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The Israeli International Legal Liability Resulted from Gaza Strip Blockade in the Light of International Law Rules.

المسؤولية القانونية الدولية لاسرائيل الناجمة عن حصار قطاع غزة في ضوء قواعد القانون الدولي

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Abstract :

This study deals with the international legal responsibilities resulted from the Israeli blockade on Gaza Strip. Israel announced that the blockade is necessary to limit Palestinian rocket attacks that may threaten the Hebrew State. The research problem appears in the continuation of the Israeli blockade on Gaza Strip since it is contrary to the rules of International law.

The researcher suggests some recommendations to reduce the suffering of Gaza inhabitants like: resuming the peace process which will lead to a Palestinian State, the SC should issue a resolution which ends the blockade, and the SC should also assign the Palestine State to the reconstruction of Gaza Strip, and allow the entry of humanitarian aids.

Key words: IHL: International Humanitarian Law

SC : Security Council

GA: General Assembly

UNOCHA: The UN Office for the Coordination of Humanitarian Affairs

ملخص :

تتاولت هذه الدراسة المسؤولية القانونية الدولية الناجمة عن الحصار الإسرائيلي على قطاع غزة. لقد أعلنت إسرائيل أن الحصار ضروري للحد من الهجمات الصاروخية الفلسطينية والتي قد تهدد الدولة العبرية، تظهر مشكلة البحث في استمرار الحصار الإسرائيلي على قطاع غزة حيث أن هذا الحصار هو مخالف لقواعد القانون الدولي.

ويقترح الباحث مجموعة من التوصيات والتي يمكن تطبيقها للحد من معاناة سكان غزة مثل: استئناف عملية السلام والتي من شأنها أن تؤدي إلى قيام دولة فلسطينية، ينبغي على مجلس الأمن إصدار قرار يفضي إلى إنهاء الحصار، وينبغي كذلك على مجلس الأمن تفويض دولة فلسطين بإعادة إعمار قطاع غزة، والسماح بدخول المساعدات الإنسانية.

الكلمات المفتاحية: المسؤولية القانونية

الدولية لإسرائيل، الحصار، قطاع غزة، قواعد القانون الدولي.

Introduction:

Gaza Strip is located on the coast of the Mediterranean Sea that borders Egypt on the south west and "old Palestine" on the east and north. Gaza makes up part of the Palestinian territories which includes the West Bank.

Israel granted the right of self-autonomy to Gaza through the Palestinian Authority in 1994. Prior to this, Gaza had been subject to military occupation, most recently by Israel from 1967-1994 and administered by Egypt from 1948–1967 and earlier by Great Britain from 1918–1948, and Turkey when Gaza had been part of the Ottoman Empire.

Gaza has an increasing growth of population, it is considered the 13th highest in the world, so it is overcrowded. There is a limited capability to construct new homes and facilities for this growth. The territory is 41 kilometers long, and from 6 to 12 kilometers wide, with a total area of 365 square kilometers . (Rubenberg, 2003,P.52)

Gaza Strip was officially administered by the All Palestine Government, established by the Arab League in September 1948, and the leader was Haj Ameen Alhuseini. All-Palestine Government in Gaza Strip was managed under the military authority of Egypt, functioning as puppet state, until it officially merged into United Arab Republic and dissolved in 1959. From the time of the dissolution of the All-Palestine Government until 1967, Gaza Strip was directly administered by an Egyptian military governor.

Israel occupied Gaza Strip from Egypt in the war of 1967. Pursuant to the Oslo Accords signed in 1993, the PA became the administrative body that governed Palestinian population centers while Israel maintained control the airspace , territorial waters and border crossings with the exception of the land border with Egypt. (Shlaim, 2013,P. 17)

Statement of the problem:

The continuation of the Israeli blockade on Gaza Strip since 2006 which affected all the Gaza inhabitants in all their life aspects. There are five questions which arise as a result of this study.

- 1.What is the Israeli legal responsibility as an occupier towards Gaza inhabitants?
- 2.What is the international legal status of Gaza Strip after the Israeli withdrawal in 2005?
- 3.What is the Israeli Civil responsibility which resulted from the blockade?
- 4.What is the Israeli criminal liability which resulted from the blockade?
- 5.What can the international community do to reduce the suffering and pain for the Palestinians in Gaza?

