
THE LEGAL STATUS OF GAZA STRIP UNDER INTERNATIONAL LAW OF OCCUPATION

Muath Mohammed Alashqar¹, Asmar binti Abdul Rahim², Ahmad Shamsul bin Abd Aziz³

¹ A PhD candidate at School of law, Universiti Utara Malaysia 06010 UUM Sintok, Kedah, Malaysia.

² School of law, Universiti Utara Malaysia 06010 UUM Sintok, Kedah, Malaysia.

³ School of law, Universiti Utara Malaysia 06010 UUM Sintok, Kedah, Malaysia.

E-mails: Muathalashqar@gmail.com, Asmar@uum.edu.my, Sham@uum.edu.my

ABSTRACT

Israel conquered Gaza Strip and West Bank in the six-day war of June 1967. Since then, both areas have been under continuous Israeli occupation until Israel chose in 2005 to withdraw its ground troops and settlements from Gaza with retaining control over Gaza's airspace, territorial sea, and borders. While West Bank's occupied status is undisputed, the status of Gaza is less apparent following disengagement. Since then, it is still an essential and contentious legal question whether Gaza should be considered an occupied territory or not. This article aims to analyse the legal status of Gaza Strip after the 2005 disengagement under the international law of occupation. The paper employed the content analysis by examining the international law of Occupation and related international agreements using a qualitative approach. As a result, it is concluded that Gaza Strip continues to be occupied territory by Israel under the effective control test that is at the basis of the law of Occupation. Therefore, the relationship between Gaza and Israel is governed by the Law of Occupation, reflected by the Hague Conventions of 1907 and the Geneva Conventions of 1949.

Keywords: Israel-Palestine conflict, Gaza Strip, International Law of Occupation, Effective control.

1.0 INTRODUCTION

Over time, international law has evolved a framework that grants the occupying power the authority necessary to manage the area under its control while also codifying the rights of the occupied territory's population. Thus, one of the primary goals of international regulations on belligerent occupation is to allow residents of an occupied region to live as "normally" as possible in such circumstances [1]. To this effect, the recognition of the temporary nature of the occupation is required to administer the territory as effectively as possible without introducing significant changes to the existing order while also ensuring the protection of the fundamental rights of the inhabitants [2].

Determining whether a situation is an occupation or not has ramifications for the amount of protection provided to civilians in the occupied area. This is precisely why the discussion over Israel's Occupation of Gaza has become so heated [3]. The West Bank and Gaza were occupied by Israel in 1967. In contrast to the West Bank, where it is undeniable that Israel continues to be occupied because of the presence of the Israeli forces, the situation in the Gaza Strip is more complicated [4]. Israel decided in 2004 to withdraw its soldiers and evacuate the settlements from Gaza Strip. It asserted that after the end of the process of disengagement, there would be no reason to claim that the Gaza Strip remains occupied territory [5].

This paper aims to examine the legal status of the Gaza Strip according to the rules of the international law of occupation. Thus, analysing the international conventions and the relevant laws are discussed in this paper using a qualitative approach based on primary and secondary sources. The effective control status requirements have been applied to the situation in Gaza, which shows Israel continues to exert a substantial level of control over Gaza as required under the Law of Occupation.

2.0 THE CONCEPT OF OCCUPATION

As for the definition of occupation under international conventions, article 42 of The Hague Convention of 1907 defines the status of the occupation as: Territories are considered to be occupied when they are placed under the control of an invading force or military force. Expressly, the occupation is restricted to the territory over which a lawful authority has been established and may be exercised. The Hague Regulations provide in its article 42 that *"the occupation extends only to the region where such power has been constituted and may be exercised"*. Thus, the occupation concerns only those regions where the necessary control has successfully been established [4].

Occupation, which has the features of an international armed conflict, is governed by the laws of war, namely the 1907 Hague Regulations, GCIV 1949, and several provisions of the 1977 Additional Protocol I to the Geneva Conventions [5]. Thus, Article 2 of the GCIV 1949, common to the conventions, has expanded the concept of occupation and includes the State of Occupation even if there are no armed forces on the ground. Further confirmation of the possibility of partial occupation may be found in Article 2 of the Fourth Geneva Convention 1949 (GCIV), which establishes that the principles governing occupation included in the Convention apply to all cases of partial or entire occupation [6].

2.1 The International Law of Occupation

International Law, specifically the Law of Occupation, governs the legal status of the land occupied by Israel in 1967. The legal status of the region shall either be determined directly via the application of international treaties, such as the Geneva Conventions signed by Israel or indirectly through international customary law, such as the Hague Regulation [7].

