

CHAPTER I

INTRODUCTION

A. Background

The Israeli-Palestinian conflict is an ongoing dispute between Israel and the Palestinians¹. Although the conflict is wide-ranging, the key issues are border security, water rights, control of Jerusalem, land rights, and legalities concerning refugees. The violence resulting from the conflict has prompted other security and human rights concerns on both sides and internationally. It forms part of the wider Arab-Israeli conflict. The term is also used in reference to the earlier phases of the same conflict, between Zionist halutzim and the Arab population living in Palestine under Ottoman or British rule.

Many attempts have been made to broker a two-state solution, which would entail the creation of an independent Palestinian state alongside an independent Jewish state or next to the State of Israel (after Israel's establishment in 1948). As of 2009, a majority of both Israelis and Palestinians, according to a number of polls, prefer the two-state solution over any other solution as a means of resolving the conflict². Moreover, a considerable majority of the Jewish public sees the Palestinians' demand for an independent state as just, and thinks Israel can agree to the establishment of such a state³. A majority of Palestinians and

¹ *A History of Conflict: introduction* (Accessed February 25, 2010); Available from http://www.bbc.co.uk/2/Shared/spl/hi/middle_east03/v3_ip_timeline.html

² *Just Another Forgotten Peace Summit* (Accessed February 13, 2010); Available from <http://haaretz.com/hasen/pages/933214>

³ *Negotiating Arab-Israeli Peace* (Accessed February 25, 2010); Available from <http://www.books.google.com/book?>

Israelis view the West Bank and Gaza Strip as an acceptable location of the hypothetical Palestinian state in a two-state solution⁴. However, there are significant areas of disagreement over the shape of any final agreement and also regarding the level of credibility each side sees in the other in upholding basic commitments⁵. A handful of academics advocate a one-state solution, whereby all of Israel, the Gaza Strip, and West Bank would become a bi-national state with equal rights for all⁶.

Within Israeli and Palestinian society, the conflict generates a wide variety of views and opinions. This highlights the deep divisions which exist not only between Israelis and Palestinians, but also within each society

A hallmark of the conflict has been the level of violence witnessed for virtually its entire duration. Fighting has been conducted by regular armies, paramilitary groups, terror cells and individuals. Casualties have not been restricted to the military, with a large number of fatalities in civilian population on both sides.

According to human right watch, 1417 included 926 civil died in Jewish against on December 27, 2008 – January 18, 2009, and a third of these amount was children. Jewish itself loose 10 of soldiers and 3 civilians in that war. And

⁴ Dershowitz, Alan . *The Case for Peace: How the Arab-Israeli Conflict Can Be Resolved* . Hoboken: John Wiley & Sons, Inc., 2005

⁵ *Just Another Forgotten Peace Summit* (Accessed February 13,2010); Available from <http://haaretz.com/hasen/spages/933214>

⁶ "Israel: The Alternative", *The New York Review of Books* , Volume 50, Number 16, October 23, 2003. Access December 25, 2009.

according to Jewish government their soldier killed around 1.166 Palestinian people⁷. Israel admits using white phosphorous in Gaza

The Middle East is characterized by a comprehensive security deficit, where military power still constitutes the primary tool to protect the regional states. The aftermath of 9/11 has had a profound effect on the Middle Eastern security context and generated an increased focus on weapons of mass destruction (WMD) in the region. This study focuses on Israel, which highly influences the region's attitude towards WMD. However, Israel is often disregarded in Western discussions regarding the impact of WMD on the security dilemmas in the Middle East. The purpose of this report is to evaluate Israel's scientific and technical capabilities to develop WMD, and the state's political intent to utilize this capacity for offensive and/or defensive purposes

A weapon of mass destruction (WMD) is a weapon that can kill large numbers of humans and/or cause great damage to man-made structures, natural structures, or the biosphere in general. The scope and application of the term has evolved and been disputed, often signifying more politically than technically. Coined in reference to aerial bombing with chemical explosives, it has come to distinguish large-scale weaponry of other technologies, such as chemical, biological, radiological, or nuclear⁸.

The perceived threat from weapons of mass destruction (WMD) has become one of the most important issues on foreign policy and national security

⁷ *Israel admits using white phosphorous in Gaza* (Accessed January 15, 2009); Available from <http://forum.detik.com/showthread.php?t=105780>

⁸ *Weapons of mass distraction* (Accessed December 25, 2009); Available from http://www.thornwalker.com/ditch/dtw_wmd.htm

agendas. The WMD threat has, for example, profoundly influenced the Bush administration's national security and homeland security strategies⁹.

