Journal of Social Research

E-ISSN: 2828-335x
Vol. 5, No. 12, November 2026, pp. 6073-6081
DOI : 10.55324/josr.v5i12.3574
Journal of Social Research

The Protection of Civilians in Armed Conflict: Between the Validity of Norms and the Effectiveness of International Law

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Keywords:
Legal Positivism; H.L.A. Hart; Normative Validity; International Humanitarian Law; Gaza.

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ABSTRACT

The Gaza conflict raises a fundamental theoretical question concerning the gap between the legal validity of international humanitarian law (IHL) norms and their effectiveness in protecting civilians during armed conflict. This study aims to examine the legal foundations of normative validity and the limitations of legal positivism, particularly H. L. A. Hart's legal theory, in explaining the implementation and enforcement of international humanitarian law. Employing a normative legal research methodology, the study adopts statutory, conceptual, and case-based approaches through an examination of relevant international humanitarian law instruments, reports issued by the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, and official documents of the International Court of Justice (ICJ) and the International Criminal Court (ICC). The findings demonstrate that the legal validity of international humanitarian law norms derives from recognized sources of international law and is not automatically diminished or extinguished by violations or failures of compliance. Hart's concepts of primary rules, secondary rules, and the rule of recognition provide a theoretical framework for understanding the structure, identification, and operation of legal norms; however, their application to the decentralized international legal system requires careful contextual interpretation. Furthermore, the effectiveness of civilian protection depends not only on the existence of legally binding norms but also on state and non-state actor compliance, enforcement mechanisms, international cooperation, and institutional capacity. The study concludes that normative validity constitutes a necessary legal foundation for civilian protection but does not, by itself, guarantee the effective implementation or enforcement of international humanitarian law during armed conflict.

INTRODUCTION

Armed conflict involves not only the use of military force but also the legal obligation to limit its humanitarian consequences (Kwakwa, 2023; Orzeszyna, 2023; Rodenhäuser & Mutasa, 2024; Van Steenberghe, 2022; Цапюк & Царенко, 2025). Civilians face substantial risks of death, forced displacement, destruction of essential infrastructure, and restricted access to humanitarian assistance. International humanitarian law (IHL) regulates the means and methods of warfare and protects individuals who do not, or no longer, participate directly in hostilities. Accordingly, the existence of armed conflict does not absolve the parties of their obligations to comply with applicable legal norms. Humanitarian protection is therefore not

merely a moral consideration external to the law but an integral component of the binding legal obligations that constrain the conduct of parties during hostilities (Belhadi & Benkhellil, 2026; Droege, 2024; Firdausi & Latifah, 2026).

The conflict in the Gaza Strip since October 7, 2023, provides a significant context for examining the implementation of these obligations. The United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel investigated events occurring from that date and identified various alleged violations of international humanitarian law and international human rights law in its 2024 report. The Commission's findings should be understood as investigative documentation and legal assessments conducted within its mandate rather than as final judicial determinations of criminal responsibility (AllahRakha, 2024; Manzi, 2022; Mia, 2025). Nevertheless, these findings provide an important factual and analytical basis for examining how international legal norms are interpreted and applied to conduct during armed conflict. Assessing the applicability of international humanitarian law in Gaza also requires careful consideration of conflict classification, the legal status of the parties involved, the applicability of relevant treaty provisions, and customary international humanitarian law.

International judicial mechanisms further illustrate the legal and institutional complexities surrounding civilian protection (Abuseridze & Kikilashvili, 2025; Ahmad et al., 2024; Fursenko, 2025). In the case of South Africa v. Israel, concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice (ICJ) issued orders indicating provisional measures on January 26, March 28, and May 24, 2024. Separately, on November 21, 2024, the International Criminal Court (ICC) issued arrest warrants for Benjamin Netanyahu and Yoav Gallant in connection with alleged war crimes and crimes against humanity. These proceedings operate within distinct legal frameworks: the ICJ adjudicates disputes concerning state responsibility under international law, whereas the ICC determines individual criminal responsibility under the Rome Statute. Provisional measures ordered by the ICJ and arrest warrants issued by the ICC involve different procedural standards, legal purposes, and consequences. Neither should be interpreted as a final judicial determination establishing responsibility for all alleged violations arising from the conflict (Ablamskyi et al., 2023; Al-Dulaimi & Mohammed, 2026; Van Steenberghe, 2024).