2.1.1 The Hague Conventions

The Peace Conferences of 1899 and 1907 brought an end to a series of Hague Conventions that had been in effect for decades. In Section III (Articles 42 through 56) of the Regulations Respecting the Laws and Customs of War on Land, originally written as an annex to Hague Convention (II) in 1899 and later amended and added as an appendix to Hague Convention (IV) in 1907, belligerent occupancy is the focal point. It is addressed in the legislation what would happen once hostilities have ended and occupation has begun. The laws deal with various occupation issues, from the beginning of the occupation to the obligations of the occupant, as well as limits on the occupier's behavior [8]. The significance of the ramifications is the change of the status of the Hague Regulations in the field of belligerent occupation, which has occurred recently. To acquire declaratory status, the Regulations' provisions – which are a mirror image of customary law – have become binding on all states, regardless of whether or not they are Contracting Parties to the Hague Conventions of 1899/1907 [9].

2.1.2 The Fourth Geneva Convention 1949.

The Fourth Geneva Convention contained rules governing the behaviour of states toward civilian populations during times of war and clauses defining the duties of governments toward civilian populations in the case of an occupation [10]. In order to prevent a recurrence of the terrible events of World War II, the Convention's main objective was to offer these individuals more protection than was given by the Hague Regulations at the time of the war. As a result, according to Article 154 of the Geneva Convention (IV), the Convention is considered to be "supplementary" to the Hague Regulations [2].

Civilians in occupied areas who find themselves *"in the hands of a Party to the war or Occupying Power of which they are not nationals"* are referred to as "protected people" under the Fourth Geneva Convention (Article 4, GCIV 1949), and their rights are outlined in the Convention. Their rights are inviolable and cannot be renounced (Article 8, GCIV 1949). Any such renunciation would be null and invalid, regardless of whether the individual decision of his or her own free will or as a result of compulsion by the occupying authority [10].

Among the obligations stated in GCIV 1949 in occupied territories are the following:

- *"The protection of protected persons' honor, family rights, religious convictions, and practices, as well*

as manners and customs” (Article 27, GCIV 1949).

- *“Prohibiting destruction of any property unless “necessary” to the military operation” (Article 55,56, GCIV 1949).*
- *“The obligation of ensuring food and medical supplies for the population, as well as maintaining medical services” (Article 55,56, GCIV 1949).*
- *“The obligation to facilitate the functioning of institutions devoted to the care and education of children, as well as taking any necessary measures to help identify children, to assist orphaned children, and to provide preferential treatment to “children under than fifteen years, expectant mothers, and mothers of children under seven years “(Article 50, GCIV 1949).*

2.1.3 Additional Protocol I

In 1977, the Geneva Conventions were supplemented with an Additional Protocol Relating to the Protection of Victims of International Armed Conflicts (Protocol I Additional to GCIV 1949) and Protocol II, which is devoted to non-international armed conflicts. Some of the clauses of Protocol I deal with occupied territories; meanwhile, it does not supersede the Geneva Conventions (including Convention (IV)) but rather supplements them. However, occasionally, the Protocol explicitly overrides earlier Geneva norms. For instance, when the Protocol expressly amends or repeals Geneva provisions relating to the belligerent Occupation [13].

2.2 Obligations of occupying power under International Law of Occupation

According to the Hague Convention and the Fourth Geneva Convention, occupation is linked "to the extent that Power exercises the functions of government in occupied territory. If a territory is found to be occupied, then a host of responsibilities accrue to the occupying power [11], for instance:

a) Duty to restore and maintain law and order

Maintaining public order and safety in occupied territory is an obligation of the occupying force. In accordance with Article 43 of the Hague Regulations *“In order to carry out this duty, the occupying power is entitled to take such measures of control and security in regard to protected persons as may be necessary as a result of the war”* (Article 43 of the Hague Regulations 1907). In the language of Article 27 of the Fourth Geneva Convention. Such measures may include the use of force. However, any use of force in circumstances outside combat, whether by soldiers or police officers, must be consistent with international law enforcement standards, including the 1979 UN Code of Conduct for Law Enforcement Officials (Code of Conduct) and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).

b) Duty to provide food, medical care and facilitate relief assistance

The occupying authority has the responsibility of ensuring, if necessary, the provision of food and medical supplies to the residents of the occupied regions under its jurisdiction [12]. According to Article 55 of the Fourth Geneva Convention: *“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores, and other articles if the resources of the occupied territory are inadequate”.*

With regard to medical care, Article 56 states that: *“the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.”* More generally, according to Article 59, in the case of a shortage of supplies for the entire population of a conquered area, the Occupying Power would promise to relieve the inhabitants on their behalf, using whatever methods were at its disposal. Such schemes, which can be implemented by governments or neutral humanitarian groups such as the International Committee of the Red Cross, should include a focus on food, medical supplies, and clothes. Every effort will be taken to ensure the safety of such shipments. However, relief consignments in no

way relieve the occupying powers of their responsibilities (Article 8, GCIV 1949).

c) Criminal jurisdiction

Under the Fourth Geneva Convention, the position of judges, like that of public officials, may not be altered by occupying powers. Existing tribunals shall continue to function, preserving their authority over offenses of domestic criminal law by citizens of the occupied territory. However, in the absence of a functional legal system, the occupying force may establish its own courts to execute the functions of the ordinary judiciary, provided they apply existing laws (Article 54, GCIV 1949).

