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**The Occupying Power According to the International Humanitarian Law:
Case Study in Gaza Strip**

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Abstract

Conflict in Gaza Strip involving Israel and Palestine has continuously attracted international concerns. Under the strict authority of Israel, humanitarian issues materialize in the strip as Gaza's inhabitants undergo crises including energy and subsistence while Israel fails to fulfill the basic needs of the people. In 2007, Jaber Al-Bassiouni Ahmed with his associates sought legal remedy to the Supreme Court of Israel to clarify their rights inhabiting the Gaza Strip. The purpose of this article is to explain whether international humanitarian law could be implemented to the occupying power of Israel in Gaza Strip and elucidate the limitation of the occupying power regarded by the law. Achieving this explanation requires a qualitative legal approach. It emphasizes on documents scrutiny using the perspectives of primary, secondary, and tertiary laws. The research result shows that under the regime of international humanitarian law, "alien occupation" is the key to regulate the Gaza Strip against the regime of the occupying power by Israel. The one-year rule in the Case of Gaza Strip indicates that Israel held the occupying power of the territory as not only did Israel act as a controller but also it participated in the physical activities to regulate the lives of Gaza residents in addition to the limitation of the functions of Palestinian Authority posed by Israel.

Keywords: Gaza Strip, International Humanitarian Law, Occupying Power

**Penguasa Pendudukan Berdasarkan Hukum Humaniter Internasional:
Studi Kasus di Jalur Gaza**

Abstrak

Konflik di Jalur Gaza yang melibatkan Israel dan Palestina terus menarik perhatian internasional. Di bawah kekuasaan Israel, isu humaniter mencuat di jalur tersebut karena penduduk Gaza mengalami krisis energi dan mata pencaharian, sementara Israel tidak memenuhi kebutuhan dasar hidup penduduk tersebut. Pada tahun 2007, Jaber Al-Bassiouni Ahmed bersama rekan-rekannya mengajukan tinjauan hukum kepada Pengadilan Tinggi Israel untuk mengklarifikasi hak-hak mereka sebagai penduduk di Jalur Gaza. Tujuan penelitian ini adalah untuk menjelaskan apakah hukum humaniter internasional dapat diterapkan dalam kasus penguasa pendudukan di Jalur Gaza oleh Israel dan menjelaskan batasan kekuasaan pendudukan tersebut. Pendekatan kualitatif hukum berbasis studi dokumen dengan perspektif hukum primer, sekunder dan tersier digunakan dalam penelitian ini. Hasil penelitian ini membuktikan bahwa di bawah hukum humaniter internasional, "pendudukan asing" menjadi kunci regulasi yang dapat diterapkan di Jalur Gaza di bawah resim penguasa pendudukan yakni Israel. Aturan "Satu Tahun" di jalur

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tersebut menunjukkan bahwa Israel memegang kendali wilayah tersebut karena Israel tidak hanya bertindak sebagai pengontrol melainkan juga melakukan kegiatan fisik untuk mengatur kehidupan masyarakat Gaza juga membatasi fungsi-fungsi otoritas Palestina.

Kata Kunci: Hukum Humaniter Internasional, Jalur Gaza, Penguasa Pendudukan

A. INTRODUCTION

It is common that International Humanitarian Law ("IHL") applies in times of international armed conflict.¹ It also applies during the occupation by the opposing party whether in whole, in part or in peace.² The occupation of Israel over the conflicting territory of Gaza Strip materializes humanitarian issue, calling for an international intervention to solve the disputes. As such, IHL plays an especially important role in the case of Gaza Strip that is under the control of the Israel authority. Whether this law can be practically applied to "occupation" issue is still uncertain as there is no normative definition of it. In other words, the word "occupation" seems abstract in the eye of legal language.

However, article 42 of the Hague Regulations mentions that "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation applies only to the territory where such authority is established, and in apposition to assert itself". This implies that a territory can be considered an occupation when the hostile party establishes its occupying power. Occupying power is an authorized presence in the occupied territory while having its rights and obligations towards the civilians' welfare as mentioned in the Fourth Geneva Convention.³ In practice, however, a hostile army entering its opponent's territory do not automatically become an occupying

power. The occupant must meet the requirements of effective control test, as an example, whether there is a military presence and the establishment of temporary administration by the occupant.⁴

Since the advent of Arab-Israeli wars of 1967, Israel had occupied the Palestinian territory of Gaza Strip ever since its victory against the Arab nations. Israel then established a military administration that further brought the occupying power presence for the people who lived in the strip. Since 1993, the representative of Palestinian people, called the Palestinian Liberation Organization, had engaged diplomatic measures with the government of Israel for transitioning the Gaza Strip region from the occupied territory to become an independent territory. During the occupation period, the Israeli armed forces had controlled all the civilian aspects in Gaza Strip, most notably, by conducting arbitrary arrests, limiting the gasoline distribution, and controlling the Gaza Power Plant ("GPP") which supplied the electricity for around 1,8 million people who resided there. On 18 December 2003, the Prime Minister of Israel Ariel Sharon granted the request from Palestinian Liberation Organization and announced the withdrawal of Israeli military presence in the Gaza Strip.

Such withdrawal was not entirely pure since one of the articles of the disengagement plans mentioned that Israel

¹ Cordula Droege, "The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict", *International Law Forum the Hebrew University of Jerusalem*, Vol. 40, No. 2, 2007, pp. 310-312.

² Article 2 of The Geneva Convention of 12 August 1949 (the Geneva Convention); Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, Leiden: Martinus Nijhoff Publishers, 2009, p. 42.

³ Articles 43-78 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (GC IV).

⁴ Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), International Court of Justice, December 19, 2005.

shall own exclusivity towards the air space of Gaza strip, monitor the external perimeter of the strip and exercise the maritime security surrounding the Gaza's coastline. The Israeli forces were able to impose night curfew for Gaza's residents, close the public school and disperse the community organization within the Gaza Strip. This paper will explain whether international humanitarian law could be implemented to the occupying power of Israel in Gaza Strip and elucidate the limitation of the occupying power regarded by the law.