Significance of study:

The importance of the research appears in proving the Israeli international legal responsibility borne by the Israeli authorities as a result of damage caused to the Palestinian people in Gaza Strip because of the blockade imposed since the beginning of 2006.This study is essential in contributing to the achievement of justice and ending the blockade, according to the rules of international law.

Study approach:

The researcher used the descriptive approach and the methodology of content analysis, so as to describe the facts, analyzing the international legal norms, and trying to know how these norms are applied to the facts related.

Research Division:

Chapter 1:

1. Definition of Blockade:

A blockade is a method of warfare, imposed "to prevent vessels or aircraft of all nations, enemy as well as neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy nation". The blockade was originally regarded as a naval measure, similar to a siege in land warfare. It has developed beyond naval measures to encompass land, technological, and air blockade. (Reynolds, 1998, P. 86.)

A blockade can also be defined as, "constraints, imprisonment and prevention carried out by a state or group of states against a group or state to achieve political goals, economic or social or all of the restrictions imposed on them to give in to its terms.

Under Article 42 of the United Nations Charter, the Security Council is permitted to impose pacific blockades, to "maintain or restore international peace and security".

On the other hand, Article 3 from the General Assembly Resolution 3314 in 1974 mentioned the blockade in case number 3. It states, "(c) The blockade of the ports or coasts of a State by the armed forces of another State"; it is considered an act of aggression. (Yousef, 2011, P.282)

2. The Types of blockade in general:

Blockade is divided into four types:

1. Aggressive military blockade:

This blockade aims to encircle a specific location, city or camp or castle in order to compel the besieged to surrender after the end of ammunition or food in their possession. Nuremberg Military Court which was formed after the World War 2, stated that the military blockade is legitimate when it aims to force the other state to surrender.

2. Naval military blockade:

The interdiction of a nation's lines of communications at sea by the use of naval power. Until the beginning of the nineteenth century, blockades were always a part of a war. This changed when France, Russia and Britain came to the aid of the Greek rebels against Turkey. They besieged the Turkish coast, which led to the battle of Navarino. War was never declared, however, so it is considered the first pacific - peaceful — blockade. The first truly pacific blockade involving no shooting at all, was the British blockade of the Republic of New Granada in 1837, established to compel New Granada to release an imprisoned British consul. (Shajry, 2010, P. 89)

3. Political and diplomatic blockade:

It aims to express the dissatisfaction of a certain state towards an unfriendly act carried out by another state against it. The resolution taken by the GA No. 1761 in 1962 deemed apartheid and the policies enforcing it to be a violation of South Africa's obligations under the UN charter and a threat to international peace and security. Moreover, the resolution requested Member States to break off diplomatic

relations with South Africa, to cease trading with South Africa, and to deny passage to South African ships and aircraft.

4. Economic blockade:

It occurs when a state tries to prevent another state from implementing its own economical and national policy. It aims at preventing the arrival of funds and remittances of money from different banks to the besieged state, the freezing of funds and cutting any business relationships and to prevent the arrival of goods and food stuff for the people of that State. (Legal Center for Freedom of Movement, 2009, P. 29)

3. Types of blockade according to the UN charter:

A. The blockade implemented by an authorization from the security council:

This delegation is given by a resolution taken by the Security Council. Some legal experts say that the blockade derives its force from Article 42 of the UN Charter which permits the Security Council to impose pacific, air and land blockades, to "maintain or restore international peace and security".

B. The blockade implemented without an authorization from the Security Council:

Art. 27 from Hague Convention 1907 states that: In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. (Shukri, 2001, P. 479)

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

According to San Remo manual which is applied in the armed conflicts at sea in 1994, it describes the blockade as a means of war, it asserted that, " A blockade shall be declared and notified to all belligerent and neutral states. The declaration shall specify the commencement, duration, location, and extent of the blockade, and the period within which vessels of neutral states may leave the blockade coastline. (Doswald, 1995, P. 103)

4. The Legal status of Blockade:

Since 1945, the security council determines the legal status of blockades by article 42 of the UN charter, the council can also apply blockades.

According to the not ratified document San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994, a blockade is a legal method of warfare at sea but is governed by rules. The manual describes what can never be contraband. The blockading nation is free to select anything else as contraband in a list, which it must publish .

The blockading nation typically establishes a blockaded area of water, but any ship can be inspected as soon as it is established that it is attempting to break the blockade. This inspection can occur inside the blockaded area or in international waters, but never inside the territorial waters of a neutral nation. A neutral ship must obey a request to stop for inspection from the blockading nation. If the situation so demands, the blockading nation can request that the ship divert to a known place or harbor for inspection. If the ship does not stop, then the ship is subject to capture. If people aboard the ship resist capture, they can be lawfully attacked. (Abdul Monem, 2006, P. 101.)

