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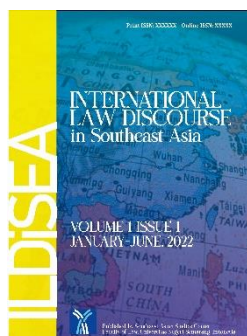
Analysis of the Palestinian and Israeli Conflict in the Perspective of International Humanitarian Law

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ABSTRACT: The conflict between Israel and Palestine to this day continues. Many studies even reveal that the conflict between Israel and Palestine is not only related to religious ideology and belief but also related to legal aspects, especially international law. This study aims to analyze the Israeli-Palestinian conflict from the point of view of International Humanitarian Law. This study finds and confirms that International Humanitarian Law can be used optimally in providing protection for civilians in times of armed conflict. However, several other related studies found that there were many violations of human rights in Palestine by the Israeli army, especially against civilians. This of course violates basic conventions on human rights and other rules of international law.

KEYWORDS: Palestine-Israel Conflict, Armed Conflict, Humanitarian Law, Human Rights Protection

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I. INTRODUCTION

The state is one of the subjects of international law.¹ As a subject of international law, the state must have conditions that must be met, namely, one of which is territory. The division of territory in each

¹ The state is the main subject in international law. In the context of international law, the state in question is a sovereign state and has its own government. According to the 1949 Montevideo Convention concerning the Rights and Duties of the State, the qualification of a country as a subject of international law is to have a permanent population, a certain territory, a legitimate government and the ability to establish relations with other countries. The state is declared the first subject of international law because the fact shows that the first to carry out international relations is the state. The rules provided by the international community are in the form of rules of behavior that must be obeyed by the state when countries enter into relations with each other. Countries that are subject to international law are independent, sovereign states and are not part of a state. That is, having full self-government and full power over citizens within the authority of that state. *Please see* Malcolm N Shaw, *International Law*. (Cambridge: Cambridge University Press, 2017); Martin Dixon, *Textbook on International Law*. (Oxford: Oxford University Press, 2013); Jan Klabbbers, *International Law*. (Cambridge: Cambridge University Press, 2020); Frédéric Mégret, "Are There "Inherently Sovereign Functions" in International Law?." *American Journal of International Law* 115, No. 3 (2021): 452-492; Sigit Riyanto, "Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer." *Yustisia Jurnal Hukum* 1, No. 3 (2012); Dewa Gede Sudika Mangku, *Pengantar Hukum Internasional*. (Klaten: Penerbit Lakeisha, 2020); Mochtar Kusumaatmadja, and Etty R. Agoes. *Pengantar Hukum Internasional*. (Bandung: Penerbit Alumni, 2021).

country aims to facilitate administration, government, and matters relating to the state. However, until now, conflict between countries is one of the issues that is still hot, one of which is due to regional actions between countries. One of the international conflicts regarding territorial borders that has occurred and has not been resolved to date is the conflict between Palestine and Israel.²

The conflict between Palestine and Israel occurred after the Balfour Declaration, in which the Jews also attempted to establish a state by conducting diplomacy on November 2, 1917 through the Balfour Declaration. The Balfour Declaration contained approval of the idea of establishing a new state by the Jews in Palestine. This declaration took place at a meeting of the British Cabinet on October 31, 1917, which stated that the British government supported Israel's plan to establish a homeland for the Jews in Palestine, provided that it did not do anything that could harm Palestinian rights and communities.³

² Ilmi Dwiastuti, "The Roots of Israel-Palestine Conflict: A Political Culture Analysis." *AEGIS: Journal of International Relations* 4, No. 2 (2021); Krištof Sucha, "Violence More Profitable Than Peace, Arms Trade in Israel-Palestine Conflict." *Politics* 4, No. 3 (2021): 507-528.