B. INTERNATIONAL HUMANITARIAN LAW

Essentially, International Law only regulates relation between countries. It does not regulate armed conflicts occurring between countries within the territory of a country and between the rulers of colonial territories and kingdoms.⁵ Law of armed conflict (Humanitarian Law) occurs when an event has turned into an armed conflict.⁶ IHL recognizes two types of armed conflict – international and non-international armed conflicts.

1. International Armed Conflict

Article 2 of the Geneva Conventions 1949 (Common Article 2) elucidates the application of the Geneva conventions if the armed conflict that occurs is international. International Armed Conflict (IAC) depicted in the Geneva conventions is applied when there is an armed conflict between two or more countries even though one of the countries in conflict does not recognize the state of the conflict happening.⁷ The implementation of the IAC also applies in the case of the occupation of part or

all of the territory of a country by another country although the occupation does not have an armed resistance.⁸ In addition, the IAC can also be enforced between liberation groups against the ruling government to determine their own destiny (self-determination).⁹ This relates to Article 1 Paragraph 4 of Additional Protocol I of the 1949 Geneva Conventions (API), in which international armed conflicts include:

“An armed conflict situation in which parties fighting against colonial domination, foreign occupation and racist regimes in determining their own destiny as stated in the UN Charter and Declaration on the Principles of Law International relations of friendship and cooperation among States in accordance with the Charter of the United Nations.”

There are no concrete requirements regarding terminology of “people”. However, a group of people can be considered “people” if they occupy an area sharing common language, ethnicity, and culture.¹⁰ The people making efforts to self-determination through armed violence are called National Liberation Movement.¹¹ One of example of the liberation movement associated with the situation in Palestine is the Intifada Movement carried out by the PLO

⁵ Leslie C. Green, *The Contemporary Law of Armed Conflict, 2nd Edition*, Manchester: Manchester University Press, 2000, p. 54.

⁶ A.P.V. Rogers, *Law on the Battle Field*, New York: Manchester University Press, 2004, p. 54.

⁷ Alina Kaczorowska, *Textbook: Public International Law*, London: Old Bailey Press, 2002, p. 465.

⁸ Article 2, Para. 2 Common Articles of Geneva Convention

⁹ The situations are articulated as CAR (Colonial domination, Alien Occupation, & Racist Regimes)

¹⁰ Arlina Permanasari (*et.al.*), *Pengantar Hukum Humaniter*, Jakarta: International Committee of the Red Cross, 1999, p. 134.

¹¹ Leslie C. Green, *op.cit.*, p. 61.

against Israel. This movement reflects the implementation of self-determination although it involves organized armed groups with the armed forces of a country. Thus, this conflict is classified as an international armed conflict.

2. Non-International Armed Conflict

The significant difference between non-international armed conflict and the international one relies on the key parties legally involved in the conflict.¹² In the non-international armed conflict, the parties involved in the conflict are between state and other non-state parties (non-state entity) while in the international armed conflict, the parties embroiled in the conflict are between countries.¹³ Other non-state parties involved in the non-international armed conflicts are included in an Organized Armed Groups.¹⁴ The concept of Organized Armed Groups has not been clearly explained in the practice of non-international conflicts.¹⁵

Non-international armed conflict does not only occur between the state and armed groups but also between armed groups within a country.¹⁶ This understanding arises from the notion of the non-international armed conflict clearly stipulated on Article 1, Additional Protocol II to the 1949 Geneva Convention (PT II) as follows:

"This Protocol developed from Article 3 of the Geneva Convention, 12 August 1949, is applied in the context of armed conflicts that is not

protected by Article 1 of the Additional Protocol 1 of the Geneva Convention (AP I) which take place on the territory of a party between its armed forces against armed groups, organized under a command that is responsible for exercising power over a part of its territory so as to enable them to carry out military operations continuously and enable them to carry out this protocol. This Protocol is not applicable to situations of chaos and tension occurring within a country such as riots, isolated and irregular acts of violence and other similar acts which do not constitute armed conflict".

It can be concluded that non-international armed conflict exists if meeting the following conditions:

- a. The armed group has an organized military forced.
- b. The armed group in the area of command is responsible for and acts in a certain area.
- c. The armed group can implement the contents of the conventions.
- d. It is not applied to the context of riots and other acts of violence that are irrelevant to the armed conflict.

The provisions of international humanitarian law applied in the context

¹² Haryomataram, *Sekelumit tentang Hukum Humaniter*, Surakarta: Sebelas Maret University Press, 1994, p. 20.

¹³ *Ibid.*

¹⁴ Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International*

Humanitarian Law, International Committee of the Red Cross, Geneva: International Committee of the Red Cross, 2009, p. 31.

¹⁵ *Ibid.*, p. 30.

¹⁶ A.P.V. Rogers, *op.cit.*, p. 218.

of non-international armed conflict include Article 3 of the general requirements of the 1949 Geneva Convention. This implies that protection is carried out following the principle of non-discrimination against every *hors de combat*, civilian population and non-combatants in any non-international armed conflict that occurs in the conflict area of a party to the convention and binds the parties to the conflict.¹⁷ However, an armed conflict, originally non-international, may become an international armed conflict when foreign countries perform an intervention to support organized armed groups or the conflict involves the stated and the organized armed groups.¹⁸ A non-international armed conflict can be classified as international one if:¹⁹

- a. Countries in which its territory sparking armed conflict recognize the rebels as belligerent of warring parties.
- b. One or more foreign countries assist one of the armed forces in conflict.
- c. The two foreign countries intervene with the armed forces and assist each other in conflict.