Moreover, under the Fourth Geneva Convention, occupying powers are permitted to establish their own "fully organized, non-political military courts," which are to sit in the occupied areas if they pass legislative requirements (Article 66, GCIV 1949). Military courts set up by the occupying power must respect detailed procedural guarantees laid down in Articles 67 and 69 to 75. In addition, the Fourth Geneva Convention affirms the principle of individual criminal responsibility and prohibits the imposition of collective punishments on individuals. Persons who have been accused or convicted of a criminal offense must be imprisoned in humane conditions and held in detention facilities located within the occupied territory. They have the right to receive visits from representatives of the International Committee of the Red Cross (ICRC) [12].

d) Assigned residence or administrative detention (internment)

According to Article 78 of the Fourth Geneva Convention, "if the occupying power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment." The Occupying Power must, however, follow a regular method defined by it in accordance with the requirements of the present Convention in order to make decisions respecting such assigned residence or internment in such cases, pursuant to Article 78 of the present Convention. The parties involved will have the opportunity to appeal the outcome of this procedure. It is expected that appeals will be resolved with the least amount of delay. If the judgment is sustained, it will be subject to periodic review, preferably every six months, by a competent committee established by the said Power, which will be appointed by the President. Administrative detainees have the right to receive visits from representatives of the International Committee of the Red Cross (ICRC) (Article 109, GCIV 1949).

e) Prohibition of coercion, torture, and other forms of brutality

Physical or moral coercion against protected individuals shall not be exercised, in particular, in order for them or third parties to obtain information about them or their activities (Article 31, GCIV 1949). Anything that could cause bodily pain or the annihilation of protected individuals while in their possession is also illegal under international humanitarian law. This prohibition applies not only to murder, torture, corporal punishment, mutilation, and medical or scientific experimentation that are not required by the medical care of a protected person but also to any other measures of cruelty, whether carried out by civilian or military agents (Article 32, GCIV 1949).

f) Protection of property and natural resources

The Hague Regulations require occupying authority to respect "private property". They shall be regarded only as administrators of publicly owned buildings and natural resources such as forests, and agricultural estates (Article 55, GCIV 1949). As such, occupying authority must not appropriate or otherwise dispose of public property or the natural resources of occupied territory. The extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, is a war crime, specifically a grave breach of the Fourth Geneva Convention (Article 147, GCIV 1949).

g) Role of the International Committee of the Red Cross

A fundamental safeguard for the protection of civilians in occupied territory is constituted by the work of the ICRC. Under the Fourth Geneva Convention, the occupying powers must accept the services of the ICRC. Its delegates have the right to take up any matter relating to the law of occupation. They must be granted free movement throughout the entire occupied territory. In particular, they must be given free access to all detention facilities and all categories of detainees (Article 143, GCIV 1949).

2.3 The Effective Control Test Contained in Article 42 of the Hague Regulations

To demonstrate occupation factually, the effective control test provided in International Regulations must be fulfilled. This is because occupation establishes a particular scenario where practical geographical control is in the hands of the occupying power. At the same time, the sovereign title remains in the hands of legal authority [6]. The effective control test may assist in determining whether or not this transfer of (temporary) power has taken place. This is critical because the occupier must be allowed to execute the rights and obligations ordinarily vested in the legitimate power but suspended temporarily by the fact of Occupation [5].

The fact that there is some exercise of control over the land under occupation separates it from a simple invasion in this regard. As occupation is defined as invasion and taking possession of an enemy country with the intention of maintaining control over it [13]. However, determining exactly when an invasion becomes an occupation is extremely difficult. The result has been the assertion by some that in order to provide the greatest protection feasible for the occupied people, some requirements under international law of occupation should be applied during the invasion period. Because the rights guaranteed to individuals under the law of occupation would already apply during the invasion phase, a distinction is made based on the nature of the right in question. In contrast, for the other rights, such as rules governing property, the effective territorial control test would still be necessary [14].