Israel is widely believed to possess weapons of mass destruction , and to be one of four nuclear-armed countries not recognized as a Nuclear Weapons State by the Nuclear Non-Proliferation Treaty (NPT)¹⁰. The US Congress Office of Technology Assessment has recorded Israel as a country generally reported as having undeclared chemical warfare capabilities, and an offensive biological warfare program¹¹. Officially Israel neither confirms nor denies possessing nuclear weapons.

To make sure that Israel military will defeat Palestine military (Hamas), Israel Air Force was brought a thousand of smart bomb. This kind of bomb was named Joint Direct Attack Munitions (JDAM). Which this planning get complaining from US Congress. According to the congress, Israel government violated the agreement for cluster bomb toward the civil. But IAF still continued their programmed by allocating 100 million dollars.

This plan already violated UN Resolution No 1540 that was ratified on April 28, 2004 about Weapons of Mass Destruction (WMD). And this plan also violated the Convention of Conventional Weapon (CWC) article I about general obligations for each state party under convention. And this action also violated the

⁹*The National Security Strategy of the United States of America* (Accessed February 13, 2010); Available from <http://www.whitehouse.gov/nsc/nss.html>

¹⁰ *Background Information, 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons United Nations* (Accessed November 8, 2009); Available from <http://www.un.org/events/npt2005/background.html>

¹¹ *Proliferation of Weapons of Mass Destruction: Assessing the Risks*, US Congress Office of Technology Assessment (Accessed February 13,2010); Available from <http://www.princeton.edu/~ota/disk1/1993/9341/9341.PDF>

principle of UN about peace and security maintenance, because this kind of action threat other states, and also these weapon endanger the civil, because the effect is very deaden¹²

But on December 2008, Israel under PM Benjamin Netanyahu still used Weapons of Mass Destruction to attack Hamas. And the weaponry system that was applied in Gaza used White Phosphorus, and by this weaponry system, Israel military killed more than a thousand people. In other words Israel had done the second session of genocide after Holocaust.

According to the Convention of Conventional Weapon (CWC), each state is prohibited to use White Phosphorus (WP) in civil area. The effect of White Phosphorus is very dangerous, because the characteristic of White Phosphorus it is flammable, and it is so difficult to extinguish, and if White Phosphorus is extinguish by water, it raises toxic¹³.

Before Gaza crisis, UN had good mark as a problem solving in every issues, and UN also ran their task as peacemaking, peace keeping, and peace building, and with their troops from the members, UN also contributec in the battle field to maintain the peace.

United Nations as the head of whole international organization is responsible for Weapons of Mass Destruction issue, and should take real action to stop Israel aggression, because Israel aggression endangers the civil, and its hard task for new secretary general of UN, Ban Ki-moon. In this term, he should make

¹² *Israel's Nuclear Weapons* (Accessed January 15, 2010); Available from <http://www1.surya.co.id/v2/?p=466>

¹³ *Middle East has 150 Nuclear Weapons* (Accessed February 23); Available from <http://completeada.blogspot.com/2009/01/menyibak-senjata-terlaranmg-yang.html>

a priority about the policy, because the policy is related with humanitarian and also the relation between states. But in fact, UN does not take real action to handle the conflict, in other word UN failed to overcome the conflict in Gaza Strip, UN failed run their principles, maintaining peace and security.

UN as the international organization has 5 functions related with the task of UN. According to the Harold K. Jacobsen, international organization has five main duties¹⁴:

- ***Information function***

UN should take responsibility for giving every information related with the development in every issue, so UN should has the current information that relates with the member. It will assist one state to other states that need it.

- ***Normative function***

UN has their own normative function, and the normative function of UN is described on UN task, which are peacemaking, peace keeping, and peace building

- ***Lawmaking function***

In UN, there was Security Council as the main instrument for UN to run lawmaking function. And Security Council also has two types, permanent and un-permanent member. The States are that placed in permanent are states who become great power in Cold War era which

¹⁴ Harold K. Jacobson. *Networks of Interdependence*. New York: Alfred A Knopf, 1979, p. 89-90

are United State of America, France, Russia, England, and China. The un-permanent members will be chosen in certain period.

- ***Supervisory functions over the implementation of regulations***

In UN there is a main rule named UN Charter which explains about the regulation in UN and how every member should participate.

- ***Operational Function***

To run UN task as peacemaking, peace keeping, and peace building, UN always gets assist once from the members. If there was a war in certain place UN sent their troops. UN member always sends their troops to join in peace keeping troops.