C. THE CORE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

In addition, International Humanitarian Law establishes several key principles as follows:

1. The Principle of Distinction

Each party embroiled in an armed conflict must distinguish between combatants and civilians.²⁰ Civilians

cannot be attacked and cannot participate directly in a battle.²¹ The purpose of this Principle is to protect civilians and their objects²². Any combatant who has carried out attacks against legitimate military objectives cannot be subject to legal sanctions.²³ However, any combatant who carries out attacks without differentiating himself from the civilian population can be classified as a violation of IHL. This has been stated in the Kordic and Cerkez case in the International Criminal Tribunal for the Former Yugoslavia (ICTY).²⁴

“The prohibition against attacking civilians stems from a fundamental principle of international humanitarian law, the principle of distinction, which obliges warring parties to distinguish at all times between the civilian population and combatants, between civilian objects and military objectives and accordingly to direct military operations only against military objectives. Article 48 of Additional Protocol I enunciates the principle of distinction as a basic rule. In its Advisory Opinion on the Legality of Nuclear Weapons, the International Court of Justice (ICJ) described the principle of distinction, along with the principle of protection of the civilian population, as

¹⁷ Leslie C. Green, *op.cit.*, p. 24.

¹⁸ *Ibid.*, p. 219.

¹⁹ Pietro Verri, *Dictionary of the International Law of Armed Conflict*, Geneva: International Committee of the Red Cross (ICRC), 1992, p. 35.

²⁰ AP I, Article 48.

²¹ AP I, Article 53, para. 1.

²² API I, Article 48.

²³ API I, Article 52, para. 2.

²⁴ International Criminal Tribunal for the Former Yugoslavia (ICTY), Kordic and Cerkez Case (Appeals Chamber Judgment), para. 54.

“the cardinal principles contained in the texts constituting the fabric of humanitarian law” and stated “States must never make civilians the object of attack.” As the ICJ [International Court of Justice] held: “These fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law.”

As stated above, it is clearly observed that the Principle of Differentiation has held the status as a binding general legal principle. In practice, this Principle mandates each fighting party at all times to be able to distinguish between combatants and civilians as well as between military and civilian objects.²⁵

2. The Principle of Proportionality

An attack is an act of violence against an opponent offensively or defensively.²⁶ In committing to acts of violence, each fighting party is obliged to adhere to this Principle. This Principle has been stated in Article 57, Paragraph 2, Point a (3) of the API as follows:²⁷

“When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected

shall be that the attack on which may be expected to cause the least danger to civilian lives to civilian objects.”

As explained above, every attack carried out by a belligerent in a military operation must be preceded by actions to ensure that the attack will not cause civilian casualties in the form of loss of life, injury, or damage and civilian objects that is excessive compared to a direct benefit military may obtain from the attack.

The Principle also serves as a key consideration by the International Court of Justice when providing an opinion regarding the legitimacy of the threat or use of nuclear weapons. It was stated by Judge Higgins' opinion in the Nuclear Weapons Advisory Opinion as follows:²⁸

“The principle of proportionality, even if finding no specific mention, is reflected in many provisions of Additional Protocol I to the Geneva Convention of 1949. Thus, even a legitimate target may not be attacked if the collateral civilian casualties would be disproportionate to the specific military gain from the attack.”

However, each warring party cannot avoid all the consequences of attacks on the intended military object. Any attack aimed at a military object but causing casualties or civilian damage owing to the attack is categorized as “collateral damage”.²⁹

²⁵ AP I, Article 48.

²⁶ AP I, Article 49, para. 1.

²⁷ AP I, Article 2, point a (3).

²⁸ Legality of the Threat or Use of Nuclear Weapons Advisory Opinion, International Court of Justice, 8 July 1996, para. 19.

²⁹ Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict*, New York: Cambridge University Press, 2004, p. 119.

3. The Principle of Humanity

Essentially, this Principle obliges people who are not involving in an armed conflict (protected person) to be treated humanely. This Principle states that disputing parties are required to pay careful attention to humanity and are prohibited from using violence that can cause excessive injuries and unnecessary suffering.³⁰

4. The Principle of Military Necessity

This Principle dictates that disputing parties are justified in using force to subdue their opponents to achieve the objectives of a military operation. Initially, this Principle can be observed from the Declaration of St. Petersburg, dictating that:³¹

"The only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy and for this purpose it is sufficient to disable the greatest possible number of men."

Although warring parties are allowed to use force, only actions aimed at weakening the opposing forces can be allowed in IHL³².

D. OCCUPATION IN INTERNATIONAL HUMANITARIAN LAW

Although provisions in international law is available regarding military occupation, the scope of the occupation is still problematic. According to Michel Veuthey, military occupation is a juridical concept that cannot be implemented or debated in contemporary armed conflicts, including guerrilla warfare.³³

1. Occupation Definition and Scope

The development of international instruments further results in an international convention describing occupation. The 1907 Hague Regulations, the successor to the 1899 Hague Regulations, dictating that the occupation applies during wartime, where there is a direct control by the opposing country in the territory the occupy.³⁴ As stated in Article 42, an area is considered occupied when there is military power set in the territory of the opposing country.³⁵

The Geneva Convention explicates the scope of occupation in armed conflict. As dictated in Article 2 of the Convention, occupation applies in international armed conflicts whether the territory is occupied only partially or completely.³⁶ Occupation also occurs when there no matches the occupied territories.³⁷ The determination of occupation in international armed conflicts is an element of the *conditio sine qua non*.³⁸ This has been stated in the Blaskic decision at the ICTY explaining that:³⁹

"In order for the International Tribunal to prosecute an individual for grave breaches of the

³⁰ Arlina Permanasari, *Loc.Cit*

³¹ St. Petersburg Declaration Renouncing the Use, in Time of War, of Certain Explosive Projectiles, 11 December 1868.

³² Ian Henderson, *The Contemporary Law of Targeting*, Leiden: Martinus Nijhoff Publishers, 2009, p. 44.

³³ Adam Roberts, *Occupation, Resistance and Law: International Law on Military Occupations and on Resistance*, UK: Oxford University Press, 1985, p. 249.

³⁴ *Ibid.*

³⁵ HR IV, Article 42.

³⁶ Geneva Convention, Article 2.

³⁷ *Ibid.*

³⁸ Tristan Ferraro, "Determining the beginning and the end of Occupation under International Humanitarian Law", *International Review of the Red Cross*, Vol. 94, No. 885, 2012, p. 139, which reads: the determination of an occupation is a *conditio sine qua non* (an important and irreplaceable element.)

³⁹ *International Criminal Tribunal for the Former Yugoslavia (ICTY), Blaskic Case (Appeals Chamber Judgment)*, IT-95-14-1, 28 Oktober 2003, para. 170.