Specifically, Article 42 of the Hague Regulations of 1907 states that the exercise of authority in a territory must meet three conditions in order to be effective: the territory must be placed under the authority of the hostile army; the state in power must exercise the functions of government in the territory; [15] and the occupier's authority must be exclusive of the authority of the established government [16]. Fourth Geneva Convention 1949 is consistent with the Hague Regulations. It affirms that the occupation is connected to how a Power performs government duties in the purportedly occupied area, which is a condition of recognition (Article 6, GCIV 1949).

The effective control test of a territory refers to a scenario in which a territory is deemed occupied and is put under the authority of a hostile army. The occupation is limited to the area over which such power has been constituted and may be exercised, and no beyond. Despite the language of the Hague effective control test, however, occupational status is not relinquished due to a lack of direct military presence. Based on the Nuremberg Tribunal, effective control is maintained as long as the occupier can re-enter the occupied territory at will to regain control of the region [17].

The effective control criteria have also prompted the debate of whether the requisite control must be actual or if the mere possibility of exercising control is adequate under certain circumstances. If potential control would be deemed to be sufficient, the test would be based on the capability of the enemy forces to exercise authority over the occupied territory rather than on their actual exercise of such control. Thus, it would suffice for the occupying force to be able to replace the legal sovereign's authority with its own. The ability to create such control, on the other hand, should not be seen as entirely hypothetical and unrestrained, and it has usually been acknowledged that the occupying power must be able to establish actual control "within a reasonable period" when it is required [6]. One of the primary reasons that the potential control test should be preferred is that it is more accurate. Establishing real rather than prospective control would enable the occupier to "circumvent its duties by simply refusing to create the control it is in a position to establish." This would result in the creation of two significant gaps. First and foremost, it would create a protection gap [18]. Making the occupying power the one who decides whether or not to activate the law of occupation fails to protect the civilian population from the same authority that it is supposed to be protected from in the first place. This would not be necessary if the occupying authority were seen as a neutral caretaker, but occupation is seldom neutral, and history has demonstrated that the occupied people have been the target of many cases of abuse. Second, it would also create a gap in governance [19].

As a result of the occupation, a unique scenario occurs in which there is a misalignment between title and control. Considering that the legitimate power has been temporarily incapacitated from exercising authority over the given territory, and given that the occupying power has refused to establish such authority in order to avoid being subjected to the obligations imposed on it by the law of occupation, no authority over the concerned territory will be exercised. This makes it even more important to have the law of occupation implemented correctly in order to avoid any gaps in the performance of governmental functions such as maintaining public order and civil life in accordance with Article 43 of the Hague Regulations and Article 64 GCIV [5].

2.4 Are Boots on the Ground Necessarily Required?

Another key point to be made in respect to the effective control test is the matter of boots on the ground. Most crucially, a difference should be established between what is specifically necessary at the time of the inception of the occupation and what is required over the period of time during which the occupation is maintained. Indeed, if the need for physical presence is a necessity for the formation of the occupation, it might, in light of the potential control test, be less stringently needed for its maintenance [20]. It is true, according to Cuyckens, that the effective control required to trigger occupation may be maintained remotely, in some specific conditions and in light of contemporary technical breakthroughs, such that troops are not required to be there physically (on a permanent basis) [5]. The idea that there should be some wiggle room in interpreting the boots on the ground requirement during the maintenance of the occupation appears to have been acknowledged by Yoram Dinstein, who argues that "the Occupying Power must deploy "boots" on the ground in or near the territory." [2]. Similar to the difficulties demonstrated in relation to the actual control test, strictly requiring the occupying power to be physically present in the occupied territory would allow it to easily escape the obligations otherwise imposed upon it under the law of occupation by avoiding placing troops on the ground while nonetheless controlling the territory concerned from the outside, resulting in a situation of effective control similar to that which would be spelled out in the law of occupation. It appears that leniency in the implementation of the need for actual presence corresponds the most closely to reality [21].

