

## **Protecting Child Victims in Occupied Territories: Legal Obligations and Humanitarian Accountability**

**Mohammadmehdi Seyednasseri \* , Mahmoud Abbasi \*\***

DOI: 10.22034/iruns.2026.511741.1168

Received: 2025-03-10

Accepted: 2025-12-16

### **Abstract**

Children have become the most tragic indicators of human suffering in contemporary armed conflicts, especially within occupied territories where violence, deprivation, and fear converge to dismantle the very essence of childhood. From Gaza and the West Bank to Ukraine and Syria, their lives unfold within a continuum of insecurity in which the traditional boundaries between war and peace have collapsed. These children endure not only physical harm but also displacement, loss of education, trauma, and the denial of identity, conditions that reveal the profound moral and legal crisis of modern occupation. This article examines the legal and humanitarian rules governing the conduct of occupying powers toward child victims of armed conflict and assesses the extent to which these norms provide effective protection. By analyzing the intersection between *jus in bello* and *jus post bellum*, it argues that

---

\* MohamadMehdi Seyed Nasseri PhD of International Public Law, Islamic Azad University, UAE Branch, United Arab Emirates. (Corresponding Author).  
sm.snaseri@gmail.com

\*\* Associate Professor, Shahid Beheshti University of Medical Sciences, Tehran, Iran.

the protection of children serves as both a legal obligation and a moral test of the legitimacy of occupation. While international instruments such as the Fourth Geneva Convention, the Additional Protocols, and the Convention on the Rights of the Child articulate comprehensive duties of care, education, and health, persistent violations expose the gulf between normative commitments and lived realities. Through a doctrinal and interpretive methodology grounded in treaty law, jurisprudence, and United Nations practice, the study reveals the structural and political obstacles that undermine enforcement, including the fragmentation between humanitarian and human rights regimes and the erosion of accountability. Ultimately, it contends that the true measure of lawful occupation lies not in preserving administrative order but in preserving childhood itself.

**Keywords:** Law of occupation; child victims; international humanitarian law; human rights law; Geneva Conventions.

## **Introduction**

In the contemporary landscape of armed conflict, children have emerged as the most tragic barometers of human suffering. Nowhere is this more apparent than in occupied territories, where the daily realities of violence, deprivation, and fear converge to dismantle the very essence of childhood. From Gaza and the West Bank to parts of Ukraine and Syria, the physical destruction wrought by warfare is mirrored by an invisible but equally devastating erosion of the psychological, developmental, and social foundations of young lives. These children, born into occupation, experience a form of existence in which the ordinary boundaries between war and peace have collapsed. Their vulnerability transcends physical exposure to hostilities; it extends to displacement, loss of education, trauma, and the denial of identity and belonging. Within this humanitarian tragedy lies a profound legal and moral question: What are the rules governing the conduct of an occupying power towards child victims of armed

conflict, and how do these rules succeed or fail in ensuring meaningful protection? This inquiry, though deceptively narrow in its framing, cuts to the very heart of modern international law. It challenges the coherence of the law of occupation as a branch of *jus in bello*, while simultaneously testing the normative resilience of the international community's human rights commitments in contexts where sovereignty, control, and accountability are most contested. The question is not merely about compliance with codified obligations but about the survival of humanitarian purpose itself within the machinery of military governance. The relevance of this inquiry extends beyond doctrinal curiosity. It exposes a crucial intersection between *jus in bello* and *jus post bellum*, between the rules designed to regulate the conduct of hostilities and those intended to restore dignity and order in their aftermath. The protection of children, as a normative principle, embodies the moral bridge between these two domains. The child in occupation is not merely a passive civilian shielded by the laws of war; rather, the child represents a distinct subject of international concern whose rights demand an integrated application of humanitarian and human rights norms. Thus, the study of how occupying powers interact with child victims offers not only a measure of legal fidelity but also a moral compass for the legitimacy of occupation itself. Yet, the distance between legal aspiration and lived experience remains vast. The Fourth Geneva Convention, the Additional Protocols of 1977, and the Convention on the Rights of the Child articulate elaborate protections for children in times of war and occupation. They enshrine the obligations of occupying powers to safeguard health, education, nutrition, and moral well-being; to prohibit deportation or forced transfer; and to facilitate humanitarian access without discrimination. Nevertheless, the repeated images of bombed schools, besieged hospitals, and displaced families reveal a

stark dissonance between legal norms and operational realities. This dissonance is not simply the result of law's inadequacy, but of the erosion of political will, the instrumentalization of humanitarian law, and the collapse of accountability mechanisms under the weight of *realpolitik*.