A fundamental legal problem emerges when the existence of binding international norms does not translate into effective civilian protection. Violations of international humanitarian law do not automatically invalidate the norms concerned; rather, they highlight the importance of distinguishing among the legal validity and applicability of norms, compliance by relevant legal actors, and the institutional capacity to investigate, adjudicate, and respond to violations. Normative validity concerns the recognition of a legal rule as binding within the applicable legal framework, whereas legal effectiveness relates to the extent to which that rule is observed, implemented, and enforced in practice. In international law, the identification of applicable legal norms may be guided by Article 38(1) of the Statute of the International Court of Justice, which identifies international conventions, international custom, and general principles of law as sources applied by the Court, while judicial decisions and the teachings of highly qualified publicists serve as subsidiary means for determining rules of law.

Legal positivism provides a relevant theoretical foundation for examining this distinction because it emphasizes the identification and validity of legal norms through recognized legal sources and institutional criteria rather than their moral desirability alone. H. L. A. Hart developed this perspective by distinguishing between primary rules, which impose duties and obligations, and secondary rules, which establish procedures for recognizing, changing, and adjudicating legal rules. Central to this framework is the rule of recognition,

which specifies the criteria through which legal norms are identified as valid within a legal system. However, Hart questioned whether international law possesses the same institutional structure and unified system of secondary rules characteristic of developed domestic legal systems. His analysis of international law, particularly its decentralized institutional structure and the absence of a universally accepted rule of recognition comparable to that found in municipal legal systems, remains a subject of theoretical debate. This tension establishes the central analytical gap addressed in this study: although the validity of international humanitarian law norms can be established through recognized sources of international law, the extent to which Hart's legal positivism adequately explains their practical implementation, compliance, and enforcement within the international legal order requires further critical examination.

This study focuses on the theoretical relationship among normative validity, legal compliance, and enforcement effectiveness rather than providing an exhaustive examination of international humanitarian law provisions or a chronological account of the Gaza conflict. Accordingly, it addresses two principal research questions: (1) How do legal positivism and H. L. A. Hart's legal theory explain the validity of international humanitarian law norms governing civilian protection in Gaza? (2) How does the Gaza conflict illustrate the gap between normative validity and the effectiveness of civilian protection, and what are the limitations of Hart's theoretical framework in explaining this discrepancy?

METHOD

This study employed a normative legal research design incorporating conceptual, legal instrument-based, and case-based approaches. The primary legal materials comprised the Fourth Geneva Convention of 1949, Additional Protocol I of 1977, the International Committee of the Red Cross (ICRC) Customary International Humanitarian Law Database, reports of the United Nations Independent International Commission of Inquiry (A/HRC/56/26 and A/HRC/56/CRP.4), provisional measures orders issued by the International Court of Justice (ICJ) in South Africa v. Israel, and official International Criminal Court (ICC) communications concerning arrest warrants. Secondary legal materials included scholarly books and journal articles addressing legal positivism, H. L. A. Hart's legal theory, and the effectiveness of international law. Data were collected through literature and documentary research and analyzed qualitatively using a descriptive-analytical approach involving three stages: (1) identifying the sources and applicability of relevant legal norms; (2) examining case documents in relation to applicable international humanitarian law; and (3) assessing compliance and enforcement mechanisms. The analysis was limited to the Commission's findings concerning events from October 7 to December 31, 2023, the ICJ's 2024 provisional measures orders, and the ICC's November 2024 arrest warrants. Subsequent legal developments were excluded from the scope of the study.