2.5 End of Occupation

Once the occupying force loses effective authority over the territory in question, the occupation comes to an end. This is the theoretical response to the issue of when an occupation comes to an end, and it is the same answer given to the question of when an occupation begins. The end of occupation is thus also a factual assessment. However, as is the case with the majority of factual judgments, this one is far from straightforward to put into reality, and the question of when occupation comes to an end is actually one of the most difficult to resolve in practice. Normally, an occupation comes to an end when an occupant either withdraws from the area or is forced out of it. However, the occupying power rarely withdraws at once at an exact moment in time [6]. A withdrawal rather occurs progressively, through a gradual thinning out of the forces concerned. Similarly, pinpointing the precise moment when effective control is lost during a resurgence of hostilities is challenging, especially given the fact that not all resurgences of hostilities will result in the loss of effective control. As a result, it is difficult to determine whether and when the effective control has been lost completely. Furthermore, while complete withdrawal does certainly bring an end to the occupation, the fact that foreign troops continue to be stationed on the territory in question does not necessarily imply that the occupation is still in progress. [20]. This is mainly the case when the legitimate power ends up consenting to the presence of the foreign troops. The situation would be similar in practice if an agreement to cease an occupation were to be followed by another agreement that allowed the foreign forces to remain. For consent to effectively terminate occupation, it however needs to be genuine, valid, and explicit. Finally, the fact that the end of occupation is a factual assessment also entails that merely declaring that the occupation has come to an end, while the facts on the ground still seem to show otherwise, is not sufficient [5]. This was one of the most contentious issues surrounding the cessation of the occupation in Iraq. Even though UN Security Council Resolution 1546 (2004) declared that the Coalition Provisional Authority (CPA), which was administering the territory on behalf of the occupying powers, would cease to exist by the 30th of June 2004, and that Iraq would subsequently reassert its full sovereignty and authority over the previously occupied territory, the CPA, in fact, continued to exercise effective control over the territory. Assuming that the transfer of authority took effect at the time specified in the resolution, the occupation would have come to an end. Although the occupation was officially declared to be over in UN Security Council Resolution 1546 (2004), the occupation continued in reality since effective control had not yet been transferred to the Iraqi government at that time. As a result, in order for a transfer of authority to be successful in ending the occupation, it must be effective. On a practical level, it's all about keeping the territory under effective authority while keeping the occupying power out of it through the use of proxy governments [10].

3.0 THE EFFECTIVE CONTROL TEST AND THE POST-DISENGAGEMENT SITUATION IN GAZA

As part of its Revised Disengagement Plan, which was implemented on June 6, 2004, Israel withdrew its armed forces and evacuated all of its settlements from the Gaza Strip. In Gaza, the absence of Israeli ground

forces implies that the region is no longer under the authority of the invading force [22]. Nonetheless, Israel's continued military incursions into Gaza, as well as its control of the region's boundaries, provide compelling evidence that Israel is still in control of the area. Boots on the ground are sometimes a fair proxy for control over a region. However, nothing in the Hague Convention makes them a precondition for finding occupation in a given situation or situational context [11]. Until now, Israel continues to carry out several essential government tasks, such as the following:

A) Territorial Waters and Air Space

The disengagement plan states: Israel will hold sole control of Gaza airspace and will continue to carry out the military activity in the waters of the Gaza Strip. Therefore, Israel continues to maintain exclusive control of Gaza's airspace and the territorial waters, just as it has since it occupied the Gaza Strip in 1967. Control of the airspace enables Israel, among other things, to monitor the actions on the ground, and to interfere with radio and TV broadcasts [23]. Control of the waters enables Israel, for example, to limit the activity of Gaza fishermen. Due to Israel's control of Gaza's air and sea space, the Palestinian Authority cannot, on its own initiative, operate a seaport or airport. This situation infringes the right to freedom of movement to and from Gaza and impairs the ability of Gazans to carry out foreign trade [8].

1) Control of airspace

Israeli combat and intelligence-gathering aircraft fly daily over the Gaza Strip. By these and other means, Israel can monitor the activity on the ground and attack targets whenever it wants [24]. The Oslo Agreements Israel gave Israel full control over Gaza's airspace but established that the Palestinians could build an airport in the area. Gaza Airport was duly built and opened in 1998, providing a limited number of weekly flights to Arab countries. Passengers leaving from the airport were transported by bus to Rafah Crossing, where they were checked by Israel in the same manner as those leaving for Egypt by land, before being taken back to the airport [7].

On 8 October 2000, immediately after the outbreak of the second intifada, Israel closed down the airport, and it has not opened since. In December 2001, the Israeli Air Force bombed the airport's runways. From the beginning of the second intifada to the completion of the disengagement plan in 2005, the airport served as an Israeli military base. When the soldiers left and after the disengagement plan was implemented, it was found that soldiers at the base had vandalized and destroyed the buildings [24]. In the Agreement on Movement and Access (AMA), which Israel and the Palestinian Authority signed in November 2005, Israel recognized the importance of the airport in Gaza and committed to discuss arrangements to reopen it with the Palestinians. No discussions on this matter have ever been held [25].

2) Control of territorial waters

While there is no fence along Gaza's coastline, residents do not have open access to the sea. Palestinians wanting to go to sea need to request a permit from Israel, and those who obtain a permit are restricted in the distance they can go from shore. Israeli patrol boats have at times fired at boats that exceeded the distance allowed [24].