The existing literature has grappled with aspects of this dilemma, examining, for example, the convergence of *lex specialis* principles between international humanitarian and human rights law, or the jurisdictional reach of international courts in occupied territories. However, relatively little scholarly attention has been devoted to the specific plight of children as rights-holders within the law of occupation, and to how their protection exposes the normative fault lines of that regime. This article seeks to fill that gap through a comprehensive legal and normative analysis that situates the child not at the periphery but at the core of the humanitarian project. Methodologically, the study adopts a doctrinal and interpretive approach grounded in treaty analysis and supported by jurisprudence and practice. It draws upon the Fourth Geneva Convention (1949), Additional Protocols I and II (1977), and the Convention on the Rights of the Child (1989), as well as the relevant case law of the International Court of Justice, the International Criminal Court, and United Nations fact-finding mechanisms. Through this triangulated analysis, the article explores both the scope and the effectiveness of the occupying power's duties in contemporary contexts of prolonged occupation. The structure of the article unfolds as follows. Part II establishes the conceptual and legal framework, defining the notions of "occupation" and "child victims" and identifying the relevant sources of law. Part III examines the substantive obligations of the occupying power, protection, care, humanitarian assistance, and accountability, while engaging with case studies that reveal their

practical shortcomings. Part II analyzes the systemic gaps and challenges within the current legal architecture, including the fragmentation between humanitarian and human rights regimes and the political impediments to enforcement. Finally, Part V advances a child-centered reinterpretation of occupation law and proposes policy and institutional reforms to strengthen accountability and ensure effective protection.

In essence, this article argues that the legitimacy of any occupation, in both legal and moral terms, must be measured by its treatment of children. The occupying power's compliance with humanitarian obligations is not a mere technical requirement but a litmus test of its adherence to the broader values of international law, the preservation of human dignity, the restraint of force, and the promise of a future in which even under occupation, childhood may endure.

## **I. Conceptual and Legal Framework**

### ***a) Definition and Scope of "Occupation" and "Child Victims."***

The concept of occupation occupies a central place in the law of armed conflict, marking the delicate boundary between the exigencies of military control and the preservation of civilian life under foreign authority. The classical definition, codified in Article 42 of the 1907 Hague Regulations, provides that "territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised." Article 43 of the same instrument imposes upon the occupying power the obligation to "take all measures in its power to restore, and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country." These provisions, concise yet profoundly consequential, anchor the modern law of occupation in

a duality of control and restraint: the exercise of authority by the occupier and the continued protection of the occupied population<sup>1</sup>.

The Fourth Geneva Convention of 1949, particularly Article 2, reinforces and expands this framework, applying its provisions “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the occupation meets with no armed resistance.” Thus, the legal status of occupation arises not from the formal declaration of annexation or recognition by the occupied State, but from the factual existence of effective control exercised by foreign forces<sup>2</sup>. The contemporary jurisprudence of the International Court of Justice and the International Criminal Tribunal for the Former Yugoslavia has reaffirmed this functional understanding, emphasizing that occupation is a situation of fact characterized by the substitution of the occupying power’s authority for that of the sovereign<sup>3</sup>.

Within this legal matrix, the notion of the child victim assumes particular significance. The Convention on the Rights of the Child, in Article 1, defines a child as “every human being below the age of eighteen years,” while Article 38 specifically mandates States Parties to respect and ensure respect for international humanitarian law rules applicable to children in armed conflict<sup>4</sup>. The Optional Protocol to the CRC on the involvement of children in armed conflict further strengthens this protection by prohibiting the direct participation of

---

<sup>1</sup> Human Rights Watch. *Gaza: Attacks on Schools, Hospitals, and Civilian Infrastructure*. New York: HRW, 2024. <https://www.hrw.org/middle-east/north-africa/israel/palestine>

<sup>2</sup> Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. August 12, 1949. 75 U.N.T.S. 287. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

<sup>3</sup> International Criminal Tribunal for the former Yugoslavia (ICTY). *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgment, 3 March 2000. <https://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf>

<sup>4</sup> Convention on the Rights of the Child. U.N. General Assembly, Resolution 44/25, November 20, 1989. U.N. Doc. A/RES/44/25. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

persons under eighteen in hostilities and imposing on States the duty to prevent recruitment and to promote rehabilitation. Yet the term “child victim” in the context of occupation extends beyond the immediate exposure to violence or displacement<sup>5</sup>. It encapsulates the multifaceted harms, physical, psychological, social, and developmental, that arise when a child lives under the prolonged coercive power of a foreign authority. The child victim is thus situated at the intersection of vulnerability and agency: vulnerable due to dependence, displacement, and trauma; yet a bearer of inalienable rights under international law. In this sense, the child is not merely an object of protection but a subject of rights, whose condition tests the humanitarian and moral legitimacy of the occupying power’s governance. The intersection between international humanitarian law and international human rights law is particularly pronounced in this domain. While IHL traditionally governs the conduct of parties in armed conflict, IHRL continues to apply concurrently, subject only to lawful derogations in times of emergency. The ICJ’s jurisprudence most notably in the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004) has affirmed that human rights obligations do not cease in situations of occupation<sup>6</sup>. Rather, they operate in parallel with IHL, ensuring that the occupying power remains bound by both the *lex specialis* of humanitarian law and the broader guarantees of human dignity inherent in human rights treaties.