RESULTS AND DISCUSSION

Basis for the Validity of Civilian Protection Norms

The protection of civilians has its basis in treaties and customary humanitarian law. Its validity is assessed on the basis of the source, scope of application, and the parties to the party, not on moral considerations alone. The analysis needs to distinguish the protection of persons under the control of the opposing party, including through Article 27 of the Geneva Convention IV, from the rules on the conduct of attacks. Both contribute to the protection of civilians, but the elements and methods of implementation are different: Article 27 must also be read together with other rules, including the prohibition of collective punishment and obligations related to humanitarian assistance, and is not the only rule relevant to all military actions.

Validity also demands a distinction between a treaty and customary law. A treaty applies according to the status and scope of the attachment of the parties concerned, whereas customary law is identified through the practice of the state as law (opinio juris), not simply the frequency of the action. Therefore, the applicability of a provision to Israel, armed groups, or other parties should not be assumed solely from the mention of the basic instrument of obligation and the context of the conflict must be explained separately. Recognition of the principles of distinction and proportionality in customary law is important when a norm is claimed to apply more broadly than an obligation under a particular treaty.

From the point of view of legal positivism, the norm of the protection of civilians is recognized through a recognized legal source, and its validity is not automatically lost when a violation occurs. The assessment that an act is a violation uses that norm as a standard. The question of whether norms apply in this way must be distinguished from the question of whether norms are observed, and the argument of validity does not depend on the number of violations reported. The application of these principles to Gaza must rest on the fact that every attack on civilian casualties does not automatically prove a violation, since the assessment requires information about the target, estimated losses, expected military advantages, and appropriate precautions at the time of the attack.

Documentation and Implementation of Norms in Gaza

The Commission of Inquiry's report A/HRC/56/26 examines events since 7 October 2023, including attacks on civilian targets and military posts in Israel as well as Israeli military operations in Gaza, with a review period of 7 October to 31 December 2023. The Commission identified violations of humanitarian law and international human rights law, both by Palestinian armed groups against civilians and in military operations in Gaza, including alleged violations of the principles of distinction, proportionality, and prudence. The findings are the result of the commission's assessment of the evidence it gathered, need to be read according to the mandate and period of the investigation, and do not replace the determination of liability by the competent courts. From a legal theory perspective, the report shows how valid norms are used to assess actions and their impacts.

A number of issues require a separate legal analysis. Population displacement must be examined through the prohibition of forced displacement, the right to leave territory, non-refoulement, and the right of return, which are interrelated but not identical. Siege is not absolutely prohibited, but is subject to the limits of humanitarian law, including obligations related to humanitarian assistance and the prohibition of making civilian starvation a method of warfare. Civilian hospitals are granted special protection under the Geneva IV Convention, and the loss of such protection is only possible under conditions regulated by law, so alleged attacks must be examined on the basis of the status of the facility and concrete circumstances, rather than inferred from damage alone. In all three examples, the fact of damage does not stand alone as proof of the element of violation of conflict documentation becomes material to test the application of norms, not a substitute for legal analysis of the elements and circumstances of each event.

ICJ and ICC: Functions and Limits of Mechanisms

The mandates of the two courts are different: the ICJ handles disputes between states according to its authority, while the ICC examines individual criminal liability under the Rome Statute. These differences determine the basis of authority, procedural standards, and legal consequences, thus also influencing how effectiveness is measured. In the case of South Africa v. Israel, the interim injunctions of January 26, March 28, and May 24, 2024 are binding on the parties according to applicable provisions, but not a final verdict that genocide has been proven. At this stage the Court assesses the requirements to protect claimed rights and prevent irreparable harm during the course of the case. The order indicates that the legal mechanism

is working at a certain stage, not that the subject matter has been decided or that the protection has been effective as a whole.