In the Interim Agreement, signed by Israel and the PLO, Israel agreed to allow fishing boats from Gaza to go some twenty nautical miles (about thirty-seven kilometres) from the coastline (except for a few areas, to which they were prohibited entry). In practice, Israel did not issue permits to all applicants and allowed fishing up to a distance of no more than twelve nautical miles. Following the disengagement, Israel reduced the fishing area even more, and since 25 June 2006, fishermen have not been allowed to go further than three nautical miles from shore. As a result, the fishing sector in Gaza, which provides a livelihood to many families and is an important source of food for residents of the area, suffered a harsh blow [26].

In the agreements signed by the parties since the beginning of the Oslo peace process, the sides repeatedly agreed to work toward building and operating a seaport in Gaza. In the summer of 2000, infrastructure work for the port began, but in October of that year, following the outbreak of the second intifada, Israel bombed the seaport construction site. As a result, the donor states ceased funding the project, and no work has been done on the seaport since then. In the AMA of November 2005, mentioned above, Israel agreed to allow the renewal of the construction work [25]. Moreover, in order to assure that foreign donors and investors would be willing to invest in the project, Israel promised that it would not strike the port again and would cooperate in establishing the security and other arrangements needed to operate it. To date, no action has been taken in this matter [24].

Israel's authority in the sea and air is an exercise of "effective control" because first, control over adjacent waters and air space does necessarily constitute "effective control" overland, and second, control is complete because Israel has not allowed Gaza access to several nautical miles for fishing and other purposes. The Agreements granted Israel exclusive right of "defense... from the sea and from the air," and they do not also give the Palestinian Authority control over Gaza's territorial waters and do not allow the PA to operate air traffic. Israel was allowed to override PA control for "external security" threats. thus, the restriction on access to territorial waters and air space does constitute "effective control" because Israel's command of Gaza's air and coastal waters is sufficiently comprehensive and does exclude the established government of the PA.

B) The Border and Crossings

Currently, the primary crossings from Gaza are Karni (north-east), a closed cargo terminal for security reasons after Hamas took over in 2007. While Erez (north) is the only pedestrian crossing, Rafah (south) is the only central crossing point into Egypt, which Egypt and Hamas currently control. Following disengagement, Israel and the Palestinian Authority signed the Agreement on Movement and Access (AMA) on November 15, 2005, handing over control of Rafah to the Palestinians and Egypt and increasing traffic via the Erez and Karni crossings, as well as the Agreed Principles for Rafah Crossing (APRC), which expands on the AMA [27]. As a result, Israel's actions on the Gaza border do constitute "effective control." The Agreements grant Israel absolute authority over "external security", which includes the Israel-Gaza border. Therefore, border control is a function of government, and the Israeli government exercises the organizing and monitoring of the Gaza Strip's borders and displaces Gaza's government.

C) Gaza's infrastructure, electricity, water.

The Occupation of Israeli in Gaza caused the dominance to overpower, petroleum, and telecommunications shown "effective control" has been exercised. The Agreements state that the fuel supply must adhere to Israeli safety and security requirements, that the Palestine Electric Company must generate a portion of Gaza's power, and that the Israeli Electric Company must generate the balance." Thus, providing power is an Israeli attempt to exercise the role of government in Gaza [8].

In terms of water, there are three significant sources of natural fresh water in the Occupied Palestinian Territory: (I) the Jordan River, (ii) the Coastal Aquifer, and (iii) the Mountain Aquifer. The Jordan River is the primary source of natural fresh water in the Occupied Palestinian Territory. In spite of the fact that the Jordan River forms the eastern boundary of the Occupied Palestinian Territory, Israel has prevented the Palestinians from drawing any water from it since the occupation began in 1967 by declaring its river banks a closed military zone and destroying Palestinian pumping stations and irrigation ditches, among other measures [28]. Although the Coastal Aquifer exists under Gaza, its availability as a source of drinking water for Gazans has been severely impacted by over-pumping and the infiltration of seawater and sewage into the groundwater. Located predominantly on the West Bank, the Mountain Aquifer also spans the 1949 Green Line, which runs through it [29].

Following Israel's armed occupation in 1967, Israel assumed complete authority over all Palestinian water consumption and development under military administration. Military Order No. 92 (issued in August 1967) delegated to the Israeli military control of all water resources in the seized territories. Israel's 2005 disengagement does not eliminate any control of Israel on Gaza concerning water supply and sewage removal, indicating "effective control" of those functions [30].

D) Taxation and Population Registry in Gaza

Israel and the PA are responsible for determining, regulating, levying, and collecting their respective income taxes, property taxes, municipal taxes, and fees. In addition, Israel transfers to the Palestinian Authority income taxes received from Palestinians employed within Israel and income taxes collected from Palestinians employed in settlements [31].