³ The Balfour Declaration was an open statement issued by the British Government in 1917 during World War I to declare support for the establishment of a "national residence for the Jewish people" in Palestine. At that time Palestine was one of the areas within the territory of the Ottoman Empire and the Jews in Palestine were still a minority at that time. The Balfour Declaration is contained in a letter dated 2 November 1917 from the British Secretary of State, Arthur Balfour, to Lord Rothschild, leader of the British Jewish community, for notification to the Zionist Federation of Great Britain and Ireland. The Balfour Declaration was broadcast through the mass media on November 9, 1917. The Balfour Declaration made support for the Zionist movement from the worldwide Jewish community increased. Over the decades, Israel's occupation of Palestine has expanded and increased tensions between the two countries. Territorial annexation, expulsion, and human rights violations continue to occur. Although the idea of ending the war

In armed conflict there are laws that must be obeyed in every war. International humanitarian law functions to provide protection for both combatants and the civilian population, prevent cruel wars that know no bounds from unnecessary suffering and guarantee fundamental human rights for those who fall into the hands of the enemy. Combatants who fall into enemy hands have the right to be treated as prisoners of war and must be treated humanely.

The term humanitarian law or in full international humanitarian law applicable in armed conflict originates from the term laws of war. In its development, the word war caused deep fear, so that a new term emerged, namely armed conflict to replace the term war even though war was still happening everywhere. After World War II, efforts were made to prevent and even abolish war. This attitude affects the use of the term, so that the term law of war has changed to the law of armed conflict.

In a further development, namely the beginning of the 20th century,

between the two countries has been carried out several times, to this day, the prolonged conflict between Israel and Palestine has yet to find a bright spot. Please see Mayir Vereté, "The Balfour Declaration and its makers." *Middle Eastern Studies* 6, No. 1 (1970): 48-76; Mark Levene, "The Balfour declaration: a case of mistaken identity." *The English Historical Review* 107, No. 422 (1992): 54-77; Avi Shlaim, "The Balfour Declaration and its consequences." *Yet more adventures with Britannia: Personalities, politics and culture in Britain* (2005): 251-270; Joe Stork, "Understanding the Balfour Declaration." *Merip Reports* 13 (1972): 9-13; James Renton, "Flawed foundations: The Balfour declaration and the Palestine mandate", in *Britain, Palestine and Empire*. (London: Routledge, 2016), pp. 15-38; E. D. İ. Z. İsmail, "A neoclassical realist explanation of the Balfour Declaration and the origins of the British foreign policy in Palestine." *Tarih İncelemeleri Dergisi* 34, No. 1 (2019): 99-122; Jehuda Reinharz, and Motti Golani. "Chaim Weizmann: The Great Enabler. From the Balfour Declaration to the Establishment of the State of Israel." *Modern Judaism* 40, No. 1 (2020): 108-131; Sahar Huneidi, *The Hidden History of the Balfour Declaration*. (New York: OR Books, 2019).

efforts were made to regulate the way of fighting which in its preparation was equipped with the conceptions of the principle of humanity, which in the end the term laws of armed conflict experienced a shift with the new term International Humanitarian Law Applicable in Armed Conflict, which is then often abbreviated as international humanitarian law or international humanitarian law. Although the terms used are different, namely the law of war, law of armed conflict, international humanitarian law, international humanitarian law, but all these terms have the same meaning, namely regulating the procedures and methods of war and the protection of victims of war.⁴

⁴ Humanitarian law represents the balance that exists in the world and maintains world stability, the term humanitarian law or in full International Humanitarian Law Applicable in Armed Conflict, which later became law in gun disputes, this term arose when a conference of government experts on the reaffirmation and development in armed conflict was held. In 1971 on a new field in international law. Humanitarian law is not intended to prohibit war but for humanitarian reasons to reduce or limit the area where war occurs. International humanitarian law is a set of rules which, for humanitarian reasons, are designed to limit the consequences of armed conflict. This law protects those who are no longer or are no longer involved in conflict and limits the ways and methods of fighting. International humanitarian law is another term for the laws of war and the law of armed conflict. The law of war or what is known as International Humanitarian Law is one of the oldest branches of international law, because humanitarian law has not escaped its development with human civilization. Likewise, what was expressed by Mochtar Kusumaatmadja that the law of war is as old as humans themselves. In its development, humanitarian law experienced a very significant development from century to century before the existing humanitarian law. Not yet in the form of regulations, it is still just a habit called culture. has a very important status in maintaining the balance of the world. *Please see* Hans-Peter Gasser, "International Humanitarian Law: An Introduction." *International Review of the Red Cross* (1961-1997) 34, No. 298 (1994): 88-88; Frits Kalshoven, and Liesbeth Zegveld. *Constraints on the Waging of War: An Introduction to International Humanitarian Law*. (Cambridge: Cambridge

