



## HUMANITARIAN LAW PERSPECTIVE: PROTECTION OF CHILDREN AND WOMEN IN ARMED CONFLICT

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Article	Abstract
<p><b>Keywords:</b> <i>Armed conflict, Humanity, Protection of women and children</i></p> <p><b>Article History</b> Received: Aug., 23, 2024, Reviewed: Sept.,19, 2024 Accepted: Oct., 23, 2024 Published: Dec.,02,2024</p>	<p>Several countries in the world are involved in armed conflicts, both internally and with other countries such as Russia and Ukraine, the impact is civilian casualties on both sides, especially women and children, and allegedly violating the provisions stipulated in international humanitarian law. As a result of the armed conflict, hundreds of thousands of civilians fled Ukraine, mostly women and children. Disproportionate attacks in the form of targeting civilians, excessive use of force and restrictions on humanity are violations that are contrary to the principles of humanitarian law. The protection of women and children as a result of armed conflict must be implemented, because it is not only physical, but also psychological, economic, social, cultural, health, and so on. The negative impacts of armed conflict have resulted in the delayed achievement of sustainable development targets in Ukraine, Russia and other affected countries. Conflict resolution requires a humanitarian approach involving the commitment of all parties to carry out their obligations as members of the UN by respecting the provisions of international humanitarian law that apply according to the principle of <i>pacta sunt servanda</i>, making mediation efforts through humanitarian diplomacy, the UN must impose sanctions on both countries if they violate international humanitarian law.</p>

### 1. INTRODUCTION

Women's role in childcare during armed conflict is particularly difficult, and women are particularly vulnerable to violence and sexual abuse perpetrated by perpetrators of armed conflict.<sup>1</sup>

Apart from women, children are the most vulnerable group of civilians affected by armed conflict. Children without fathers or mothers end up living on their own, seeking shelter, food and protection from armed groups everywhere.<sup>2</sup>

<sup>1</sup> Nils Melzer, *Hukum Humaniter Internasional Sebuah Pengantar Komprehensif* (Jakarta, ICRC Indonesia,2019), p.242

<sup>2</sup> *Ibid*, p.244

Other devastating impacts on children's future lives are forced conscription, intelligence service ('espionage'), slavery, and being victims of sexual violence.<sup>3</sup>

Armed conflicts can be caused by territorial disputes, conflicts over natural resources, political ambitions, religious issues, ethnic issues, and others. The impact of armed conflict, provoked in any way, has complex implications not only for the countries concerned but also for their neighbours, and is of great concern to the UN. This is because the UN plays an important role in maintaining international peace and security.

According to a 2022 UN Security Council report, nearly 90% of casualties in armed conflict (war) result in short- and long-term destruction and civilian deaths.<sup>4</sup>

This can be seen from the example of the armed conflict between Russia and Ukraine that began in February 2022 and had a negative impact on both countries and neighbouring countries.

Russia's invasion of Ukraine, its impact on Ukrainian civilians, particularly women and children. A week of Russian attacks on Ukraine resulted in the mass displacement of around 1 million civilians from Ukraine to neighbouring countries.<sup>5</sup>

Based on the description above, the author is interested in writing an article with the title: 'Humanitarian Law Perspective: Protection of Women and Children in Armed Conflict'.

## **2. RESEARCH METHODOLOGY**

The research used "Normative Juridical Legal Research" in accordance with Soerjono Soekanto's opinion that legal research is carried out by examining secondary materials or library materials or library legal research, through searching for books, laws, literature, and other legal materials<sup>6</sup>

## **3. DISCUSSION**

### **3.1 Protection of Children in Situations of Armed Conflict**

The set of rules that limit the humanitarian impact of armed conflict and/or the protection of humanity in the world is international humanitarian law (HHI), also known as the law of armed conflict or the law of war (*ius in bello*). HHI consists of rules of

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<sup>3</sup> *Ibid*, p.244

<sup>4</sup> <https://ipdefenseforum.com/id/2023/12/melindungi-warga-sipil-selama-konflik/>, accessed on 26 October 2024