5.The Requirements for a Legal Natural Blockade :

There are five main conditions concerning the imposition of a legal naval blockade during the course of an armed conflict which Israel must fulfill. The San Remo Manual stipulates that the naval blockade:

1. must be declared and notified;
2. must be effective, which is deemed a question of fact;
3. must be applied impartially to all vessels;
4. cannot prevent access to the ports and coasts of neutral states;
5. must comply with certain humanitarian law obligations. (Heineg, 2009,P.47)

6. -The Sources of International Law on Blockades:

The rules which blockades depend on, are derived and based basically on customary international law, as there is no international treaty available on this subject. Customary law is binding in international law. According to Article 38 of the Statute of the International Court of Justice, the sources of international law are:

a) international treaties, b) international custom c) general principles of law recognized by civilized nations. A binding customary rule is created when many states have for a long time behaved in a certain way and have done so because they felt an obligation to behave in that manner.

Blockades have been in existence for hundreds of years. They were mentioned specifically in the 1856 Declaration of Paris "after the Crimean War" Respecting Maritime Law.

Legal experts and scholars can find the customary rules on blockade in the manuals of the laws of war issued by certain Western countries such as the United States and Britain. In addition, there is a manual prepared by an international group of experts in 1994 called the San Remo Manual. "While some speak about the San Remo Agreement, there was no agreement, but rather a manual". In addition, the general principles of the laws of armed conflict apply also to naval warfare.(Abed Saeed, 2010, P.6)

7. Precedents of Blockades:

There were lots of blockades which can be considered precedents, here are some examples:

1. During the Korean War between 1950 and 1953, there was a blockade which was imposed by the United Nations on North Korea.

2. In 1971, when Bangladesh tried to secede from Pakistan, India applied a comprehensive blockade lasted for about seven months. That blockade affected the civilians life, it was difficult because Bangladesh is a low-lying country, and the annual floods destroy most of the agricultural products in this small country. (Botura, 2010, P. 71)

3. During the Iran-Iraq war between 1979 and 1988, there was a blockade of Shatt el-Arab.

4. Lebanon was blockaded for several months in the 2006 war between Israel and Hizb Allah, and Israel allowed safe passage from Lebanon to Cyprus for humanitarian purposes. (Yousef, 2011, P.282)

These are some examples of the most famous blockades which occurred in the past, and they show that blockade is imposed to implement certain purposes for the countries that practice blockade.

Chapter 2:

1. When did Israel impose the blockade on Gaza?:

The blockades on Gaza Strip include land, air, and sea blockade by Egypt and Israel from 2007 up to this moment. In March 2007, a Palestinian unity government headed by Ismail Haniya was formed. Shortly after, in June, Hamas took control of Gaza Strip seizing government institutions and replacing the Palestinian National Authority with its own. Following the takeover, Egypt and Israel largely sealed their border crossings with Gaza.

Israel claims that the blockade is necessary to limit Palestinian rocket attacks from Gaza Strip on its cities and to prevent Hamas from obtaining other weapons which threaten the Israeli security. (Al-Gaf, 2007, P.23)

Facing mounting international to lift their blockade in response to the Gaza flotilla raid, Egypt and Israel lessened the restrictions starting in June 2010. Israel announced that it will allow all strictly civilian goods into Gaza while preventing certain weapons which can be used for double purposes from entering Gaza.

Egypt used to open the Rafah border from time to another. Following the 2013 Egyptian military coup, Egypt's military has destroyed most of the tunnels which are used for smuggling food, weapons and other goods to Gaza.

The blockade which was imposed on Gaza has been criticized by UN Secretary General Ban Ki-moon, the UNHRC and other human rights organizations, a criticism that has been officially supported by US officials. (Farra, 2009, P.114)

However, a Fact-Find Mission chaired by a former judge of the ICC, as well as a panel of five independent UN rights experts concluded that the blockade constituted collective punishment of the population of Gaza and was therefore unlawful. The ICRC considered the blockade illegal and affects the life of Gaza inhabitants. (Darcy, 2012, P. 211).

2. Is Gaza Strip still occupied by Israel?:

The research arises an important question:

Is Israel up to this moment an occupier?