---

<sup>5</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. U.N. Doc. A/RES/54/263, May 25, 2000. <https://www.ohchr.org/en/instruments-mechanisms/instruments/op-crc-armed-conflict>

<sup>6</sup> International Court of Justice. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136. <https://www.icj-cij.org/case/131>

In this convergence lies both strength and tension: strength in the complementary protection it affords to child victims; tension in the overlapping jurisdictions, interpretive ambiguities, and enforcement gaps that often allow violations to persist unchecked. Understanding the legal scope of “occupation” and “child victimhood,” therefore, demands not only a reading of treaties but a recognition of their interdependence in practice, a recognition that the protection of children under occupation represents the ultimate test of the coherence and humanity of international law itself<sup>7</sup>.

***b) Sources of Law Governing the Conduct of the Occupying Power***

The legal obligations of an occupying power toward child victims are drawn from a complex and interwoven body of international norms, treaty law, customary law, judicial decisions, and soft-law instruments. The core of this regime resides in the Fourth Geneva Convention of 1949, which establishes the general duties of occupying powers toward the civilian population. Among its most significant provisions are Articles 50, 51, 55, 56, 70, and 77, which collectively enshrine the occupying power’s obligations to ensure the welfare, education, medical care, and moral integrity of children in occupied territories. Article 50 mandates the occupying power to “facilitate the proper working of all institutions devoted to the care and education of children,” and prohibits any change in the personal status of children or their enlistment in military or paramilitary organizations. Article 51 restricts the requisition of labor, explicitly protecting minors from forced or hazardous work. Articles 55 and 56 impose duties to ensure

---

<sup>7</sup> Henckaerts, Jean-Marie, and Louise Doswald-Beck. *Customary International Humanitarian Law: Volume I – Rules*. Cambridge: Cambridge University Press / ICRC, 2005. <https://ihl-databases.icrc.org/en/customary-ihl>

the provision of food and medical supplies, as well as the maintenance of public health and hygiene, thus acknowledging the occupier's role as a temporary administrator responsible for the civilian population's basic needs. Article 70 prohibits the deportation of protected persons, while Article 77 (read in conjunction with Additional Protocol I, Article 77) articulates the special protection owed to children, requiring that they be the object of "special respect" and safeguarded against all forms of indecent assault or inhuman treatment. The Additional Protocols of 1977 significantly expanded the humanitarian dimension of these duties<sup>8</sup>. Article 77 of Protocol I reiterates the principle of special protection for children, while Article 4 of Protocol II applies similar guarantees to non-international armed conflicts, emphasizing humane treatment and the prohibition of recruitment or participation of children under fifteen in hostilities. Together, these instruments reflect a gradual evolution from a regime of restraint to one of affirmative protection where the occupying power's obligations are not limited to abstention from harm but extend to active measures of care, rehabilitation, and rights fulfillment<sup>9</sup>.

Regional human rights instruments further reinforce this legal edifice. The African Charter on the Rights and Welfare of the Child (1990) goes beyond the CRC by explicitly addressing situations of armed conflict and occupation, obligating States to ensure protection and rehabilitation of affected children. Similarly, the European Convention on Human Rights, through its jurisprudence on

---

<sup>8</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), and relating to the Protection of Victims of International Armed Conflicts. June 8, 1977. 1125 U.N.T.S. 3. <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>

<sup>9</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II), and relating to the Protection of Victims of Non-International Armed Conflicts. June 8, 1977. 1125 U.N.T.S. 609. <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977>

extraterritorial application particularly in *Loizidou v. Turkey*<sup>10</sup> and *Al-Skeini v. United Kingdom* confirms that occupying powers bear human rights responsibilities commensurate with their degree of effective control over a territory<sup>11</sup>. These precedents consolidate the principle that legal responsibility follows factual control, rendering humanitarian obligations unavoidable for any power exercising de facto authority over civilians. International jurisprudence and institutional practice have further clarified the contours of these obligations. In the *Congo v. Uganda* (2005) judgment, the ICJ held Uganda responsible not only for violations committed directly by its forces but also for failing to prevent abuses in the territories under its occupation, including acts affecting children<sup>12</sup>. The Wall Advisory Opinion (2004) reaffirmed the applicability of both humanitarian and human rights law in occupied territories, underscoring the duty of Israel to respect the rights of Palestinians, including children, under the ICCPR, ICESCR, and CRC. Similarly, the International Criminal Court's preliminary examinations concerning the situation in Palestine have recognized the targeting and displacement of children as potential war crimes under Articles 8(2)(a) and 8(2)(b) of the Rome Statute. Reports by United Nations human rights bodies and special mechanisms have echoed these findings, revealing persistent patterns of violations from unlawful detention and recruitment to denial of humanitarian access against children in occupied territories. These cumulative sources of law and practice affirm that the occupying