<sup>5</sup> [www.aljazeera.com](http://www.aljazeera.com), accessed on 26 October 2024

<sup>6</sup> Soerjono soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (RajaGrafindo Persada, Jakarta, 2011, hal.12)

international law that establish minimum humanitarian standards that must be observed in situations of armed conflict."<sup>7</sup>

HHI was developed specifically for use in situations of armed conflict. Therefore, parties to an armed conflict cannot justify non-compliance with international humanitarian law on the basis of the brutality of the armed conflict, and must fulfil their humanitarian obligations in all circumstances.<sup>8</sup> HHI regulates the balance between military and military interests.

HHI regulates the balance between military and humanitarian interests, and humanitarian considerations impose certain restrictions on the means and methods of armed conflict and ensure that parties to armed conflict always act humanely.<sup>9</sup>

Parties to an armed conflict must be able to distinguish between ‘civilians and non-civilians’ and ‘protect them from harm caused by armed conflict operations.’<sup>10</sup> Parties to the conflict must exercise caution when conducting armed conflict activities and protect civilians, civilians, and civilian objects at all times.<sup>11</sup>

Parties involved in armed conflict should follow the principle of Proportionality, which means they must be careful when planning or deciding to launch an attack, and must refrain from actions that could harm civilians, cause injury, damage civilian property, or similar matters.<sup>12</sup> Armed conflict actors are expected to uphold decency and humanity towards individuals who are accidentally caught in the midst of fighting, regardless of the status, position, or role of the two parties involved, as mentioned earlier.<sup>13</sup> The explanation of HHI above can be concluded to be very concerned and protect the civilian population, civilian individuals and civilian objects.

The explanation of HHI above can be concluded to be very concerned and protect the civilian population, civilian individuals and civilian objects, so that whatever armed conflict occurs, it must respect and implement HHI towards the civilian population, in this writing focusing on the civilian population is children and women who occur due to armed conflict between Russia and Ukraine.

An international legal treaty that provides guidelines on the protection of children and women during situations of armed conflict is the UN Convention on the Rights of the

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<sup>7</sup> Hukum Humaniter Internasional Sebuah Pengantar Komprehensif, p.17

<sup>8</sup> *Ibid*, p.17

<sup>9</sup> *Ibid*, p.18

<sup>10</sup> *Ibid*, p.18.

<sup>11</sup> *Ibid*, p.19.

<sup>12</sup> *Ibid*, p.19

<sup>13</sup> *Ibid*, p.20.

Child (CRC). Adopted in 1989, the Convention recognises the rights of children and provides special protection for them, especially in emergency situations such as armed conflict. Article 38 of the Convention on the Rights of the Child states that the states involved must make every effort to protect and care for children involved in situations of armed conflict.<sup>14</sup>

The Optional Protocol to the UN Convention on the Rights of the Child (OPAC) is a treaty established in 2000, focusing on the participation of children in situations of armed conflict. The OPAC establishes a prohibition on recruiting children under the age of 18 into the military and provides extra protection for those involved in or affected by conflict.<sup>15</sup>

The Hague Convention underscores the importance of protecting children in difficult situations, such as times of conflict, and recognises the importance of learning in keeping children safe.<sup>16</sup>

A number of International Humanitarian Guidelines in situations of armed conflict, including HHI, the Geneva Conventions, and additional protocols, together provide protection to individuals not engaged in combat, including children. Because children are the future heirs of every country in the world, therefore, they should not be involved in armed conflict. There are also UN Security Council Resolutions, namely Resolutions 1612<sup>17</sup> and 1882<sup>18</sup>, which focus on the protection of children during armed conflict. These resolutions recognise the adverse effects of war on children and call for measures to protect them. States are obliged to take necessary measures to protect children affected by situations of armed conflict.

UNICEF's 2022 report<sup>19</sup> is deeply saddened and concerned about the impact of the Russian and Ukrainian armed conflict on the lives and well-being of some 7.5 million children in the country of Ukraine. The armed conflict has damaged water infrastructure and educational facilities that are vital to both Ukraine and Russia.