Some opinions say that since Israel is still in control of Gaza's airspace and adjacent sea, Israel is still the occupier. According to another opinion, under the Hague Regulations of 1907 "Respecting the Laws and Customs of War on Land", occupation has to include full control of the area. "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Article 42, and of course Israel does not control the whole territory of Gaza. Therefore, it is not responsible for what happens there. (Samson, 2010, P. 125)

In my opinion, Israel has created a strange case in International Law, it is not in control of Gaza, and it does not practice a real occupation on Gaza Territories. On the other hand, Israel still has control on sea and airspace and attacks Gaza Strip whenever it needs that. So Israel deliberately and cleverly planned and managed to establish a new case which needs a lot of effort from the legal experts to illustrate, and find its suitable status in international law.

So, we can say according to what is above mentioned that Gaza is not a sovereign state "although it has its own government, controlled by Hamas", and is not a part of Israel or of any other state. Its status is ambiguous, and so too is the nature of the armed conflict between Israel and Hamas. Thus, there is no clear

answer to the question whether the blockade is lawful. But we can say that Israel practices a hidden occupation, although it does not have full control on the Gaza Strip territories.

3.The Legal Description for the Israeli Blockade on Gaza Strip:

1.The Israeli blockade is a means of collective punishment:

Collective punishment is prohibited by Article 33 of GC IV which provides that “No protected person may be punished for an offence he or she has not personally committed”. It is also prohibited by Article 75(2)(d) of AP I, and Article 50 of the Hague Regulations.

2.The Israeli Blockade aims at causing starve for the civilians in Gaza Strip:

Under Article 54(1) of AP I, “Starvation of civilians as a method of warfare is prohibited”. Insofar as the naval blockade combined with the Closure Policy have caused hunger, they could be considered to be in breach of Article 54(1) of AP I. (Additional Protocol 1 of Geneva Convention)

3.The Israeli blockade is a crime against humanity:

The Israeli practices prevent the people in Gaza Strip from travelling; as a result they cannot live their daily life as the other people in the world. Goldston in his report, item 1334 stated that: Palestinians are denied freedom of movement and their right to leave and enter their own country.

4.The Israeli blockade is a crime of genocide:

The Israeli practices in Gaza Strip lead to a real destruction for the people there, this action is directed against the inhabitants in Gaza who are part of the Palestinian people. In 1998, the Rome Statue of the International Criminal Court (ICC) established the first permanent international criminal court. Article I of the UN Convention on the Prevention and Punishment of the Crime of Genocide:

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.” (Saber, 2011, P.79)

The following acts can be considered genocide when and only when they are committed with the intent to destroy a group protected by the Convention: killing, causing serious bodily or mental harm; deliberately inflicting on the group conditions calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.

4.Israel's International Legal Liability for Blockading Gaza Strip

International legal responsibility for civilian occupation:

a. The Israeli :

Israel is obliged to abide by the international obligations which has been violated by him as an occupying power, Israel also bears the responsibility for the compensation of all damages and losses suffered by the occupied region and its civilian inhabitants as a result of the crimes committed by the violation of the provisions of international law and the rules of belligerent occupation law.

The aggressive acts and blockade which are implemented by Israel from the view of international law are illegal; and so Israel bears the civil liability. Israel as an occupying power is obliged to compensate and reform the damages which affected the Palestinians and caused harm and damage to their life.(Darraji, 2005,P. 211)

Reasons for the civil liability for the State of Israel:

Israel as an occupying power violated its contracting obligations because:

- 1.It violated the rules of IHL.
- 2.It violated the rules of the UN.
- 3.It violated the rules of International Human Rights Law.
- 4.It violated the rules of the people's right to self-determination, the prohibition of using force, and promotion the relationships between the sovereign states.(Asr, 2011, P. 83).

b. The Israeli Violations according to the rules of International Criminal Law:

The acts that were committed during the aggression against Gaza Strip on 27th December 2009, and the aggression on 14th November 2012 are considered illegal , and constitute flagrant violation to the rules of international humanitarian law , international law, human rights , and at the same time the rules of international criminal law are applied in terms of genocide, certain war crimes, crimes against humanity , which stipulated in international criminal law , specifically in the articles (6 ,7 and 8) of the Rome Statute on the permanent international Criminal Court.(Awad, 2001,P.108)

5.The Effects resulted from the Israeli Blockade on Gaza Strip:

1.The economic effects: The Gaza Strip economy suffers a lot through the years of blockade. As a result there is the unemployment problem and the electricity crisis. This problem affects all the aspects of life.