Following the Agreements, the Palestinian Authority (PA) is given authority over "population registry and documentation" in the Gaza Strip, which it then exercises for its population. Israel, however, is permitted some involvement in monitoring the registry and identification cards due to Israel's security concerns about who enters its territory. As a result, Israel frequently supplants the PA's authority and control over the registration and the PA's ability to collect taxes - a piece of evidence that "effective control" exists [32].

E) Security Considerations and Right to Re-enter Gaza

According to the Nuremberg Tribunal, effective control is maintained as long as the occupier can re-enter the occupied territory at will to regain control of the region [17]. Israeli statements and admissions regarding the continued exercise of control and supreme jurisdiction over Gaza's airspace, naval waters, transportation of people and goods, and finally, Israel's frequent military operations within the borders of Gaza itself have all confirmed that Israel meets these occupational requirements [24]. For instance: Operation Cast Lead (2009), Column of the Cloud (2012) [33], Operation Protective Edge (2014) [34], and Operation Guardian of the Walls (2021)[35] are all recent examples of military operations.

4.0 CONCLUSION

As a result of Israel's "Disengagement" Plan 2005, Gazans remain under the effective command and control of the Israeli military. Even though Israel claims to have removed its permanent military presence from the Gaza Strip, Israeli soldiers maintain the capacity and right to invade the territory at any time. Furthermore, Israel maintains control over the airspace, coastline, and borders of Gaza. According to the Plan, Israel has the unilateral authority to decide whether or not Gaza would open a seaport or an airport. Additionally, Israel maintains complete control over all border crossings, including the border between Gaza and Egypt. Furthermore, Israel continues its military activity along the Gaza Strip's coastline". Taken together, these powers mean that all goods and people entering or leaving Gaza are subject to Israeli control. Finally, Israel will prevent Gazans from engaging in international relations. Accordingly, Israel effectively controls Gaza administratively and militarily.

Israel remains the Occupying Power of the Gaza Strip under international law. Gaza remains occupied territory in the wake of the Israeli withdrawal, and Israel continues to bear obligations to the territory according to the Fourth Geneva Convention and the Hague Convention. As a result of the Hague Convention of 1907 and the Fourth Geneva Convention of 1949, when a nation enters a state of war outside its borders, it incurs occupation obligations. These obligations can only be discharged if the conflict is brought to a close and military control over the conquered territory is terminated.

5.0 REFERENCES

1. A. Roberts, 'Prolonged military occupation: the Israeli-occupied territories since 1967', *Am. J. Int'l L.*, vol. 84, p. 44, 1990, doi: 10.2307/2203016.
2. Y. Dinstein, *The international law of belligerent occupation*. Cambridge University Press, 2019.
3. G. Aronson, 'Issues arising from the implementation of Israel's disengagement from the Gaza Strip', *J. Palest. Stud.*, vol. 34, no. 4, pp. 49–63, 2005.
4. S. Darcy and J. Reynolds, 'An enduring occupation: the status of the Gaza Strip from the perspective of international humanitarian law', *J. Confl. Secur. Law*, vol. 15, no. 2, pp. 211–243, 2010.
5. H. Cuyckens, 'Is Israel Still an Occupying Power in Gaza?', *Netherlands Int. Law Rev.*, vol. 63, no. 3, pp. 275–295, 2016, doi: 10.1007/s40802-016-0070-1.
6. T. Ferraro, 'Determining the beginning and end of an occupation under international humanitarian law', *Int'l Rev. Red Cross*, vol. 94, p. 133, 2012.
7. C. Bruderlein, 'Legal aspects of Israel's disengagement plan under international humanitarian law', *Leg. Policy Brief*, Harvard Univ. Progr. Humanit. Policy Confl. Res., 2004.
8. E. Samson, 'Is Gaza Occupied: Redefining the Status of Gaza under International Law', *Am. U. Int'l L. Rev.*, vol. 25, p. 915, 2010.
9. D. Schindler and J. Toman, *The laws of armed conflicts: a collection of conventions, resolutions, and other documents*, 4th edn. Brill, 2004.
10. A. Roberts, 'The end of occupation: Iraq 2004', *Int. Comp. Law Q.*, vol. 54, no. 1, pp. 27–48, 2005.
11. N. Stephanopoulos, 'Israel's Legal Obligations to Gaza After the Pullout', *Yale J. Int. Law*, vol. 31, p. 524, 2006.
12. G. Giacca and E. Nohle, 'Positive Obligations of the Occupying Power: Economic, Social and Cultural Rights in the Occupied Palestinian Territories', *Hum. Rights Law Rev.*, vol. 19, no. 3, pp. 491–515, 2019.
13. R. Kolb and S. Vite, *L'applicabilité "ratione temporis" du droit de l'occupation de guerre: le début et la fin de l'occupation*. Bruylant, 2013.
14. E. Benvenisti, *The international law of occupation*. Oxford University Press, 2012.
15. M. Zwanenburg, 'The law of occupation revisited: the beginning of an occupation', *Yearb. Int.*