The definition of war by Francois is defined as a legal state between countries that are at war with each other using military force.⁵ While Oppenheim defines war as a dispute between two countries with the intention of controlling the opponent and building conditions of peace as desired by the victor.⁶

II. METHODS

University Press, 2011); Louise Doswald-Beck, and Sylvain Vité. "International humanitarian law and human rights law." *International Review of the Red Cross* (1961-1997) 33, No. 293 (1993): 94-119; Dieter Fleck, ed. *The Handbook of International Humanitarian Law*. (Oxford: Oxford University Press, 2021).

⁵ Alan I. Forrest, Étienne François, and Karen Hagemann, eds. *War Memories: The Revolutionary and Napoleonic Wars in Modern European Culture*. (Basingstoke: Palgrave Macmillan, 2012).

⁶ Lassa Oppenheim, *International Law. A Treatise: Volume II: War and Neutrality*. (London: Longmans, Green, and Co., 2018). See also Lassa Oppenheim, "The science of international law: its task and method." *American Journal of International Law* 2, No. 2 (1908): 313-356. Furthermore, it is also emphasized that War is a physical and non-physical action (in a narrow sense, is a condition of hostility using violence) between two or more groups of people to exert dominance in the disputed territory. War is anciently defined as armed conflict. In the modern era, war is more about technological and industrial superiority. This is reflected in the military doctrine, such as "Whoever controls the heights controls the world". This suggests that mastery over heights must be achieved by technology. But the word war no longer acts as a verb but has shifted to an adjective. It was journalists who popularized this, so gradually this shift got its place, but in general war meant "contradictory". See also Arnold D. McNair, "The legal meaning of war, and the relation of war to reprisals." *Transactions Grotius Society* 11 (1925): 29-54; Edna Lomsky-Feder, "The Meaning of War Through Veterans' Eyes: A Phenomenological Analysis of Life Stories." *International Sociology* 10, No. 4 (1995): 463-482; Michaela L. Schok, et al. "Meaning as a mission: A review of empirical studies on appraisals of war and peacekeeping experiences." *Clinical Psychology Review* 28, No. 3 (2008): 357-365; Bart Klem, "The problem of peace and the meaning of 'post-war'." *Conflict, Security & Development* 18, No. 3 (2018): 233-255.

The method used in this paper is the library method. The library method is a method that is carried out by studying and collecting data from libraries related to tools, both in the form of books and information on the internet

III. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN PALESTINE AND ISRAEL

International Humanitarian Law (IHL) is designed to ensure a minimum protection even during the most profound catastrophe of human society, namely war. During armed conflict, the combatants have a license to kill combatant elements of the adversarial conflict. IHL seeks to salvage what realistically can be protected notwithstanding the clash of arms.

The Israeli-Palestinian conflict may be a conflict that takes a long time after the Crusades that occurred between the East and West around the twelfth century. This conflict that has lasted for six decades has become quite an acute conflict that has captured the attention of the world community.

In Operation Cast Lead⁷ for example, the Israeli military attacks on

⁷ The Gaza War, also known as Operation Cast Lead (Hebrew: מבצע עופרת יצוקה), also known in the Muslim world as the Gaza Massacre (Arabic: مجزرة غزة) and referred to as the Battle of al-Furqan (معركة الفرقان) by Hamas, was a three-week armed conflict between Gaza Strip Palestinian paramilitary groups and the Israel Defense Forces (IDF) that began on 27 December 2008 and ended on 18 January 2009 with a unilateral ceasefire. The conflict resulted in between 1,166 and 1,417 Palestinian and 13 Israeli deaths (including 4 from friendly fire). On December 27, 2008, Israel launched Operation Cast Lead, a massive, 22-day military assault on the Gaza Strip. The ferocity of the attack was unprecedented in the more than six-decade-old conflict between Israelis and Palestinians, killing some 1,400 Palestinians, most of them civilians. In the aftermath of the offensive, an UN-appointed fact-finding mission found strong