2.The Education: The students cannot pay the university fees, and most of the students can't travel abroad because of the blockade and closure policy.

3.The social effects: There is the poverty problem which is resulted from the unemployment, and the lack of means of communication with the relatives in the other parts of the world.

4.The health care: Gaza Strip in general suffers from the lack of medicines and the necessary equipment for operations in the main hospitals, and the governmental clinics. (Abu Alkhair, 2011,P. 88)

Recommendations:

The blockade on Gaza represents a unique and modern case study in international law. However, one can infer the lessons learned from this blockade, where there are two basic lessons learned. Firstly, the Security Council allowed the state of Israel to violate the rules of international humanitarian law without signing punishment. Secondly, there is a threat to the Security Council to undermine its legitimacy and the legitimacy of international law by failing to maintain the rule of law and resist this challenge in the name of maintaining peace and security.

There are facts about Gaza Blockade which should be put into consideration when dealing with the previous problem. These facts cannot be ignored or denied:

1. The blockade had subjected Gaza inhabitants to collective punishment in "flagrant contravention of international human rights and humanitarian law."

2. The blockade deprived 1.8 million Palestinians living in the enclave of fundamental rights.

3. About one-third of Gaza's arable land and 85 percent of its fishing waters are totally or partially inaccessible due to Israeli military measures.

4. At least two-thirds of Gaza people households lack secure access to food. "People are forced to make unacceptable trade-offs, often having to choose between food or medicine or water for their families."

5. The blockade - now in place for ten years - has devastated Gaza's economy, left most people unable to leave Gaza, restricted people from essential services such as healthcare and education.

6. More than 40% of people in Gaza - nearly 50% of youth - are now unemployed and 80% of people receive international aids. Many key industries, such as the construction industry, have been decimated as essential materials are not allowed into Gaza.

7. Thousands of Palestinians have left Gaza Strip for Europe using tunnels, traffickers and boats since the beginning of Operation Protective Edge. They declared, "It's better to die at sea than to die of despair and frustration in Gaza".

And in order to address the effects of this blockade and to maintain the prestige and standing of international law, the United Nations and the civilized international community should implement the following:

1. Resuming the peace process between the Palestine State and Israel according to certain agenda, and under the supervision of the United Nations, which will finally lead to an independent Palestinian State on the West Bank and Gaza territories.

2. The Security Council should issue a resolution declaring that the blockade on Gaza is illegal and constitutes a threat to international peace and security.

3. In the case of issuance of the Security Council resolution, it should be based on his authority under Chapter VII, which authorizes the use of military force in order to end the blockade for Gaza Strip reconstruction, and to ensure the delivery of humanitarian relief and aids to all Gaza inhabitants.

4. The Security Council must stress the advisory opinion of the International Court of Justice on the separation wall, and confirms that the use of legitimate force in Gaza Strip must be subject to the standards of international law enforcement.

5. The Security Council should include the international humanitarian law in all its statements, declarations, speeches and letters related to the occupied Palestinian territories, to implement the provisions of the Fourth Geneva Convention regarding the protection of civilians in time of war on the West Bank and Gaza Strip.

6. The Security Council should stress in its resolutions on the situation in Gaza Strip, the need to prevent Israel from the use of force in relation to the Palestinians, as happened in the last war of 2014.

7. If the Security Council fails to issue a resolution that would force Israel to end the blockade on Gaza Strip, the UN members should resort to the General Assembly of the United Nations for a resolution under "Uniting for Peace" in order to end the blockade on Gaza Strip.

8. The Palestinian State and Egypt should do their best to facilitate the Gaza inhabitants' life by allowing the entry of humanitarian aids and materials needed for the reconstruction of the Gaza Territories.

9. The need for Psychological rehabilitation for every single person affected by the last war and from all age categories, especially Gaza Strip witnessed an awful war, that it had a bad impact psychologically and behaviorally on all the residents

of Gaza, and it was a bitter experience the besieged Palestinian people suffered during the recent war.

10. Encouraging the Islamic and Arab States to Join Rome Statute of the International Criminal Court to form a lobby which aims at prosecuting the Israeli officers who are responsible for committing crimes of war against the Palestinians.

11. The universal and Arab civil institutions should practice a pressure on Israel and form a general international opinion to support the Palestinians rights, especially the right to self-determination.

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