraine - Type of Armed Conflict”¹² discusses the classification of armed conflicts and application of international law to modern armed

¹⁰ Rhama abu Sneida, “Violation of the Israeli Occupation of Military Necessity Criteria in Its Attacks on the Gaza Strip and Its Legal Implications has introduced an overview of the principle of military necessity,” (Master dissertation, Islamic University, 2017).

¹¹ Elinor Fry, “The Nature of International Crimes and Evidentiary Challenges” in *Pluralism in International Criminal Law*, edited by Elies van Sliedregt and Sergey Vasiliev (Oxford, Oxford University Press, 2014).

¹² Sabin Guţan, “Ukraine - Type of Armed Conflict”, *International Conference Knowledge-Based Organization*, vol. 22, no. 2, (2016): 329. Via Sciendo, <<https://content.sciendo.com/view/journals/kbo/22/2/kbo.22.issue-2.xml?language=en>>.

conflicts with special reference to armed conflict in Ukraine. As he aims to determine nature of conflict in Ukraine and the applicable rules of international law.

Volker Roeben, in his article "The Procedure of the ICC: Status and Function of the Prosecutor"¹³ analyzes the procedure of the ICC, as well as discusses the organization of the court. Volker in his article addresses impact of politics on the procedure of the court. This article also addresses two of the criticisms often levied against the ICC: that it actually is counter-productive to the objective of international human rights and humanitarian law enforcement for its chilling effect on states, in particular non-parties to the Statute and for its presumed ineffectiveness. Volker concludes that the procedure ensures legitimacy of the court, states parties to Rome Statute, and the Security Council as well.

1.10 RESEARCH GAP

Many articles and books have been conducted about the IHL and the violations of its principles, in addition to the protection of weak categories during armed conflicts. All the above-cited literature have addressed the matters in general, however, none of them discusses the topic of this study which is the Israeli violations against civilians, especially the children which had occurred in Gaza Strip during the three Israeli wars. Therefore, due to lack of researches address these violations and its position under international law, it is very significant and timely to conduct a research addressing this topic, in filling the gaps and providing another platform for future research.

¹³ Volker Roeben, "The Procedure of the ICC: Status and Function of the Prosecutor" in *Max Planck Yearbook of United Nations Law*, edited by A. von Bogdandy and R. Wolfrum (Netherlands: Koninklijke Brill N. V., 2003)

CHAPTER TWO

HISTORY OF ARAB – ISRAELI CONFLICT

2.1 INTRODUCTION

The chapter generally discusses nature, theories, types of conflict, as well as it briefly compares between term ‘conflict’ and ‘dispute’. This chapter also introduces a historical overview of Arab-Israeli conflict, which explains a history of wars that launched between Arab including Palestinian and Israel since 1948.

2.2 NATURE OF CONFLICT

In general, conflict is described as “a struggle over values and claims to scarce status, power and resources¹⁴”. Conflict is defined as “an incompatibility of goals or values between two or more parties in a relationship, combined with attempts to control each other and antagonistic feelings toward each other¹⁵”

Conflict is as old as humanity. It is a prominent feature of human society. Men will fight each other even if they do not have weapons or when the tools of violence are not at hand. Therefore, when there are no weapons to fight, men will fight even with their fists. As long as man has other men around him, there will be matters of disagreement, because the interests are different and clashed, which may lead to create a conflict between the competing societies.¹⁶ History of continuous conflict dates to the

¹⁴ Kenneth E. Boulding, *Conflict and Defense*, (New York: Harper and Row, 1962), 5.

¹⁵ Shelley Rose Adrian-Taylor; Kimberly A.; Noels Kurt Tischler, “Conflict Between International Graduate Students and Faculty Supervisors: Toward Effective Conflict Prevention and Management Strategies”, *Journal of Studies in International*, vol. 11, no. 1 (2007): 93.

¹⁶ Kayode Soremekun; Sheriff F. Folarin; Daniel Gbervbie; Duruji Moses, *Readings in peace and conflict studies* (Ota: Covenant University, 2013), 16.

beginning of humanity. The survival of mankind on this planet depends on how we manage and control the conflict which caused not only by clashed interests but also by the hostilities.¹⁷

2.3 CONFLICT AND DISPUTE

The terms 'conflict' and 'dispute' are sometimes used in the same meaning. For example, both terms have been used to describe the same situations in the construction industry. The difference between the two terms is often indistinct, which may create a confusion. Although the conflict and dispute have same sources like information and resources. However, there is a slight difference between them. Conflict is usually linked to a group of factors, such as the differences in goals, expectations, and values. Conflict could also be referred as a consequence of an affective or subjective state, like stress and hostility. Whereas the term dispute is connected with justified and particular issues, and its nature may allow for third party to intervene in the decision process, such as mediation, arbitration, and court. In brief, the term conflict has broader connotation than term dispute, and conflict word includes dispute.¹⁸

2.4 THEORIES OF CONFLICT

Determining the causes of conflict is a controversial issue, there are several theories which are different in identifying the origin of conflict. For example, some of these theories refers the cause of conflict to the unequal classes in the society, whereas some

¹⁷ Ho-Won Jeong, *Understanding Conflict and Conflict Analysis*, (London: SAGA Publications Ltd, 2008), 3.

¹⁸ F. Ellis; B.K. Baiden, *A Conceptual Model for Conflict Management in Construction Firms*, (London: RICS, 2008), 2-3.