public facilities are not always the result of negligence and the Israeli military's efforts to not respect human rights and International Humanitarian Law. Because Hamas often uses public buildings or infrastructure to provoke Israel to attack a UN school where Hamas launched its rockets. In article 51, paragraph 7 of additional Protocol I explains that: "*The presence or movement of the civilian population or individual civilians may not be used to make certain places or areas free from military operations, especially / in efforts to protect military objectives from attacks or to protect, support, or hinder military operations. The parties to the conflict may not direct the movement of the civilian population or individual civilians with the aim of protecting military objectives from attacks or to protect military operations.*"

The actions taken by the Hamas paramilitary show a violation of the rules of IHL, in addition to that, if seen from article 28 of the Geneva Conventions, there have also been violations committed by the Hamas military that civilians will not be the object of attacks as reflected in article 51 paragraph 2 of Additional Protocol I. Meanwhile, it relates to buildings and civil infrastructure. The basic rules of the IHL regarding attacks on buildings and infrastructure are contained in article 52 of Additional Protocol I "*General Protection of Civilian Objects*". This article is a codification of customary law

evidence of war crimes and crimes against humanity committed by both the Israeli military and Palestinian militias. Investigations by human rights groups such as Amnesty International and Human Rights Watch came to the same conclusion. *Please see* Asa Kasher, "A Moral Evaluation of the Gaza War—Operation Cast Lead." *Jerusalem Center for Public Affairs Brief* 9, No. 18 (2010): 2009; Yehuda Ben Meir, "Operation Cast Lead: political dimensions and public opinion." *Strategic Assessment* 11, No. 4 (2009): 29-34; Robert Blecher, "Operation Cast Lead in the West Bank." *Journal of Palestine Studies* 38, No. 3 (2009): 64-71; Lori Allen, "The scales of occupation: 'Operation Cast Lead' and the targeting of the Gaza Strip." *Critique of Anthropology* 32, No. 3 (2012): 261-284.

applicable to both international and non-international armed conflicts. In IHL it categorically rejects attacks on buildings and infrastructure that do not have an effective contribution to military action. However, when looking at the condition that it was Hamas that carried out attacks on Israel using civilian buildings and infrastructure, it puts Israel in a state of necessity to carry out attacks on buildings that have an effective contribution to Hamas' military interests. In addition, Hamas and other organizations in the Gaza Strip make extensive use of Palestinian civilians as human shields. It shows how terrorist organizations build huge military infrastructure in the Gaza Strip.

The violations committed by the Israeli side are the non-implementation of humanitarian principles. The attack that occurred caused many civilian casualties from the Palestinian side, although not entirely the large number of victims was purely the fault of the Israeli military. Violation of this humanitarian principle is interpreted as a prohibition on the means and methods of fighting that are not essential to the achievement of a real military advantage. to alleviate human suffering wherever it is found. This principle aims to protect and ensure respect for human beings. This principle is useful for increasing mutual understanding, friendship, cooperation and sustainable peace among all peoples so as not to create discrimination because of nationality, race, religious belief, class or political opinion. This principle is meant to relieve suffering, giving priority to cases of the most pressing distress.

The laws governing war are contained in the 1949 Geneva conventions. In 1949 Geneva Laws or The Geneva Laws are terms used to denote a series of provisions of International Humanitarian Law which regulates the protection of war victims; consisting of both

combatants and civilians. Called the Law of Geneva, because almost most of the provisions on this matter were produced in the city of Geneva, Switzerland. In studying humanitarian law, the mention of 'the Geneva Laws' can make it easier to distinguish it from 'the Hague Laws', namely to make it easier to distinguish the formation of provisions regarding the protection of war victims, and provisions regarding the means and methods of warfare, although such a distinction cannot be fully justified.