On November 21, 2024, the ICC's Pre-Trial Chamber I rejected Israel's objection to jurisdiction and issued arrest warrants for Netanyahu and Gallant after deeming that there were reasonable grounds to believe that the two were criminally responsible for alleged war crimes and crimes against humanity. The warrant is a procedural stage, not a guilty verdict, and does not ensure the arrest or cessation of other offenses; criminal liability is determined through the applicable legal process. Both mechanisms demonstrate the existence of legal channels, but their effectiveness depends on authority, procedures, evidence, cooperation, and execution of decisions. The existence of mechanisms is not the same as the final outcome.

Validity of Norms according to Legal and Hart Positivism

The Gaza case confirms the importance of distinguishing the legal status of norms from the behavior of bound parties. Legal positivism asks researchers to first identify the sources and criteria for the applicability of norms; once a norm is discovered, compliance is assessed from the available actions and evidence, without concluding that the violation renders the norm invalid. Within this framework, norms recognized based on legal sources remain the standard of assessment even if alleged violations occur repeatedly. Hart helps map the differences between the rules that establish standards of conduct and the practices of recognition and their application. Norms for the protection of civilians can be understood as primary rules, while the criteria for identifying sources of law and the mechanism for examining alleged violations relate to the functions of recognition and adjudication. This mapping is analytical and not a claim that primary and secondary rules in international law are structured exactly as in national law.

The concept of the rule of recognition cannot be applied mechanically. Article 38 of the ICJ Statute is a provision concerning the law applied by the ICJ, while the rule of recognition is a theoretical concept of the social criteria of the recognition of law; the two are of different levels of analysis and should not be equated. This study therefore uses the doctrine of international law sources to identify norms and Hart's concepts to assess the theoretical issue of the recognition of law, taking into account the debate of Payandeh and A. Green (2021) on whether different structures of international law reduce their systemic character. Structural differences do not mean that international law does not exist: treaties, customary law, courts, and accountability mechanisms provide legal pathways even though their authority and implementation vary. The existence of the ICJ and ICC does not prove that international law has been centralized, but rather indicates a special mechanism with limited authority that must be examined according to its founding instruments and the basis of its jurisdiction. This is the answer to the formulation of the first problem: positivism and Hart explain validity as a matter of identifying norms through the sources and structures of legal recognition, not as the result of their implementation.

Validity and Effectiveness Gaps and Hart's Limitations

In Gaza, valid norms do not necessarily result in automatic protection because their implementation depends on the conduct of the parties and the legal mechanisms available. Effectiveness has to do not only with the presence or absence of written norms, but also with whether obligations are complied with and whether there is an adequate response to alleged violations. The commission's report, the ICJ's interim order, and the ICC's warrant indicate the existence of legal channels, but each has a different status and has not yet proven that safeguards have been effective; the existence of a process must be distinguished from its outcome and from changes in circumstances on the ground. The effectiveness of protection therefore needs to be examined through three dimensions: compliance with substantive obligations, the institution's ability to identify and process alleged violations, and the

implementation of accountability mechanisms. The existence of one dimension does not automatically prove the success of the other.

Enforcement barriers need to be specifically identified, such as jurisdictional limitations, access to evidence, state cooperation, or enforcement of judgments, and not generalized as claims that international law is weak. Article 1 Joint Geneva Conventions, which require states to respect and guarantee respect for the Conventions, are often referred to as the basis for the role of third states, but the content of their obligations depends on interpretation. Studies in Indonesian journals also highlight gaps between norms and their implementation, for example with regard to health facilities.