The impact of this is that many children are forced to flee their homes and become refugees, either within their own country or to neighbouring or other countries, losing secure and stable livelihoods and becoming homeless. As a result, armed conflict often closes

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<sup>14</sup> <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak>, accessed on 2 November 2024

<sup>15</sup> [https://Bankdata.Kpai.Go.Id/Files/2016/06/Lampiran-Undang-Undang-Ri-Nomor-9-Tahun-2012\\_Tentang-Protokol-Opsional-Konvensi-Hak-Hak-Anak-Mengenai-Keterlibatan-Anak-Dalam.Pdf](https://Bankdata.Kpai.Go.Id/Files/2016/06/Lampiran-Undang-Undang-Ri-Nomor-9-Tahun-2012_Tentang-Protokol-Opsional-Konvensi-Hak-Hak-Anak-Mengenai-Keterlibatan-Anak-Dalam.Pdf), accessed on 2 November 2024

<sup>16</sup> Ibid, p.14

<sup>17</sup> <https://documents.un.org/doc/undoc/gen/n05/439/59/pdf/n0543959.pdf>, accessed on 2 November 2024

<sup>18</sup> <http://unscr.com/en/resolutions/doc/1882>, accessed on 2 November 2024

<sup>19</sup> <https://www.unicef.org/indonesia/id/siaran-pers/pernyataan-direktur-eksekutif-unicef-catherine-m-russell-tentang-anak-anak-di-ukraina>, accessed on 2 November

schools or destroys school buildings, depriving children of the opportunity for formal education and ultimately affecting their future them."<sup>20</sup>

The most distressing impact from a human, family, community and government perspective is psychological trauma. They witness first-hand violence, death and loss of family, experience unstable lives, are more vulnerable to stress, and are more likely to experience mental health problems. In addition to abuse and exploitation, it is terrible and sad that children are also at risk of physical and sexual abuse and exploitation.<sup>21</sup> In armed conflicts, they are usually recruited by armed groups on both sides.

Children suffer from physical health problems such as lack of access to health services and nutrition as well as physical injuries caused by direct violence by parties involved in armed conflict. A particularly tragic event is family separation. When armed conflict attacks occur, entire families have to flee and the emotional and psychological well-being of children is affected. Finally, children experience social instability. This means that as they grow older, it becomes more difficult for them to form healthy social relationships and the ability to participate in society in the future.<sup>22</sup>

The above impacts not only affect children today, but can also have serious long-term implications for their development and the stability of society as a whole. Therefore, appropriate considerations and interventions are essential to support children affected by armed conflict.

The HHI toolkit, the UN Convention on the Rights of the Child, the Optional Protocol to the UN Convention on the Rights of the Child (OPAC), UN Security Council Resolutions and the Geneva Conventions, emphasise the critical importance of the protection of children's rights in the context of armed conflict being understood, lived and implemented by states in armed conflict and the UN to take the necessary measures to protect children affected by armed conflict children as the next generation of the nation in any country in the world. So the role of the law and the role of states in conflict and the role of the UN must be firm and humane to contribute to the creation of a safer and more favourable environment for future generations, and reduce the long-term impact of conflict.

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<sup>20</sup><https://www.unicef.org/indonesia/id/siaran-pers/pernyataan-direktur-eksekutif-unicef-catherine-m-russell-tentang-anak-anak-di-ukraina> ,accessed on 9 November 2024

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

### 3.2 Protection of Women in Situations of Armed Conflict

In the context of international law, there are several important instruments that provide regulation and protection for women in situations of armed conflict or dispute. Some of them are:

- 1) Geneva Convention 1949<sup>23</sup>: This Convention provides for the protection of individuals not participating in hostilities, including women. This part of the Convention emphasises the need for special protection for women, especially those who are pregnant or breastfeeding.
- 2) Additional Protocols I and II (1977)<sup>24</sup> to the Geneva Conventions: The Protocols emphasise the need for protection of women in international armed conflicts (Protocol I) and in non-international armed conflicts (Protocol II). It also emphasises the prohibition against sexual violence and degrading treatment of women.
- 3) UN Security Council Resolution 1325 (2000)<sup>25</sup>: This resolution recognises the important role of women in conflict prevention and resolution and in peacekeeping. It encourages women's participation at all levels of decision-making and calls for the protection of women and children in conflict situations.
4. Committee on the Elimination of Discrimination against Women (CEDAW)<sup>26</sup>: CEDAW is an international instrument that regulates women's rights in general, including in the context of conflict. In a state of emergency or armed conflict, states must ensure the protection and fulfilment of women's rights.
5. Other international documents and principles: There are also various other documents, declarations and principles that provide guidance on the protection of women in emergencies, such as the 1995 Beijing Declaration and Plan of Action.
6. International Human Rights Governance: Several human rights law instruments, such as the International Covenant on Civil and Political Rights, also provide protection for individuals, including women, in conflict situations.

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<sup>23</sup> Ismail, Isplancius. "Penerapan Konvensi Jenewa 1949 Dan Protokol Tambahan 1977 Dalam Hukum Nasional Indonesia (Studi tentang Urgensi dan Prosedur Ratifikasi Protokol Tambahan 1977)", *Jurnal Dinamika Hukum*, (Volume 13 No. 3 September 2013), p. 368.

<sup>24</sup> *Ibid*, p.372

<sup>25</sup> Kawalo, Monica Putri A., "Peranan Perserikatan Bangsa-Bangsa (Pbb) Terhadap Perlindungan Perempuan Dan Anak Pada Saat Perang", *Lex Et Societatis* (Vol. VII/No. 2/Feb/2019), p.17

<sup>26</sup> Adwani, "Perlindungan Terhadap Orang-orang Dalam Daerah Konflik Bersenjata Menurut Hukum Humaniter International", *Jurnal Dinamika Hukum*, (Vol. 12, No.1 Januari 2012), p.99

These protections are particularly important given that women are often victims of sexual and other forms of violence in conflict situations, so international law seeks to provide a framework for the protection and restoration of their rights.

Since the Russian invasion of Ukraine began on 24 February 2022, women and children make up the bulk of Ukraine's civilian population. Around one million people from Ukraine fled to neighbouring countries, and this number will continue to rise.<sup>27</sup>

The Russian invasion of Ukraine, which began on 24 February 2022, had negative consequences for many people, especially Ukrainian civilians, especially women and children. One million people fled Ukraine just one week after the Russian invasion began. This number is expected to continue to rise.<sup>28</sup>

Pramila Patten, UN Special Representative on Sexual Violence in Conflict, said that the conflict in Ukraine increases the likelihood of sexual violence and exploitation. The harm to the civilian population of Ukraine, including women and children, is not just physical; it also includes mental, economic, social, cultural, health and other aspects.

In Ukraine and other affected countries, the conflict has delayed the achievement of sustainable development goals.<sup>29</sup>

24 February 2022 is the anniversary of the Russian invasion of Ukraine. Because of the war, many people have died, many people have been displaced, and many people are starving. Although they are constantly facing shelling, civilians are trying to survive. The victims of displacement, poverty, and hunger have not stopped, and in recent months, the number of civilian casualties has increased as a result of an increase in the number of bombings."<sup>30</sup>

Direct Impact of the War in Ukraine: After the first year of the war, more than 8,000 civilians were killed 6 million people were displaced in Ukraine, and another 8 million left the country. By March 2023, nearly a third of Ukraine's population was starving.<sup>31</sup>

Ukrainian Civilian Casualties After two years of conflict, the war in Ukraine was brutal. More than 10,000 Ukrainian civilians have died since the start of the war. Nearly 5 million Ukrainians remain internally displaced and nearly 6 million are refugees across Europe. In

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<sup>27</sup> [www.aljazeera.com](http://www.aljazeera.com) , accessed on 26 October 2024