Geneva Conventions under article 2 of the Statute, the offence must be committed, inter alia. (i) in the context of an.....armed conflict..."

From this decision, to prosecute those who violate the law of war it is necessary to determine in advance the nature of the armed conflict that occurs. The first concept of occupation is the result of various international instruments and jurisprudence, including military guidelines. By 1880, Point 41 of the Oxford Manual dictates:⁴⁰

"The territory is regarded occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there."

As expounded above, occupation can be determined based on the *de facto* aspect by the opposing party in the territory they occupy.⁴¹ This has been dictated in the verdict of the United States Military Court at Nuremberg in the Hostages Trial Case that is "whether an invasion has developed into an occupation is a question of fact".⁴² It means that the determination of an occupation is a debate about the facts on the ground. Experts and several international jurisprudences have provided consistent opinions regarding effective control which is the ability of warring parties to exercise their power in the territory they occupy.⁴³ In international jurisprudence, the Military Court at

Nuremberg in the Von List case explains that:

"The term invasion implies a military operation while an occupation indicates the exercise of governmental authority to the exclusion of an established government. This presupposes the destruction of the organized resistance and the establishment of an administration to preserve law and order. To the extent that the occupant's control is maintained and that of the civil government eliminated, the area will be said to be occupied."

In this case, one of the key characteristics of an occupation is the role of the occupying power as government in the region. Other examples regarding effective control are listed out in the Naletilic case at the ICTY where the decision provides several references for the implementation of effective control tests as follows:

- a. The occupying power must be able to replace the power of the previous ruler who do not have the capacity to function properly.
- b. The opposing armies in the area have given up, lost, or withdrawn.
- c. The occupying power has sufficient strength or the capacity to dispatch soldiers within a certain time.

⁴⁰ Tristan Ferraro, *Op.Cit.*, p. 134.

⁴¹ *Ibid.*, p. 135.

⁴² *Ibid.*

⁴³ *Ibid.*, p. 141.

- d. Establishing temporary administrative bodies in occupied territories.
- e. The occupying authorities have instructed orders for civilians in the occupied territories.

2. End of Occupation

According to *Lauterpact/Oppenheim*, an occupation comes to an end if the warring parties occupying the territory have withdrawn their forces⁴⁴ whereas Schwarzenberger argues that an occupation is over if there is no effective control of the warring parties occupying the opposing territory.⁴⁵ Geneva Convention IV, Article 6 Paragraph 3⁴⁶ dictates:

"In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to extent that such Power exercises the functions of government in such territory..."

This means that an occupation is concluded when it has reached one year after the closure of a military operation in the region (one year rule). The warring parties occupying the territory are still bound by the provisions in the convention regarding the obligations of the occupying power to civilians in the territory they occupy.⁴⁷ One of the important factors

in determining the end of the occupation is the change of governmental power in the region.⁴⁸ The occupying power is bound by the law of occupation if it is still able to carry out government functions in the long run.⁴⁹ The final determination of an occupation is a *de facto* and non-substantial action. As was the case of the Iraqi occupation on July 13, 2003, the Coalition Provisional Authority (CPA) enacted Regulation No. 6 outlining the establishment of a power council in Iraqi. However, the board only serves as an advisory board.⁵⁰

3. Types of Occupation

Adam Roberts classifies occupation into three types: (a) Wartime Occupation; (b) Peacetime Occupation; (c) Occupation in Other Forms.⁵¹

a. Wartime Occupation

The most common type of occupation is belligerent occupation. It is also called *occupatio bellica*, meaning that the occupation in the territory of the opponent.⁵² According Von Glahn, international law only recognizes belligerent occupation – the occupation of the opponent's territory in part or whole during the period of war, governed by the Hague Regulations and the Geneva Convention IV.⁵³ It has several characteristics such as (a) committed by belligerents, (b) in the territory of the opposing country, (c) in times of armed conflict, and (d) prior to a ceasefire agreement.⁵⁴ Another type is *Armistice* occupation – a form of occupation happening when a ceasefire is undertaken by the

⁴⁴ Yutaka Arai-Takahashi, *Op. Cit.*, p. 16.

⁴⁵ *Ibid.*

⁴⁶ Geneva Convention, Article 6, para. 3.

⁴⁷ *Ibid.*

⁴⁸ Yutaka Arai-Takahashi, *Op. Cit.*, p. 19.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Adam Roberts, *Op. Cit.*, pp. 261-283.

⁵² Adam Roberts, *Op. Cit.*, p. 261.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

warring parties. This occupation is commonly referred to as mixed occupation or *mixta-bellica pacifica*.

The final type is one-year occupation after a military operation. This occupation applies in the context of an international armed conflict even though there is no resistance in the occupied territory.⁵⁵ A territory is still included in the context of one-year occupation after a military operation as long as the occupying power remains in the territory.⁵⁶ Some occupations continue for some time after the end of resistance and invasion.⁵⁷ The occupation continuing for a long time causes complex legal issues. In this regard, Article 6 of the Geneva Convention IV explicates:⁵⁸

"In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47 to 49,

51, 52, 53, 59, 61 to 77, 143."

This implies that Geneva Convention can be applied on occupied territories that do not take effect one-year rule after the end of military operations by the occupying power. However, during the one-year rule the occupying power has an applicable administration function and is obliged to abide by the 43 Articles listed out in the Article above.⁵⁹

b. Peacetime Occupation

It is arduous to determine the dividing line between war and peacetime. Most of the armed conflicts occurring between countries are carried out in the absence of a formal declaration of war. Since 1945, especially when the UN applied the phrase "use of force" instead of "war". Although IHL is applied during wartime, it is possible to apply IHL during the period of occupation, without resistance in the region.⁶⁰ This is an implication of a peacetime occupation or is referred to as Pacific Occupation or *Occupatio Pacifica*.

c. Occupation in Other Forms

It is so-called Occupation in Other Forms because such occupation in a territory is still disputed and thus, the UN or other international bodies occupy it.