The theories used have limits. Legal positivism primarily explains the basis for the identification of norms, not why a particular party complies with or violates its obligations. Hart's concept of the structure of rules also does not in itself explain the influence of military strategy, political interests, power imbalances, and institutional capacity. At this point the limitations of the theory serve as analytical findings, not reasons for abandoning the theory: Hart frames the question of the structure of the rules, while other factors are examined through factual and institutional sources. The separation of law and morality in positivism does not take justice out of the analysis; it helps determine whether an argument speaks of legal status, moral quality, compliance, or the outcome of implementation. Thus, the validity of norms is an important condition, but not a guarantee of effectiveness. Two erroneous conclusions need to be avoided, namely that repeated violations erase the validity of norms, and that written and binding norms already mean the protection of run. Both can be avoided by separating validity criteria from effectiveness indicators.

CONCLUSION

Legal positivism, particularly H. L. A. Hart's legal theory, demonstrates the importance of distinguishing the legal validity of norms from compliance with their obligations. Norms governing civilian protection can be identified through relevant international treaties and customary international law, subject to their respective conditions of applicability, while violations do not inherently invalidate these norms. Hart's concepts of primary rules, secondary rules, and the rule of recognition provide a theoretical framework for examining legal obligations and the criteria for identifying valid legal norms. However, their application to international law requires critical consideration because the decentralized structure of the international legal system differs substantially from that of domestic legal systems. Furthermore, Hart's rule of recognition cannot be directly equated with the doctrine of sources of international law, as the two frameworks address distinct dimensions of legal validity and institutional recognition.

The Gaza conflict illustrates a significant discrepancy between the applicability of international humanitarian law and the effectiveness of civilian protection. Reports issued by the United Nations Independent International Commission of Inquiry, together with proceedings before the International Court of Justice (ICJ) and the International Criminal Court (ICC), demonstrate how international legal norms provide a basis for assessing conduct and addressing alleged violations. Nevertheless, these mechanisms have distinct legal functions and procedural implications: investigative reports do not constitute criminal convictions, ICJ orders indicating provisional measures do not represent final judgments on the merits, and ICC arrest warrants do not establish criminal guilt. Although Hart's theoretical framework is valuable for explaining the structure of legal rules and distinguishing normative validity from compliance, it does not fully account for the political, military, and institutional dynamics, including power asymmetries, that influence the implementation and enforcement of international law. Consequently, the effectiveness of civilian protection must be assessed

through actual compliance, institutional capacity, and the practical operation of enforcement mechanisms rather than the mere existence of legally binding norms.

The study recommends maintaining a clear analytical distinction among normative validity, legal compliance, and enforcement effectiveness when applying legal positivism to international humanitarian law. The application of Hart's theoretical framework should be complemented by a systematic examination of recognized sources of international law, institutional arrangements, and enforcement mechanisms. Parties to armed conflicts must comply with the principles of distinction, proportionality, and precautions in attack, facilitate humanitarian relief in accordance with applicable international humanitarian law, and ensure credible investigations into alleged violations. International institutions should be strengthened through lawful cooperation, institutional accountability, and compliance with binding judicial decisions within their respective mandates. Future research should extend this theoretical framework by incorporating international legal compliance theories, power-based approaches, and institutional enforcement perspectives, supported by focused empirical investigations into the effectiveness of international accountability mechanisms in protecting civilians during armed conflict.

FUNDING

This research was carried out independently by the author, so that no institution, organization, or external party provided financial assistance or financial support during the research process.

CONFLICT OF INTEREST

The author hereby declares that there is no conflict of interest in this study. In addition, the author also has no commercial or financial relationship with any party that can be considered potentially affecting the implementation of the research, analysis results, or presentation of findings in this manuscript.

AUTHOR CONTRIBUTIONS

The author is fully responsible for all stages of the preparation of this work, from the development of initial ideas, the implementation of analysis, to the writing and refinement of the manuscript.

GENERATIVE AI STATEMENT

In the process of preparing this manuscript, the author makes limited use of Artificial Intelligence (AI) technology. The use is only intended to help improve grammar and check the accuracy of language use. All ideas, analysis, and substance of the content of the manuscript are entirely the result of the author's thoughts and responsibilities.

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