---

<sup>10</sup> European Court of Human Rights. *Loizidou v. Turkey*, Application no. 15318/89, Judgment, 23 March 1995. <https://hudoc.echr.coe.int/eng?i=001-57920>

<sup>11</sup> European Court of Human Rights. *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Judgment (Grand Chamber), July 7, 2011. <https://hudoc.echr.coe.int/eng?i=001-105606>

<sup>12</sup> International Court of Justice. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168. <https://www.icj-cij.org/case/116>

power's relationship with the child victim is governed not merely by pragmatic necessity but by a dense web of legal obligations that elevate the protection of children to a core principle of lawful occupation<sup>13</sup>. In synthesis, the normative framework governing the conduct of the occupying power is neither fragmented nor optional. It is an integrated system of obligations that demands both restraint and positive action. The child in an occupied territory thus stands as the ultimate measure of the occupier's compliance with international law: the embodiment of innocence in a space where legality and morality intersect, and where the true purpose of humanitarian law to preserve humanity amid the collapse of peace must find its most faithful expression.

## **I. Obligations of the Occupying Power towards Child Victims**

### ***a) Duty of Protection and Care***

At the core of the law of occupation lies an unambiguous humanitarian imperative: the occupying power bears the duty to ensure the protection, welfare, and dignity of the civilian population under its effective control. For children, whose vulnerability is amplified by dependency and the formative nature of their developmental years, this duty assumes an even more solemn and inescapable character. Protection in this context transcends mere physical safety; it encompasses psychological integrity, access to essential services, and the preservation of identity and family unity. The Fourth Geneva Convention (1949) is explicit in this regard. Article 49 prohibits the forcible transfer or deportation of protected persons from occupied territory, a rule that holds particular resonance for children, whose displacement severs social and familial bonds and

---

<sup>13</sup> Dinstein, Yoram. *The International Law of Belligerent Occupation*. 2nd ed. Cambridge: Cambridge University Press, 2019. <https://doi.org/10.1017/9781108612507>

inflicts long-term psychological harm. Article 50 goes further, obligating the occupying power to “facilitate the proper working of all institutions devoted to the care and education of children” and to refrain from altering their personal status or subjecting them to forced enlistment. These provisions, read in conjunction with Articles 55 and 56, which require the occupier to ensure food and medical supplies and to maintain public health and hygiene, together construct a comprehensive legal shield around the child population of an occupied territory. This duty is not discretionary. It arises from the very premise of occupation as a temporary and fiduciary regime, one in which the occupier, though in control, remains bound by the obligations of stewardship rather than sovereignty. The occupying power may not exploit, neglect, or instrumentalize the occupied population; its authority exists solely to preserve order and protect civilians until lawful governance is restored<sup>14</sup>. When the subject is a child, the moral gravity of this fiduciary role intensifies: the child represents the continuity of the occupied society, its cultural memory, and its future capacity for peace. In practice, however, this protective framework has been repeatedly undermined by the realities of protracted and politicized occupations. Nowhere is this more visible than in the occupied Palestinian territories<sup>15</sup>. In Gaza and the West Bank, decades of military control have eroded the essential conditions of childhood security, education, play, and family unity. Numerous reports by UNICEF, the United Nations Human Rights Council, and independent commissions of inquiry have documented the recurrent violations of

---

<sup>14</sup> Benvenisti, Eyal. *The International Law of Occupation*. Oxford: Oxford University Press, 2012. <https://doi.org/10.1093/acprof:oso/9780199582882.001.0001>

<sup>15</sup> Sassòli, Marco. *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*. Cheltenham: Edward Elgar Publishing, 2019. <https://doi.org/10.4337/9781786438557>

Articles 49 and 50 of the Fourth Geneva Convention, including the arrest and detention of minors, the targeting of schools, the obstruction of humanitarian access, and the deportation or forcible transfer of families. Beyond the immediate physical harms, children in these territories experience profound psychological trauma resulting from constant exposure to violence, fear, and deprivation. Studies by international organizations have found alarming rates of post-traumatic stress, depression, and learning disorders among children subjected to recurring bombardments or living under siege conditions. These realities expose the chasm between the law's aspirational protections and the entrenched culture of impunity that shields violators from accountability. The Israeli occupation, often justified on grounds of security necessity, has evolved into a paradigmatic case of humanitarian regression where the very population the law of occupation was designed to protect is rendered perpetually vulnerable. The duty of care under international law, therefore, must be understood dynamically, not as a static obligation of restraint but as a proactive commitment to restore, rehabilitate, and sustain the conditions necessary for a child's full human development. The occupier's responsibility extends to ensuring access to education, healthcare, adequate nutrition, and psychosocial support that are indispensable to the realization of the rights enshrined in the Convention on the Rights of the Child. Anything less constitutes a dereliction of both legal duty and moral conscience.