1) Occupation in Questionable Territory

Some occupation take place in areas where its sovereignty status is still legally questionable.⁶¹ Many experts argue that the occupation law cannot be applied in that case as Geneva Convention and the Hague Regulations dictate that

⁵⁵ Geneva Convention, Article 2.

⁵⁶ HRV, Article 42.

⁵⁷ *Ibid.*, p. 271

⁵⁸ Geneva Convention IV, Article 6.

⁵⁹ *Ibid.*

⁶⁰ Geneva Convention, Article 2.

⁶¹ *Ibid.*, p. 279.

occupation must be in the territory of the opposing country. This can be exemplified with the case of Indonesian invasion over East Timor on December 7, 1975. Beforehand, Indonesia had no legal ground to the territory. However, the existence of revolutionary government of East Timor sparked the rebellion of the Fretilin guerrillas which was later criticized by the UN General Assembly resolution and set out the right of self-determination of the people of East Timor.⁶²

When an occupation occurs in an area where the status of sovereignty is still contestable, AP I Article 1 Paragraph 4 explicates that the occupation is applied where the people in the area against colonial domination and alien occupation for the sake of determining their own destiny.⁶³ According to the Article, occupation law can still be applied although the territory's status is questionable.⁶⁴

2) Occupation by the UN or Other International Organization

The UN or Other International Organizations may conduct occupations. Generally, the occupations carried out by the UN reflect the UN efforts to resolve disputes occurring in the territory of the country, either peace enforcement or peacekeeping operations.⁶⁵ The enforcement of other UN occupation laws is still debatable because the UN is not bound by the provisions of the convention on the law of war.⁶⁶

However, many argue that the occupation law can still be applied

to the UN. The illustration can be observed from the case of occupation carried out by South Africa to Namibia.⁶⁷ In 1966, the UN rejected South Africa's mandate for Namibian territory and later declared the Namibian territory to have an international status and was under the UN responsibility.⁶⁸

There has been much debate by experts regarding the responsibilities of the UN regarding the status of Namibia. Sagay argues that the UN Council for Namibia has full power in the states of a state and as a *dejure* government.⁶⁹ However, some experts are of the opinion that the UN does not have a sovereign role, instead the capacity as an administration role in a region.⁷⁰

E. THE CASE OF BASSIOUNI VS THE PRIME MINISTER

1. Facts about the Gaza Strip

a. The War of Arab – Israel

Since 1948, around 150,000 Palestinians have resided in the territory and Israel itself has started to occupy it since 1967 following its victory in the Arab-Israeli war.⁷¹ Although there had been a ceasefire agreement between Israel and Arab countries after 1949, but then the conflict recurred in the previously contested areas.⁷² In 1956, Israel formed a coalition with Britain and France to attack Egypt, which at the time was nationalizing the Suez Canal and neutralizing Palestinian command attacks from the Gaza Strip. Israel succeeded in

⁶² *Ibid.*

⁶³ AP I, Article 1, para. 4.

⁶⁴ Adam Roberts, *Loc. Cit*

⁶⁵ Adam Roberts, *Op. Cit*, p. 289.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, p. 291.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, p. 292

⁷⁰ *Ibid.*

⁷¹ Joel Beinin and Lisa Hajjar, "Palestine, Israel, and the Arab-Israeli Conflict", *Middle East Research and Information Project*, 2014, p. 6.

⁷² *Ibid.*

occupying the Gaza Strip and the Sinai Peninsula.⁷³

In May 1967, Egyptian troops began to enter the Sinai Peninsula which at the time bordered with Israel. The Egyptian army then occupied the Sharm al-Sheikh area on the Southern side of the Sinai Peninsula.⁷⁴ With a diplomatic and military crisis escalating, in June 1967, Israel then attacked the Egyptian and Syrian troops, destroying the air fleet in just a few hours.⁷⁵ Jordan, then acted to support its allies, but was successfully resisted by Israel.⁷⁶ The West Bank, the Gaza Strip and the Sinai Peninsula and the Golan hills are inhabited by Palestinians. Before Israel succeeded in occupying the territory at the end of the Arab-Israel war, the West Bank was occupied by Jordan, the Gaza Strip and Sinai Peninsula were controlled by Egypt while Golan Hills were under the control of Syria.⁷⁷ Israel's success in taking over the disputed territories marked the end of the 1967 Arab-Israel war which lasted for 6 days, making Israel the occupying power.

b. Israel Occupation

After Israel occupied the Gaza Strip in 1967, its military administrative power was served as the dominant party in regulating the lives of citizens residing in the territory.⁷⁸ Imprisonment was used to control

the West Bank and Gaza Strip to prevent and punish Palestinian nationalists who resisted the occupation.⁷⁹ As an estimate, 1550 people received arbitrary arrest without trial during the occupation.⁸⁰

c. Electricity and Gasoline Supply in the Gaza Strip

The Gaza Strip required 244 megawatts (MW) of electricity for the 1.8 million people.⁸¹ A total of 120 MW was accessed through electricity pipes from Israel, 17 MW came from Egypt to the Rafah area, and the remaining 107 MW was intended for power plants in the strip – the Gaza Power Plant (GPP).⁸²

GPP was designed to accommodate an electricity capacity of 140 MW.⁸³ However, the capacity had made supply a limit of 90 MW since 2006.⁸⁴ This was due to the rampant military operations carried out by Israel soldiers and their Air Force bombardment against GPP.⁸⁵ The damage was repaired until the end of 2007. GPP started to function but only generated 80 MW as Israel began to limit the quantity of gasoline needed for GPP operations.⁸⁶ This was because gasoline could be possibly used as a tactic of war by Hamas.⁸⁷

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, p. 7.

⁷⁹ *Ibid.*

⁸⁰ Human Rights Watch, "Israel, the Occupied West Bank and Gaza Strip, and the Palestinian Authority Territories", November 2001 <https://www.hrw.org/reports/2001/pa/isrpa1101.pdf>, accessed on 18th of July 2016.