While The Hague Laws⁸ is a term used to indicate a series of provisions of International Humanitarian Law that regulates the means and methods of war. Called The Hague Laws, because the formation of these provisions was made in the city of The Hague, Netherlands. In studying Humanitarian Law, the mention of 'the Hague Laws' can make it easier to distinguish it from 'the Geneva Laws', namely the provisions produced in the city of Geneva, Switzerland; or in other words make it easier to distinguish the formation of provisions regarding the means and methods of warfare and provisions regarding the protection of war victims, although such a distinction cannot be fully justified. Until more complete rules of the laws of war have been issued, the High Contracting Parties consider it prudent to state that, in cases not included in the Rules adopted by them, residents and belligerents remain under the

⁸ As opposed to the 'law of Geneva', the 'law of the Hague' is a colloquial term that refers to a body of law mainly dealing with rules of conduct of hostilities and establishing limitations or prohibitions of specific means and methods of warfare. The term derives its name from the Hague Conventions of 1899 and 1907. It comprises rules protecting persons who are not in the power of a party to the conflict. With the adoption of Additional Protocols to the 1949 Geneva Conventions that codify and develop rules on conduct of hostilities, the dichotomy between the terms 'law of Geneva' and 'law of the Hague' has largely lost its relevance.

protection and control of the principles of law of the state, because they result from established use among civilized people, of the laws of humanity, and the dictates of public conscience.

IV. APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN THE ARMED CONFLICT BETWEEN PALESTINE AND ISRAEL

The formulation of universal human rights began to be recognized in the 20th century, exactly December 10, 1948 in Paris. This is where the Universal Declaration of Human Rights recognizes the rights of everyone around the world. This declaration was signed by 48 of the 58 member states of the United Nations. With the signing of this Declaration, recognition and at the same time the obligation of the State to respect, protect and fulfill the rights of every citizen.

The issue of upholding human rights is not only a legal issue but also a moral one. The enforcement of human rights is not solely based on the obligation to a statutory regulation but is also based on morality to uphold human dignity.⁷

Guarantees of Human Rights in war as stated in international humanitarian law are expected to be managers and controllers of the destructive effects of armed conflict. War caused by various factors (miscommunication, misperception, shift in the balance of power, etc.) is a reflection of the will of the elite in decision-making. For this reason, war or armed conflict should be carried out by formal instruments, namely combatants. Civilians and non-military facilities should be free from the destruction caused by war. Civilized rules of war are enshrined in the 1949 Geneva Conventions, which generally include two things, namely:

- (1) protection of all persons who are not or are no longer involved in war.
- (2) prohibition of the use of weapons and methods of war that cannot be controlled.

A total of 194 countries have ratified this convention, although not all of them additional protocols and supporting conventions were also ratified.

Regarding the Israeli attack on the Gaza Strip with the excuse that Hamas as an organization that often interferes with Israel's security can be seen from two perspectives. The first is the legality of the use of force or what is known as *jus ad bellum*. The second is how the attack was carried out or known as *Jus in bello*. In the context of *jus ad bellum*, the question becomes whether the Israeli attack is a self-defense attack. Meanwhile, there are only two categories of justifications, namely "*necessity*" and "*self-defense*". However, in this connection it is important to note the assertion that "*necessity*" cannot be used as a justification for violating a state's international obligations, except:

- a. It is the only way to save an essential state interest from a very great and imminent danger.
- b. Such action does not cause serious interference to the essential interests of the state to which an obligation is attached.

Meanwhile, self-defense can be used as a justification for an action if the self-defense is carried out as a legitimate self-defense in accordance with the provisions of the United Nations Charter. It is important to note here that it does not mean that all acts of self-defense are legal, but that only those acts of self-defense in accordance with the United Nations Charter are considered valid. The provision also means that for the same action, but if it is not carried out in the

context of self-defense, then the action is against the law (and therefore cannot be used as a justification or justification).

Countries that suffer losses due to the actions of other countries are allowed to take retaliatory actions. In the form of actions not carrying out certain international obligations in relation to countries that violate. But solely with the aim that the country that committed the violation would stop committing the violation and make full reparation. However, this countermeasure carries a danger or risk, namely, if it is proven that the state's actions which were initially deemed to have violated it are legal actions according to international law. So the countermeasures are illegitimate. In addition, it is necessary to distinguish the meaning of retaliation within the framework of this state's responsibility and reprisal, which is known in the applicable law in armed conflict or humanitarian law, as well as the imposition of sanctions, termination or termination of an agreement.