***b) Duty to Facilitate Humanitarian Assistance***

In parallel with its duty of protection, the occupying power is bound to facilitate, not obstruct, the work of humanitarian organizations seeking to assist the civilian population. This obligation, rooted in both the Geneva Conventions and customary international

law, is particularly critical where children are concerned, as they are often the primary beneficiaries of food aid, medical relief, and psychological rehabilitation programs. Article 59 of the Fourth Geneva Convention provides that if the population of an occupied territory is inadequately supplied, “relief actions shall be undertaken,” and the occupying power “shall agree to such relief schemes” and “shall facilitate them by all the means at its disposal.” Similarly, Article 70 requires that relief consignments, especially those intended for children, be exempted from discriminatory restrictions and allowed to reach their destinations swiftly. The duty to cooperate with impartial humanitarian organizations, including the International Committee of the Red Cross and UNICEF, is therefore not a matter of political convenience but a binding legal norm that sustains the very purpose of humanitarian law<sup>16</sup>.

In reality, however, humanitarian access is often politicized, delayed, or denied under pretexts of military necessity or security control. This practice is most vividly exemplified in the repeated blockades and restrictions on humanitarian deliveries to Gaza. Despite the clear stipulations of the Geneva Conventions, aid convoys, medical supplies, and even reconstruction materials have been systematically obstructed, producing chronic shortages of food, medicine, and fuel. Children disproportionately dependent on external aid have suffered most acutely from these constraints, facing malnutrition, preventable diseases, and the collapse of healthcare and educational infrastructure. The Security Council has repeatedly reaffirmed the principle of unimpeded humanitarian access in situations of occupation and armed conflict. Resolutions such as

---

<sup>16</sup> International Committee of the Red Cross (ICRC). *How Does Law Protect in War?* Online Casebook. Geneva: ICRC, latest edition. <https://casebook.icrc.org/>

1612<sup>17</sup> (2005) and 1882 (2009) established monitoring and reporting mechanisms on grave violations against children, identifying the denial of humanitarian access as one such violation<sup>18</sup>. The Committee on the Rights of the Child has echoed these concerns, urging occupying powers to ensure full cooperation with humanitarian agencies and to remove administrative or security barriers that endanger children's lives<sup>19</sup>. Nevertheless, the persistence of access denials reveals a structural flaw in enforcement: the absence of effective coercive mechanisms within the humanitarian regime. While the ICRC and UNICEF possess extensive mandates, they depend on the consent of the occupying power to operate, and their activities can be curtailed or conditioned by political or military considerations. The paradox is thus profound: the very entity responsible for creating the humanitarian need also controls the channels of relief. In this asymmetrical relationship, the law's humanitarian promise is subordinated to the occupier's strategic calculus, leaving children once again unprotected by the norms designed for their salvation<sup>20</sup>. To fulfill its duty genuinely, an occupying power must not only allow but actively facilitate humanitarian operations. This entails granting safe passage to relief convoys, ensuring the security of medical personnel, and coordinating with international agencies to prioritize child-focused interventions. A failure to do so transforms the occupier from

---

<sup>17</sup> United Nations Security Council. *Resolution 1612 (2005): Monitoring and Reporting Mechanism on Grave Violations Against Children*. S/RES/1612 (2005). <https://digitallibrary.un.org/record/556783>

<sup>18</sup> International Criminal Court. *Warrant of Arrest for Omar Hassan Ahmad Al-Bashir*, ICC-02/05-01/09, 4 March 2009. [https://www.icc-cpi.int/CourtRecords/CR2009\\_01517.PDF](https://www.icc-cpi.int/CourtRecords/CR2009_01517.PDF)

<sup>19</sup> Machel, Graça. *Impact of Armed Conflict on Children*. Report of the Expert of the Secretary-General, A/51/306. New York: United Nations, 1996. <https://digitallibrary.un.org/record/222874>

<sup>20</sup> International Criminal Court. *Situation in the State of Palestine*, Pre-Trial Chamber I, Decision on Territorial Jurisdiction, 5 February 2021. <https://www.icc-cpi.int/court-record/icc-01/18>

a lawful administrator into an agent of deprivation, undermining the foundational premise of humanitarian law: that even in war, humanity must prevail.