⁸¹ Position Paper: Electricity Shortage in Gaza: Who Turned Out the Lights?, Mei 2010, <http://www.gisha.org/userfiles/file/publications/Elect>

[ricitypaperEnglish.pdf](#), accessed on 13rd of May 2016, p. 3.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Harvard University, "the Implications of Bassiouni v. The Prime Minister for Humanitarian Professionals in Gaza", August 2010, P.2, <http://www.hpcrresearch.org/sites/default/files/publications/The%20Implications%20of%20Bassiouni%20v.%20Prime%20Minister%20for%20Humanitarian%20Professionals%20in%20Gaza%20->

d. Withdrawal of Israel from the Gaza Strip

In his speech on December 18, 2003, Prime Minister Ariel Sharon dictated that he would withdraw Israeli troops from the Palestinian territories.⁸⁸ This was further stated on the "Roadmap" agreement, stipulating the withdrawal of Israel troops and their citizens from 21 settlements in the Gaza Strips and 4 small settlements in the North of the West Bank and the military installations that protected them.⁸⁹

On July 13, 2005, Israel's chief of staff Dan Halutz began closing the Gaza Strip to non-residents.⁹⁰ The withdrawal began on August 15, 2005 when residents began to be given 48 hours to leave.⁹¹ The Israel government officially withdrew its troops on August 15, 2005.⁹²

e. Israel's Activities after Its Withdrawal

The Israeli and Palestinian authority had entered into an agreement regarding the movement of people and goods from Israel and the Gaza Strip.⁹³ From the Israeli perspectives, the key objectives of the withdrawal and evacuation of their population and IDF soldiers was to abate the prolonged conflict and to improve the economy and living conditions of the Palestinians.⁹⁴

However, the disengagement plan did not purely bring benefits to Palestine as can be seen in the following Agreement:⁹⁵

"Israel will guard and monitor the external land perimeter of the Gaza Strip, will continue to maintain exclusive authority in Gaza air space, and will continue to exercise security activity in the sea off the coast of the Gaza Strip."

This is supported with the facts of Israel's post-occupation activities:⁹⁶

1. Israel has control over the maritime area, air, and the Gaza Strip border.
2. Israel has the right to enter its troops within the Gaza Strip for security, and carry out military actions (e.g., Operation Cast Lead in 2008).
3. The dependence of the Gaza Strip on Israel in terms of water and electricity supplies.

Israel has the power to determine the registration of the population within the Gaza Strip and prohibits the Palestinian Authority from conducting foreign relations.

-%20August%202010_0.pdf, accessed on 18th July 2016.

⁸⁸ Carol Migdalovitz, "CRS Report for Congress: Israel Disengagement from Gaza", <http://file.setav.org/Files/Pdf/Israels-disengagement-from-gaza-crs-2005.pdf>, accessed on 13rd May 2016.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Pnina Sharvit-Baruch, "Is the Gaza Strip Occupied by Israel?", [http://jcpa.org/wp-](http://jcpa.org/wp-content/uploads/2012/02/Kiyum-sharvit-baruch.pdf)

[content/uploads/2012/02/Kiyum-sharvit-baruch.pdf](http://jcpa.org/wp-content/uploads/2012/02/Kiyum-sharvit-baruch.pdf), accessed on 13rd May 2016, p. 132.

⁹⁴ *Ibid.*

⁹⁵ Al-Haq Position Paper, "Operation Cast Lead and the Distortion of International Law", <http://www.alhaq.org/attachments/article/225/OperationCastLeadandtheDistortionofInternationalLaw.pdf>, accessed on 13rd of May 2016.

⁹⁶ Pnina Sharvit-Baruch, *Op.Cit.*, pp. 136-137.

2. The Case of Occupation: Jaber Al-Bassiouni and Others v. The Prime Minister

Case : Bassiouni and Others v. The Prime Minister
Forum : Israeli Supreme Court
No. : HCJ 9132/07 (2007)
Parties : Jaber Al- Bassiouni dan pemerintah Israel
Verdict : 2008

*The Legal Facts*⁹⁷

Jaber Al-Bassiouni, a resident from Beit Hanoun, Najar Maher, deputy of the Coastal Municipalities Water Utility in the Gaza Strip, and 10 Non-Governmental Organization (NGOs) filed a petition against the Ministry of National Security on September 19, 2007. Israel had occupied the territory of the Gaza Strip since its success in repelling Arab Troops in the Arab-Israel war in 1967. Amid the occupation, Israel was involved in providing the necessary goods for the citizens of the Gaza Strips. One of the items provided was electricity and gasoline supplies for the residents in the Gaza Strip. GPP required a supply of gasoline to generate sufficient electricity for the residents in the strip and some of the gasoline supply was derived from Israel.

Following the planned withdrawal of Israeli troops in 2005, Israel had increasingly tightened its guarding over the border of Israel-the Gaza Strip. Various attacks by Hamas made Israel continue to limit the gasoline and electricity supplies to the Gaza Strip. By this, Bassiouni and his associates believed that Israel, the occupying power, still held the obligation for the provision of the needs. Consequently, Bassiouni and his associates argued that Israel had failed to fulfill its obligations under its constitution, local

administrative law, and customary international law. This is also contradictory with: (a) Prohibiting collective punishment; (b) The Principle of Differentiation and Proportionality; (c) The Principle of Military Interests; and (d) The Obligation of the State of Israel as the occupying power to provide electricity and gasoline for the livelihood of the inhabitants of the Gaza Strip.⁹⁸

*The Legal Issue*⁹⁹

Can Israel be classified as the occupying power of the Gaza Strip under an applicable international law?

Verdict

Israel is not classified as the occupying power of the Gaza Strip because since September 2005, Israel has not had effective control over the strip. This fact can be closely observed that the absence of Israel troops in control of the strip indicates that Israeli was not the occupying power in the territory. In addition, the court ruled that Israel did not have the capability to regulate the lives of the inhabitants residing throughout the strip seeing that the control over it was in the hands of the Hamas Group¹⁰⁰.

Consideration

The Court stated that since September 2005, Israel had no longer had effective authority over the Gaza Strip. The Israeli military that previously resided in the strip had been removed based on a decree from the Israeli government and there were no Israeli soldiers in the area. Based on the fact, Israel could not be obliged to protect the lives of the citizens or to maintain security in the territory of the strip based on the occupation law. Israel also did not have an effective function to

⁹⁷ Bassiouni Case, paras. 1-10.