From these duties of international organization, UN violated 4 from 5 duties. UN only runs their duties as information function, which is UN inform member state, about the progress of UN program, but UN cannot run other duties such as Normative function, Law making function, Supervisory function over the implementation of regulation, and operational function.

According to the UN charter, the purposes of UN is maintaining international peace and security, but as what happened in Middle East in Gaza Strip war, UN appeared helplessness, because UN cannot solve the problem, and until now, UN cannot punish Israel with their fault. And the serious problem that UN was done in Gaza strip war is operational function. Because until now, UN has not sent their peace keeping troops. They just sent their agencies to help the people. And how about resolution as the representation of law making function in

Gaza Strip? The resolution that was created by Security Council could not make Israel stop their military aggression and until now Israel still ignored the resolution. This is different with in Iraq, when UN by Security Council could punish Iraq with the resolution, and in Gaza Strip crisis, why UN failed handling the conflict that related with the used of weapon of mass destruction.

B. Research question

Why did UN fail to overcome weapons of mass destruction (WMD) in Gaza Strip War?

C. Theoretical Framework

To answer the research question, I try to use the concept of Legislation process. In this concept, perhaps we will to know about legislation process on UN, and also the factor that caused UN failure to run the legislation.

1. Concept of Legislation¹⁵

“Legislation” refers to a particular set of characteristics that institutions may (or may not) possess. These characteristics are defined along three dimensions: obligation, precision, and delegation. Obligation means that states or other actors are bound by a rule or commitment or by a set of rules or commitments. Specifically, it means that they are legally bound by a rule or commitment in the sense that their behavior thereunder is subject to scrutiny under the general rules, procedures, and discourse of international law, and often

¹⁵ Nanang Pamuji Mugasejati, “*Concept of Legalization on International politic*”, Journal of Social and political science of UGM, Vol. 10. No. 2, November 2006

of domestic law as well. Precision means that rules unambiguously define the conduct they require, authorize, or proscribe. Delegation means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules.

Each of these dimensions is a matter of degree and gradation, not a rigid dichotomy, and each can vary independently. Consequently, the concept of legalization encompasses a multidimensional continuum, ranging from the ideal type of legalization, where all three properties are maximized; to hard legalization, where all three or at least obligation and delegation are high, through multiple forms of partial or soft legalization involving different combinations of attributes, and finally to the complete absence of legalization, another ideal type. None of these dimensions is far less the full spectrum of legalization that can be fully operationalized.

Statutes or regulations in highly developed national legal systems are generally taken as prototypical of hard legalization. For example, UN setting their legally binding on Charter which binding member of state to have aggression (obligation), unambiguous in its requirements (precision), and subject to judicial interpretation and application as well as administrative elaboration and enforcement (delegation)

The conception of legalization creates common ground for political scientists and lawyers by moving away from a narrow view of law as requiring enforcement by a coercive sovereign. This criterion has underlain much international relations thinking on the topic. Since virtually no international

institution passes this standard, it has led to a widespread disregard of the importance of international law. But theoretical work in international relations has increasingly shifted attention away from the need for centralized enforcement toward other institutionalized ways of promoting cooperation operation¹⁶. In addition, the forms of legalization that observe at the turn of the millennium are outrushing in the absence of centralized coercion.

United Nations in run the principle of the charter as peace keeping for international security has big responsibility to make sure that every single state run these thing and UN also gets support from other convention, such as chemical weapon convention.

In UN Charter or CWC, there are obligation things that related with weapon of mass destruction. In this case, when Israel against Palestine with the weapon of mass destruction, there were malfunction in UN body and also the violation of the charter. Based on the mechanism that adopt by UN, if a state want to against other state, he should communicate first about the action, then UN will take an action to mediate or even send their troops, but in this case, Israel are ignore the charter chapter VII about action with respect to threats to the peace, breaches of the peace, and acts of aggression

In Gaza Strip war, there were vice a versa war between Israel and Hamas. Israel was feel threaten by Hamas bombing activity, based from this statement, Israel try to used their diplomacy capacity to convince international community, and with support from United State, Israel get what they want.

¹⁶ See the debate between the "managerial" perspective that emphasizes centralization but not enforcement, Chayes and Chayes 1995, and the "compliance" perspective that emphasizes enforcement but sees, it as decentralized, Downs, Rocke, and Barsoom 1996

Another dimension of legalization is delegation. United Nations which consist of state of parties which has their own interest, are really difficult task for UN to make it balance. The third party intervention of big state also close with resolution arrangement. While the resolution is not impinge of their national interest, they will be accepted, but if the resolution were suitable with the interest, he will used veto right then.