*c) Duty to Ensure Accountability for Violations*

The third pillar of the occupying power's obligation toward child victims is the duty to ensure accountability, a duty that lies at the intersection of state responsibility and individual criminal responsibility<sup>21</sup>. Grave breaches of the Geneva Conventions, including willful killing, unlawful deportation, inhuman treatment, and the targeting of civilians, trigger not only international condemnation but legal responsibility under customary and conventional law. For children, such breaches often translate into lasting scars: orphanhood, loss of education, displacement, and trauma. The framework of state responsibility holds that the occupying power bears international responsibility for all violations committed by its organs, agents, or forces in territories under its control. The ICJ's *Congo v. Uganda* (2005) judgment underscored this principle, holding Uganda liable for breaches of international humanitarian and human rights law in the occupied regions of the Democratic Republic of Congo, including the exploitation of natural resources and harm to civilians. The Court emphasized that control implies responsibility, regardless of whether violations were directly ordered or merely tolerated by the occupying power<sup>22</sup>. At the same time, individual criminal responsibility under international law targets those who personally commit, order, or fail to

---

<sup>21</sup> United Nations, Office of the Special Representative of the Secretary-General for Children and Armed Conflict. *Annual Report on Children and Armed Conflict*. A/78/842-S/2024/384. New York: United Nations, 2024. <https://childrenandarmedconflict.un.org/>

<sup>22</sup> United Nations Human Rights Council. *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem*. A/HRC/56/26, July 2024. <https://www.ohchr.org/en/hr-bodies/hrc/coi-palestine/index>

prevent serious violations. The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia, notably in *Prosecutor v. Blaskić*, established that superiors may incur liability for acts committed by subordinates when they knew or should have known of such acts and failed to prevent or punish them. The Rome Statute of the International Criminal Court codifies these principles, identifying attacks on schools, hospitals, and children as war crimes under Articles 8(2)(a)(i), 8(2)(b)(ix), and 8(2)(e)(iv). The prosecution of former Sudanese President Omar al-Bashir for war crimes and crimes against humanity, including acts affecting children in Darfur, reflects the evolving willingness of international institutions to pierce the veil of political immunity and address grave violations against civilians. Similarly, the ICC's ongoing consideration of the situation in Palestine has opened the possibility of accountability for attacks on civilian infrastructure and the targeting or displacement of children in Gaza and the West Bank, violations that may constitute both war crimes and crimes against humanity. Yet, despite these formal mechanisms, accountability in occupied territories remains largely illusory. Political constraints, selective enforcement, and the geopolitics of Security Council referrals have created a dual system of justice, one for the powerful and another for the powerless. The resulting impunity corrodes the integrity of international law and perpetuates cycles of abuse. In the absence of genuine accountability, the legal protections afforded to children risk becoming symbolic rather than substantive, serving as moral rhetoric rather than enforceable rights. For accountability to be meaningful, it must transcend punishment and encompass restitution, rehabilitation, and guarantees of non-repetition. The occupying power must investigate

violations committed by its forces, provide remedies to victims, and cooperate fully with international mechanisms<sup>23</sup>. Failure to do so constitutes not only a breach of international law but an affront to the very idea of civilization that humanitarian law seeks to uphold.

Ultimately, the duty of protection, facilitation of humanitarian relief, and accountability are not discrete or sequential; they form a continuum of legal and moral responsibility. The treatment of child victims in occupied territories reveals whether an occupying power conceives of its authority as dominion or as duty whether it governs through coercion or through care. The answer to that question defines not only the legality of an occupation but its legitimacy in the eyes of humanity.

## **II. The Gaps and Challenges in the Current Legal Regime**

### ***a) Fragmentation between International Humanitarian Law and Human Rights Law***

One of the most persistent structural challenges in addressing the protection of children in occupied territories lies in the uneasy coexistence and, at times, the outright fragmentation between international humanitarian law and international human rights law. These two normative systems, though convergent in their humanitarian objectives, evolved from distinct historical trajectories and philosophical premises: the former designed to regulate conduct in armed conflict and the latter to protect individuals in peacetime and beyond. The consequence has been a fragmented legal landscape where the scope, applicability, and enforcement of rights fluctuate depending on interpretative choices and political will. The

---

<sup>23</sup> UNICEF. *Not the New Normal: Protecting Children in Armed Conflict*. New York: UNICEF, 2024. <https://www.unicef.org/reports/not-the-new-normal-2024>

International Court of Justice has, in several landmark opinions, sought to bridge this divide. In its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996)<sup>24</sup> The Court affirmed that “the protection of the International Covenant on Civil and Political Rights does not cease in times of war,” recognizing the concurrent applicability of both regimes. Yet, it also noted that the specific *lex specialis* of IHL would govern matters directly related to hostilities. This balancing act between complementarity and hierarchy remains one of the most conceptually contested areas of contemporary international law.