⁹⁸ Harvard University, *Op. Cit.*, p. 3.

⁹⁹ *Ibid.*, para. 12.

¹⁰⁰ *Ibid.*

maintain security and regulate the lives of the civilians in the strip. Based on this fact, the main obligation of Israel towards civilians in the strip came from the form of armed conflict in the territory while the Hamas Group controlled the strip.

3. Occupying Power Obligations in Bassiouni vs The Prime Minister According to IHL

a. The Classification of the Gaza Strip as Occupation Based on IHL

First and foremost, IHL is only applied in times of armed conflict. IHL excludes the possibility of law enforcement outside the context of armed conflict. In this case, an occupation is only applied in the context of an international armed conflict involving two or more States. In the case of the Gaza Strip, it should be noted that Israel is a member State of the 1949 Geneva Convention but not a member State of the first Additional Protocol to the Geneva Convention (AP I). Therefore, to implement the occupation the author relies on the 1949 Geneva Convention as a form of positive law that applies to Israel.

1) An Analysis of the Occupation Based on Geneva Convention

Article 2, Paragraph 2 states that the application of IHL in the cases of occupation is when the occupied territory becomes a territory of a member country (High Contracting Parties). According to Natasha Balendra, the implementation of common Article 2 of the Geneva Convention has generally been discerned that international armed conflict is essentially a conflict

between two or more countries.¹⁰¹ However, the Article is still incomplete when compared to the current situation. This can be seen on the Paragraph 2 of the common Article 2 that:

“The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”

Based on the Article above, Shamgar considers that each paragraph of the Article has 3 different situations and must be interpreted differently, namely: (1) time of peace; (2) during armed conflict, and (3) during the occupation.¹⁰² Therefore, Shamgar is of the opinion that the Geneva Convention in the case of occupation is applied only to the occupation of the territory of a country.¹⁰³ This relates to the opinion of the judges of the International Court of Justice (ICJ) in “The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)”. In that case, the ICJ judge considers that the implementation of occupation in common Article 2 refers to occupation in the territory of a country¹⁰⁴. Therefore, the imposition of occupation through the Geneva Convention constitutes occupation in the territory of a country.

¹⁰¹ Natasha Balendra, “Defining Armed Conflict”, 2007, http://lsr.nellco.org/cgi/viewcontent.cgi?article=1062&context=nyu_plltwp, accessed on 25th of June 2016, p. 2469.

¹⁰² Avinoam Sharon, “Why is Israel’s Presence in the Territories Still Called “Occupation?””, 2009,

<http://jcpa.org/text/occupation-sharon.pdf>, accessed on 13rd of June 2016, p. 10.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

2) An Analysis of the Occupation Based on Geneva Convention Additional Protocol I

Israel has consistently held the view that the classic definition of occupation is only contained in the Geneva IV Conventions regarding the status of the Gaza Strip territory. However, it needs to understand that determining the status of an occupation is a matter of on-the-ground facts.

The Additional Protocol I (AP I) serves as one of the main instruments after 1949 that reveals the case of occupation. The development of existing cases of the occupation has urged experts to further extend a major instrument addressing the occupation of territories whose status is still questionable. The Article 1 of the AP I Paragraph 3 and 4 reads:¹⁰⁵

“This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the

exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

According to Roberts, the Paragraph 4 of the Article above fills the legal vacuum regarding occupation as stipulated in Article 2 of the Geneva Convention.¹⁰⁶ In addition, Bothe, Partsch and Solf assume that the term alien occupation aims to protect cases of occupation when a country occupies a certain state. An area whose territorial status is still questionable, and the people of the area oppose the occupying power in determining their right of self-determination.¹⁰⁷

A case in accordance with Article 1 Paragraph 4 can be observed in the case of the Indonesian invasion of East Timor. The country had invaded East Timor prior to the establishment of the state of Timor Leste from the local government in the region. During the occupation in the East Timor, the country became the occupying power of the territory.¹⁰⁸

The UN General Assembly 3236 recognizes the right to self-determination of Palestinians¹⁰⁹ as shown below:

¹⁰⁵ AP 1, Article 1, paras. 3-4.

¹⁰⁶ Adam Roberts, *Op.Cit.*, p. 254.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, p. 280.

¹⁰⁹ *United Nations, General Assembly, Question of Palestine, A/RES/3236, 22 November 1974.*

(1) Reaffirms the inalienable rights of the Palestinian people in Palestine, including:

- (a) The right to self-determination without external interference;
- (b) The right to national independence and sovereignty

In the case of the Gaza Strip, an example of their practice of self-determination was the presence of the PLO as a representative for Palestinians in the region through diplomatic efforts in the Oslo Accords. In addition, the response of the Palestinians in the Gaza Strip is demonstrated through physical resistance such as the Intifada I and II

3) The Scope of Occupation *Rationae Materiae*

In the legal literature, occupation is generally the control of an area by an occupying power but does not have the title of sovereignty in the area.¹¹⁰ The Article 42 of the Hague Regulation emanates the concept of occupation and further describes what kind of situation can be categorized as an occupation.

Article 42 further dictates that an area can be considered "occupied" when an armed force from an opposing party occupies the territory of the opposing country. The Article 42 also has become a fundamental article and served as a reference in determining the occupation in IHL.

Furthermore, the Article 42 has been used as a jurisprudence reference for judges in determining the status of occupation in an area. However, during the period of occupation of the territory by the state, a criterion is required regarding the level of state control in the territory concerned.¹¹¹

Effective control test is one of the methods commonly used in contemporary IHL. It is effective to use it as a way of making legal findings in a case. This method relies more on a practical approach. In the case of an occupation, the effective control test is determined when an occupying power has controlled the area militarily and has established a temporary administrative power. To exemplify, UPDF (Uganda People's Defense Force) occupied several areas of the DRC (Democratic Republic of the Congo) and established administrative power in the occupied territories. In addition, the UPDF regulates political life in the region by overseeing general elections and establishing new provinces in the region.¹¹²

In the case of the Gaza Strip, during the period of occupation, Israel had established administrative power in the strip. Israel was also involved in regulating the lives of residents. This involvement is proven by the existence of several practices

¹¹⁰ International Committee of the Red Cross, "Occupation and Other Forms of Administration of Foreign Territory", March 2012,

<https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>, accessed on 25th of June 2016, p. 7.