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Regarding the Israeli invasion of the Gaza Strip on the grounds that Hamas as an organization that often disturbs Israel's security can be seen from two perspectives. The first is the legality of the use of force or what is known as *jus ad bellum*. The second is how the attack was carried out or known as *Jus in bello*. In the context of *jus ad bellum*,

the question becomes whether the Israeli attack is a self-defense attack.

Refer to the Basic Laws of the State of Israel. Firmly states that Israel will protect human dignity and freedom, in order to build in the Constitution the values of the state of Israel as a Jewish and democratic state. This is stated in the first goal of Humanity and Freedom.

In the Basic Law of the State of Israel, it is also emphasized that the Israeli government protects every person (citizen of Israel) to get their personal, body and honor protection. This means that what the Israeli military did to invade Palestine is an effort to fulfill the basic principles that are the reference for Israel as a nation to provide security guarantees to its inhabitants. Because, it is clear that the rockets and missiles of Hamas in particular and other paramilitaries incorporated in Palestine often disrupt Israel's security and stability so that the Israeli government needs to ensure the security of its citizens in the form of coercive measures taken because previous preventive measures have been taken to avoid conflict. such as peace negotiations, ceasefires and providing aid supplies to Palestine. Where the purpose of all that is to reduce tension.

State practice establishes the rules of reprisal (retaliation) as the norm of customary international law applicable in international armed conflicts. A belligerent retaliation consists of an act that would otherwise be unlawful but in exceptional cases is considered valid under international law when used as a law enforcement measure in reaction to the opposing party's unlawful act. In international armed conflicts retaliation has been the traditional method of enforcing international humanitarian law, although it is subject to the strict conditions of International Humanitarian Law. In the course of the

many armed conflicts that have marked the last two decades, retaliation in war has not been seen as a measure of upholding international humanitarian law. The tendency to prohibit retaliation, beyond those already prohibited by the Geneva Conventions, can be seen in the United Nations General Assembly resolution on the basic principles for the protection of the civilian population in armed conflict adopted in 1970, which states that the civilian population, or individual members thereof, shall not must be the object of retaliation.

In this case, Israel attacks Palestine as a form of retaliation for Palestinian actions that injure peace and security. In this case, the main objective of reprisal is to weaken the Palestinian military power in this case Hamas. In several times the attacks carried out by Hamas through its missiles and rockets have had an unfavorable impact on the security and comfort of the Israeli people.

The enforcement of IHL against perpetrators of war crimes can be carried out by several mechanisms according to the 1949 Geneva Conventions, Ad Hoc Courts and based on the International Court of Justice. First, according to the 1949 Geneva Conventions, a country that has become a party to the International Convention on IHL, if it finds its citizens committing war crimes, is obligated to arrest them, conduct investigations and impose punishments according to their national law. Second, through the Ad Hoc Court, if the first mechanism cannot be implemented, then the obligation is then taken over by the international community, in this case the United Nations. Third, based on the International Criminal Court (ICC), which is a new mechanism designed through an international agreement formed in Rome and called the 1998 Rome Statute.

V. CONCLUSION

This study concludes that in its conflict with Palestine, Israel has violated International Humanitarian Law, namely by not implementing humanitarian principles. The attack that occurred caused many civilian casualties from the Palestinian side. In addition, in applying International Humanitarian Law in the armed conflict between Palestine and Israel, the concepts of Self Defense and Reprisal can be found. Self Defense can be used as a justification for an action. Meanwhile, reprisal (retaliation) is in the form of non-compliance with international obligations with countries that violate.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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The voices of peace can't be silenced by bombs, shootings, sieges, brutality, and barbarism. Despite the challenges we face as peacemakers in a troubled region, all we want is peace and our campaign #WeWantPeace continues.

Widad Akrawi

Kurdish Human Rights Activists