The issue became more concrete in the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004). There, the ICJ reaffirmed the extraterritorial application of human rights obligations, holding that Israel’s responsibilities under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child extend to territories under its effective control. This pronouncement marked a decisive step toward overcoming the artificial territorialism that had long limited the reach of human rights norms. Nevertheless, the reaction of several states contesting the Court’s reasoning on grounds of sovereignty and non-applicability underscored the enduring resistance to fully integrating these legal regimes in situations of occupation. The fragmentation between IHL and IHRL is not merely doctrinal; it has profound operational consequences for child protection. While IHL offers a framework of immediate humanitarian restraint, it is primarily reactive, designed to mitigate harm rather than to secure holistic well-being. By contrast, human rights law is

---

<sup>24</sup> International Court of Justice. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226. <https://www.icj-cij.org/case/95>

proactive and developmental, encompassing long-term rights such as education, identity, and participation. In the context of occupation, where the status quo may persist for decades, the narrow application of IHL alone leaves children perpetually trapped in a regime of “humanitarian minimalism.” Their right to grow, learn, and flourish becomes subordinated to the occupier’s claim of security necessity.

This normative duality also generates jurisdictional ambiguity. International monitoring bodies often operate in silos: human rights treaty committees lack enforcement power, while humanitarian mechanisms depend on political consent. The absence of a unified interpretive authority enables occupying powers to selectively invoke one regime to evade the obligations of the other, applying IHL to justify restrictions while neglecting the developmental and participatory rights guaranteed under human rights law. The result is a system that too often legalizes liminality: a permanent “state of exception” where children’s rights are indefinitely suspended under the pretext of occupation. Bridging this fragmentation requires not only doctrinal synthesis but an epistemological shift, one that reimagines humanitarian law through the lens of human dignity rather than military necessity. The child, as a bearer of indivisible rights, cannot be compartmentalized into wartime and peacetime frameworks. His or her rights to life, education, health, and development are continuous and inalienable, and therefore demand the integrated application of both IHL and IHRL. The jurisprudence of the ICJ provides a normative foundation for this convergence, but the political courage to operationalize it remains elusive.

***a) Political and Practical Barriers to Enforcement***

Even where the legal obligations of the occupying power are clear, enforcement remains the Achilles' heel of the international legal system. The gap between norm and reality is sustained not by legal ambiguity but by political inertia, by the failure of international institutions and states to translate juridical consensus into effective action. Nowhere is this more visible than in the context of protracted occupations, where violations persist not in defiance of law but under its shadow, shielded by the geopolitics of selective accountability. The Security Council, entrusted under the UN Charter with the maintenance of international peace and security, has repeatedly failed to ensure the implementation of its own resolutions concerning the protection of civilians and children in armed conflict. Despite the robust normative framework embodied in resolutions such as 1612 (2005), 1882 (2009), and 2225 (2015), the Council's response to ongoing violations, including the killing and maiming of children, the targeting of schools, and the denial of humanitarian access, has been episodic and politically constrained. The use of veto power by permanent members, often aligned with the interests of the occupying state or its allies, has rendered the Council's protection agenda structurally impotent<sup>25</sup>. At the practical level, the enforcement mechanisms of treaty bodies and monitoring agencies suffer from chronic resource limitations and a lack of coercive authority. Reports issued by the Committee on the Rights of the Child or the Special Representative of the Secretary-General on Children and Armed Conflict, while normatively powerful, depend entirely on voluntary cooperation. Naming and shaming the principal instrument of

---

<sup>25</sup> Ben-Naftali, Orna, Aeyal M. Gross, and Keren Michaeli. "Illegal Occupation: Framing the Occupied Palestinian Territory." *Berkeley Journal of International Law* 23, no. 3 (2005): 551–614. <https://lawcat.berkeley.edu/record/1116215>

enforcement in this domain has diminishing returns when the violators are entrenched in power or enjoy geopolitical immunity<sup>26</sup>. Compounding this institutional weakness is the role of third states. The law of state responsibility, particularly Articles 16 and 41 of the ILC Draft Articles, obligates states not to recognize or assist serious breaches of peremptory norms, including those arising from illegal occupation. Yet, in practice, powerful states continue to provide political, military, and economic support to occupying regimes, thereby entrenching illegality and perpetuating harm. This complicity transforms what should be an individual act of aggression into a collective failure of the international community, one in which the suffering of children becomes collateral to the maintenance of geopolitical alliances.