And the last is obligation. Based on UN charter there were state obligation to maintain peace and security. Almost article in UN charter tell about state sovereignty, and also obligation for state member to respect the humanitarian issues. But what happened today, as the effect of arm race, now some of state member are violated the charter, and even UN has power, they cannot stop it.

Based on the dimension of legalization in UN body, we know that UN are ineffective to handling the issues that related with sovereignty of state. Although UN has the legal binding, there still states are ignoring it.

Each dimension has level of implementation, and by these level, we can predict each dimension run well or not. If the dimension on high level, it is mean these dimension are run well, but it is not guarantee if each dimension place on high level, these international organization are success to run legislation process.

Table 1.1
Indicator of delegation process that related with conflict resolution
With implementation level

	<i>High</i>
<i>Conflict resolution</i>	<ol style="list-style-type: none"> 1. <i>Used international court of justice: the decision from third party has legal binding, jurisdiction be in effect and applied for all problem, has authority to comment on and add some rule</i> 2. <i>Using international court, but has limitation on jurisdiction</i> 3. <i>Legal binding of Arbitrate</i> 4. <i>Unlegal binding of Arbitrate</i> 5. <i>Mediation</i> 6. <i>Weaken process that already legalize</i> 7. <i>Weaken of political process</i>
	<i>Low</i>

Table 1.2
Indicator of Precision toward Conflict Resolution
Related with affectivity of implementation

<i>High</i>
<ol style="list-style-type: none"> 1. <i>The rule that direct already clear enough with the explanation</i> 2. <i>There were substantive things that could explain whether limit</i> 3. <i>There were current issues that get disreaction</i> 4. <i>Just used standard</i> 5. <i>Do not operationalized well</i>
<i>Low</i>

Table 1.3
Indicator of obligation toward Conflict Resolution
Related with the effectivity of implementation

<i>High</i>
<i>1. Obligation that needn't such kind of requirement, but there were binding indicator</i>
<i>2. Obligation toward agreement that involved political sensitive issues</i>
<i>3. Obligation with escape clause</i>
<i>4. hortatory obligation</i>
<i>5. (guidelines)</i>
<i>6. Rejection of implementation</i>
<i>Low</i>

By these things, perhaps we can analyze the factor that caused UN failed to run the task as peace keeping and peacemaking in Gaza Strip Crisis. And by these things also we can predict who the actor around the legislation process in UN is.

D. Hypothesis

UN as the head of international organization which consist of a hundred member of state with their own common interest make UN cannot maximize their effort. The problematic issues such as humanitarian and arm race cannot handle well by UN because these issues related with develop state, especially in Gaza Strip issues.

UN has responsibility to keep the peace condition based on UN charter. But the problem is UN has lack in legislation process. *First*, in delegation process, Israel and his alliance, United States of America, success to control member of states and even ignore the rule that will endanger Israel position as a

state. *Second*, precision process in UN make Israel is feeling free to against Palestine. The issues that related with Israel against are not specific claimed Israel as the common actor that caused the conflict. *The third* is obligation process in UN. Obligation process in UN should run well, because UN has agencies to control the used of WMD, but the problem is, these agencies are already lead by developed states, and they cannot react neutrally.

E. Method of Research

In this research paper the writer uses only one method of research. The method is literature study, which is derived from books, journals, magazines, newspapers and also internet sources.

F. Range of Research

Range of Research of this thesis is around 1993-2008, from Oslo I Agreement up to Gaza strip crisis in 2008 in which Israel used weapon of mass destruction to attack Palestine.

G. System of Writing

Chapter I : Background

The content of this chapter is about the background, Research Question, Theoretical Framework, Hypothesis, Range of Research, Data collecting, and system of writing.

Chapter II : The Dynamic of United Nation On Conflict Management

This chapter will explain about the UN at a glance and in this chapter also describe about the dynamics of UN toward handling conflict that related with weapon of mass destruction

Chapter III : The Dynamic of Weapon Mass Destruction (WMD) and Israel Interest Behind

In this chapter the writer explains about the brief description of Weapons of mass destruction (WMD) and all aspect that relate with them

Chapter IV : Factors That Caused Ineffectiveness of UN Legislation on Gaza Crisis.

There have been problematic issues that relates with UN legislation that occurs until now, and this becomes the most problematic matter in Gaza Strip war

Chapter V : Conclusion

This is the final explanation about the failure on UN to control weapon of mass destruction in Gaza Crisis.