¹¹¹ *Naletilic v. Martinovic*, para. 217.

¹¹² *DRC v. Uganda*, p. 229-230.

carried out by Israel against the citizens of the Gaza Strip such as: (1) Prohibition by Israel regarding the use of wild thyme ingredients as cooking ingredients; (2) use of collective punishment such as curfews, closing and destroying roads, schools, and other community institutions; (3) imprisonment as one of Israel's methods to control the Gaza Strip residents. As such, the Gaza Strip is categorized within the scope of occupation.

b. Israel's Obligation to Provide Civilian's Objects for the Gaza Strip Residents

The occupying power has the obligation to protect and regulate the lives of citizens in the territories they occupy.¹¹³ However, there have been intense debates regarding the time span and conditions an occupying power is obliged to maintain and regulate the lives of citizens. This depends on the scope of the *Rationae Temporis* from the occupation. The scope of *Rationae Temporis* is based on the duration of the occupying power during effective control of the territory.¹¹⁴

However, the implementation of the *Rationae Temporis* occupation has become a matter of debate regarding the facts. Therefore, the determination of Israel's obligation to provide civilian objects in the Gaza Strip depends on the fact whether Israel is still in control of the territory. This can be further scrutinized using the Majority and Minority Approaches

to see the *Rationae Temporis* for the Gaza Strip.

1) The Majority Approach

The Gaza Strip territory has been the subject of debate by experts regarding the concept of occupation in relation to IHL. In this case, Israel had withdrawn all its troops from the Gaza Strip since September 13, 2005. However, this withdrawal poses a further debate whether this marks the end of the occupation. The majority experts (Majority Approach) use the implementation of the *Rationae Materiae* as stipulated in Article 42 of the Hague Regulation, dictating that an occupation is only applied when there is an exercise of power from the occupying power. The criteria for implementing effective control can be seen from the presence of soldiers physically occupying the area, the establishment of a temporary administrative system and the occupying power regulating the lives of citizens in the occupied territory.¹¹⁵

Since September 13, 2005, the territory of Gaza had been completely left by Israeli army. The Israel army had evacuated all soldiers and its citizens to return to their country; (2) The emergence of the Palestinian Authority as the authority that replaced Israel in regulating the Gaza Strip area. However, since Israel has claimed that Gaza is not an "occupied territory", this indicates that the situation has not changed since the withdrawal of Israeli forces from the strip.

2) The Minority Approach

¹¹³ HRIV, Article 43.

¹¹⁴ Nathalie Smuha, "The International law of Occupation in the Israeli - Palestinian Conflict",

<https://www.law.kuleuven.be/jura/art/50n4/smuha.pdf>, accessed on 13rd of June 2016, p. 932.

¹¹⁵ Naletilic v. Martinovic, *Loc. Cit.*

Since the decline of the Israeli army as occupying power in the Gaza Strip area, the area still becomes a military target of Israel. The post-occupation military targets culminated during the Operation Cast Lead which began from December 27, 2008 to January 18, 2009. The war triggered many debates considering that Israel continued to launch attacks even though it had withdrawn its troops and had entrusted it under the provisions of Oslo that the Palestinian Authority controls the Gaza Strip. The debate ultimately poses a question about Israel's occupation status in the Gaza Strip.

c. The One-Year Rule in during the Post-Occupation

Some experts whose beliefs were based on the scope of a minority approach discern the end of an occupation does not solely come with the decline of the armed forces from a previously occupied territory. Adam Roberts argues that in some cases at the end of an occupation, the return of the armed forces as an attempt to temporarily control the area is possible.¹¹⁶ This is reflected through the one-year rule in which an occupation has been deemed complete, but the occupying power can still exist in the region.¹¹⁷ The Article 3, Point B of the Additional Protocol I of the Geneva Convention specifies that:

“The application of the Conventions and of this Protocol shall cease, in the territory of Parties

to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.”

As shown above, the application for an occupation has ended one year after the military operation. The Rapporteur of Committee III believes that one of the characteristics of the rule is the end of armed contact between the two parties. Roberts explains that another characteristic of the one-year rule is shown through the strength of the minimal occupying power.¹¹⁸ This can be exemplified through the occupation of East Germany by the Soviet Union after World War II. During the occupation of East Germany until March 15, 1954, the Soviet Union only acted as supervisor of the

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

activities of the German Democratic Republic in the region. Moreover, no resistance was found between the two sides.

In the case of the Gaza Strip, despite the Israeli's troops withdrawal, there are some conditions worth noting:¹¹⁹

1. Israel has a share of control over the border of the Gaza Strip by controlling the air, sea and land areas that border between Israel and the Gaza Strip.
2. Based on the Interim Agreement between Israel and the Palestinian Authority, Israel has the freedom to take security measures in the Gaza Strip such as in the case of Operation Cast Lead.
3. Israel has the power to determine population registers in Gaza Strip territory. It has the discretion to determine whether the residents of the Gaza Strip are classified as Israeli or not.
4. Israel prohibits the Palestinian Authority from conducting diplomacy with other countries.

However, based on experts' views, existing practices and the one-year rule, Israel still has the control over the strip and regulates the lives of the residents. The one-year rule dictates that the occupying power must supervise instead of posing armed contact against the opposing party. As such, as the occupying power, Israel still holds the responsibility to fulfil the

well-beings and security of the residents of the Gaza Strip

D. CONCLUSION

Under the regime of international humanitarian law, "alien occupation" is the key to regulate the Gaza Strip against the regime of the occupying power by Israel. The one-year rule in the Case of Gaza Strip indicates that Israel held the occupying power of the territory as not only did Israel act as a controller but also it participated in the physical activities to regulate the lives of Gaza residents in addition to the limitation of the functions of Palestinian Authority posed by Israel.

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