Children in occupied territories are thus doubly victimized: first, by the violence and deprivation inflicted directly upon them, and second, by the paralysis of the institutions designed to protect them. Their vulnerability is multidimensional, a convergence of physical insecurity, psychological trauma, poverty, and, in some cases, statelessness. The denial of nationality or civil registration to children born in conflict zones further marginalizes them, excluding them from the social and legal fabric of both the occupied and the occupying society. In effect, these children exist in a legal limbo, deprived not only of protection but of recognition itself<sup>27</sup>. The persistence of these barriers reveals a deeper pathology in the architecture of international

---

<sup>26</sup> Committee on the Rights of the Child. *General Comment No. 14 (2013): On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*. CRC/C/GC/14, May 29, 2013. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/14](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/14)

<sup>27</sup> UNICEF. *The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*. Paris, February 2007. [https://childrenandarmedconflict.un.org/publications/ParisPrinciples\\_EN.pdf](https://childrenandarmedconflict.un.org/publications/ParisPrinciples_EN.pdf)

law: the overreliance on state consent as the precondition for enforcement. As long as the occupier's cooperation remains voluntary, the law's capacity to protect children will be subordinated to the logic of power. The challenge, therefore, is not merely to refine norms but to reimagine enforcement to create mechanisms that prioritize victims over politics and transform the moral authority of international law into institutional reality<sup>28</sup>. True protection for children in occupied territories will require a reconfiguration of the international order: one that holds power accountable to principle and reclaims the humanitarian vocation of law from the inertia of diplomacy. Only when the rights of the most vulnerable child under occupation are treated as non-negotiable will the promise of international law move from aspiration to actuality.

### **Conclusion**

The plight of children in occupied territories exposes the deepest fissures of modern international law. Beneath the veneer of codified obligations and solemn declarations lies a troubling paradox: the same legal order that seeks to regulate occupation often enables its endurance. The rules governing the conduct of the occupying power, meticulously articulated in the Geneva Conventions, Additional Protocols, and human rights treaties, have, in practice, been interpreted and applied in ways that prioritize the stability of occupation over the dignity of the occupied. Nowhere is this distortion more evident than in the treatment of children, whose vulnerability

---

<sup>28</sup> United Nations Security Council. *Resolution 1261 (1999): Children and Armed Conflict*. S/RES/1261 (1999). <https://digitallibrary.un.org/record/268996>

magnifies the human cost of this legal and political compromise<sup>29</sup>. To confront this paradox, international law must move beyond procedural formalism toward a moral reorientation grounded in the inherent dignity of the child. The child, as both a victim and a rights-bearer, embodies the moral essence of humanitarian law, the idea that even in war, humanity must prevail. Yet, the prevailing paradigm of occupation remains deeply anthropocentric, shaped by the occupier's prerogatives rather than the occupied population's rights. This imbalance perpetuates a vision of law that manages conflict but does not transcend it. It is therefore imperative to reimagine the law of occupation not merely as a framework of restraint but as an instrument of human restoration one that recognizes the protection of children as a measure of legal legitimacy and moral civilization.

The obligations of the occupying power toward child victims are not acts of charity; they are legal duties that arise from peremptory norms and universal conscience. The duty to protect, care, and facilitate humanitarian assistance finds its foundation not only in the Geneva Conventions but also in the broader corpus of human rights law that affirms the indivisibility of human dignity. Likewise, the duty to ensure accountability for grave violations reflects a moral imperative that transcends borders: the recognition that impunity in the face of children's suffering corrodes the credibility of law itself. When occupying powers exploit legal ambiguities to evade responsibility, the international community must assert that the protection of children is not a discretionary humanitarian gesture, it is a binding legal command anchored in the very idea of humanity.

---

<sup>29</sup> International Court of Justice. *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, July 19, 2024. <https://www.icj-cij.org/case/186>

The persistent fragmentation between humanitarian and human rights regimes and the paralysis of enforcement mechanisms reveal an international order still captive to the politics of power. Yet, the endurance of law depends on its capacity to protect the powerless. The reconstruction of normative coherence, therefore, demands an integrated approach, one that interprets *jus in bello* and *jus post bellum* through the lens of the child's right to life, development, and dignity. In this sense, the protection of children serves as both a test and a catalyst for the evolution of international law itself. A new vision is thus required, one that reconceptualizes the conduct of the occupying power in light of the sanctity of childhood. To occupy is not merely to control territory; it is to assume responsibility for lives. And among those lives, none command greater moral urgency than those of children, whose suffering transcends politics and speaks to the shared conscience of humanity. This moral insight must now find juridical expression: in clearer obligations, stronger accountability, and the unambiguous recognition that the welfare of children constitutes a non-derogable norm. Ultimately, the legitimacy of the law of occupation and indeed, of international law as a whole will not be measured by its procedural coherence or its capacity to preserve order. It will be measured by its fidelity to the fundamental promise of humanity: the preservation of innocence, the safeguarding of potential, and the refusal to normalize suffering. The true test of the law of occupation lies not in the preservation of order, but in the preservation of childhood.