<sup>28</sup> [www.aljazeera.com](http://www.aljazeera.com) , accessed on 26 October 2024

<sup>29</sup> <https://www.theindonesianinstitute.com/konflik-rusia-dan-ukraina-menimbulkan-ancaman-langsung-bagi-perempuan-dan-anak/>, accessed on 9 November 2024

<sup>30</sup> <https://www.wfpusa.org/articles/ukraine-after-2-years-war-how-conflict-has-affected-civilians/>, accessed on 9 November 2024

<sup>31</sup> <https://www.wfpusa.org/articles/ukraine-after-2-years-war-how-conflict-has-affected-civilians/>, accessed on 9 November 2024

total, more than a third of Ukrainians are refugees. The war has also had a devastating impact on the mental health of Ukrainians. Many people constantly live in stress and anxiety due to the threat of missiles and artillery, with 30% of the population suffering from mental health disorders."<sup>32</sup>

Therefore, the UN needs to continue to urge Russia to stop its invasion. In addition, Russia and Ukraine should choose the path of dialogue rather than war in resolving their conflict of interest. Finally, Indonesia through its Foreign Minister and President can mediate between Russia and Ukraine to resolve their conflict, as Indonesia has no direct interest in either side. Moreover, Indonesia is currently the Chair of the Group of Twenty Presidency. However, war cannot be tolerated given the many negative impacts it has caused."<sup>33</sup>

The author concludes from the above, the armed conflict between Russia and Ukraine lasted two years, has reached a death toll of 10,000 Ukrainian civilians and there is no data on the death toll of Russian citizens. Civilians include women and children. This will result in orphaned children, so that the surviving children can develop into the next generation of the future of both the Ukrainian nation and Russia, which is ultimately the generation of the world nation.

Likewise, children and mothers will become internally displaced persons (IDPs) in Ukraine and neighbouring European countries, estimated to be around 6 million. It can be estimated how life as a refugee will be difficult to continue a normal life with the condition of the threat of missiles and bombs. As a result, children and women will have a disorganised, poor life and will result in the mental health of civilians and suffer from mental health disorders.

The conditions experienced by children and women due to the armed conflict in Ukraine and Russia, a number of United Nations instruments and other international bodies and with all existing regulations, Conventions, laws such as: International Humanitarian Law, Geneva Conventions 1949, Additional Protocols I and II 1977, UN Security Council Resolution 1325, Committee on the Elimination of Discrimination against Women (CEDAW) and several other regulations, can be implemented firmly and boldly in protecting children and women in armed conflict.

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<sup>32</sup> <https://www.wfpusa.org/articles/ukraine-after-2-years-war-how-conflict-has-affected-civilians/>, accessed on 9 November 2024

<sup>33</sup> <https://www.theindonesianinstitute.com/konflik-rusia-dan-ukraina-menimbulkan-ancaman-langsung-bagi-perempuan-dan-anak/>, accessed on 9 November 2024

In fact, UN instruments and other bodies have an obligation to provide protection and care. Children may be the most vulnerable group among populations affected by armed conflict. The UN and international organisations can bring together member states to discuss and address domestic issues beyond national borders, can achieve goals based on the humanitarian politics of each country and can make decisions on their own without being influenced by the power or coercion of other countries and other organisations to protect children and women from armed conflict. This can be achieved where the UN has the integrity and courage to keep countries at peace.

#### **4. CONCLUSION**

International Humanitarian Law, the Geneva Conventions 1949, Additional Protocols I and II 1977, UN Security Council Resolution 1325, the Committee on the Elimination of Discrimination against Women (CEDAW) and several other regulations, have contained and formulated the protection of children and women due to armed conflict. Analysis of the violence and vulnerability of children and women, the UN as an international organisation that aims to create international security and peace, can make mediation efforts through humanitarian diplomacy, and must issue a bold and firm decision and impose sanctions on both countries if they violate international humanitarian law and other regulations through the Security Council instruments independently.

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