- Humanit. Law*, vol. 10, pp. 99–130, 2007.
16. A. Roberts, 'What is a military occupation?', *Br. Yearb. Int. Law*, vol. 55, no. 1, pp. 249–305, 1984.
 17. J. S. Amditis, 'War Crimes in Gaza: Operation Cast Lead in International Law', *Rutgers Univ.*, 2012.
 18. O. Ben-Naftali, 'Belligerent occupation: a plea for the establishment of an international supervisory mechanism', in *Cassese A (ed) Realizing Utopia: the future of international law*. Oxford University Press, Oxford, pp 538–552, 2012.
 19. M. Sassòli, 'A plea in defence of Pictet and the inhabitants of territories under invasion: the case for the applicability of the Fourth Geneva Convention during the invasion phase', *Int. Rev. Red Cross*, vol. 94, no. 885, pp. 42–50, 2012.
 20. Y. Gül, 'Is The Requirement Of "Boots On The Ground" Necessary Anymore For An Occupation?', *IBAD Sos. Bilim. Derg.*, vol. 9, pp. 336–346, Jan. 2021, doi: 10.21733/ibad.832724.
 21. I. (International C. of the R. Cross), 'Occupation and Other Forms of Administration of Foreign Territory', 2012.
 22. B. Hollinder, 'The Israeli disengagement plan: Unilateralism in the face of multilateral agreements', *Hum. Rights Br.*, vol. 13, no. 1, p. 5, 2005.
 23. Y. Shany, 'Faraway, so close: the legal status of Gaza after Israel's disengagement', *Yearb. Int. Humanit. Law*, vol. 8, pp. 369–383, 2005, doi: 10.1017/S1389135905003697.
 24. Btselem, 'Israel's control of the airspace and the territorial waters of the Gaza Strip', *Israeli Information Center for Human Rights in the occupied territory*, Jan. 01, 2011.
 25. A. Arnon and S. Bamy, 'Economics and Politics in the Israeli-Palestinian Conflict'. The AIX Group, 2015.
 26. W. Yamei, 'Wang Yamei, "Feature: Gaza Fishermen Seek Spearfishing to Overcome Israel's Maritime Restrictions"', *Xinhua*, 2019. [http://www.xinhuanet.com/english/201910/11/c_138464318.htm#:~:text=Under the Oslo peace agreement,nautical miles \(37 km\).](http://www.xinhuanet.com/english/201910/11/c_138464318.htm#:~:text=Under the Oslo peace agreement,nautical miles (37 km).)
 27. S. O'Callaghan, S. Jaspars, and S. Pavanello, 'Losing ground: Protection and livelihoods in the Occupied Palestinian Territory', *London HPG Work. Pap. 'Humanitarian Policy Group', Overseas Dev. Inst.*, 2009.
 28. M. T. Obidallah, 'Water and the Palestinian-Israeli conflict', *Cent. Eur. J. Int. Secur. Stud.*, vol. 129, p. 103, 2008.
 29. I. A. Al Khatib, I. S. Al Remawi, L. I. Ghait, and A. A. Takrouri, 'Quality of water and access to it in the Occupied Palestinian Territory', *EMHJ-Eastern Mediterr. Heal. Journal*, 15 (6), 1542-1552, 2009, 2009.
 30. C. Messerschmid, 'Water in Gaza: problems and prospects', *SSRN Electron. J.*, 2011, doi: 10.2139/ssrn.1764252.
 31. E. Samson, 'Dismantling the Arguments for Effective Control', Begin-Sadat Center for Strategic Studies, Mar. 2010. [Online]. Available: <http://www.jstor.org/stable/resrep04760.7>.
 32. V. Tilley, *Beyond occupation: apartheid, colonialism and international law in the occupied Palestinian territories*. Pluto Press, London, 2012.
 33. R. S. Cohen *et al.*, 'From Cast Lead To Protective Edge: Lessons From Isreal's Wars In Gaza', RAND Santa Monica United States, 2017.
 34. R. Pennington, 'Witnessing the 2014 Gaza War in Tumblr', *Int. Commun. Gaz.*, vol. 82, no. 4, pp. 365–383, 2020, doi: 10.1177/1748048518825097.
 35. A. Pratiwi, 'Analysis israel's violation in eleven days attack on gaza strip (analisis pelanggaran israel dalam serangan sebelas hari di jalur gaza)(10-21 may, 2021)'.