

CHAPTER IV
FACTORS THAT CAUSED INEFFECTIVENESS OF UN LEGISLATION
ON GAZA CRISIS

The concept of legislation process in UN toward controlling weapon of mass destruction are close with the decision making process in UN body. By this concept with their indicator, I try to analyze the factor that caused UN failure to handling the conflict in Gaza Strip Crisis. And this concept also try to explain about the UN as the whole international organization with a hundred member of states.

A. UN Resolution Toward Weapon of mass destruction

The development of history in Arab-Palestine and also Israel, the main root of this conflict is around 1917, when England foreign ministry, James Arthur Balfour, promise to help Jewish settlement, and also help the people to enter Palestine territory. Hehaluzt (Jewish Teenager organization) is on of Jewish organization that coordinates people from entire of the world to enter Palestine territory, and continue Theodor AfHerzl idea to created Israel state. Hehaluzt that oriented based on Hovevei Zion (lover of Zion) has their own purposes is to realize the people especially the teenager about their nationality.

In the first declaration Hehaluzt promise to protect the people to enter Palestine area by conducting defense unit⁷⁶. After Hehaluzt success to unite

⁷⁶ Sayigh, Rosemary. *Palestinians: From Peasant to Revolutionaries*. London: Zed Press, 1979.

Yahudi, people make underground movement named Jewish Legion and Gdudim.

And these organization which adopt Social Zionism is become the Zionist force⁷⁷.

Jewish get pressure in Europe, because in that time Nazi that lead by Adolf Hitler try to find Jewish and send them into Ausewitz camp. And because the spirit of Hehaluzt, Hehaluzt success to unite Jewish into Palestine territory.

Table 4.1
List of Jewish Diaspora

No	Citizenship	1919-23	1924-31	1932-39	1940-45	1919-45	%
1	Austria	497	294	5,623	892	7,306	2.2
2	Bulgaria	328	1,127	948	2,257	4,660	1.4
3	Czechs	112	363	4,779	1,181	6,435	1.9
4	England	180	173	806	89	1,248	0.4
5	Germany	469	660	35,980	2,022	39,131	11.7
6	Greece	158	696	5,280	797	6,931	3.1
7	Hungary	291	230	1,107	1,297	2,925	0.9
8	Italy	37	57	556	559	1,209	0.4
9	Latvia	401	858	3,212	86	4,557	1.4
10	Lithuania	901	3,014	5,208	180	9,303	2.8
11	Poland	9,158	37,387	83,847	6,833	137,225	40.9
12	Romania	1,404	3,739	9,548	6,474	21,165	6.3
13	USSR	13,363	14,636	2,473	634	30,836	9.2
14	Yugoslavia	145	136	702	746	1,729	0.5
15	Iran	197	865	489	176	1,727	0.5
16	Iraq	171	2,617	124	627	3,539	1.0
17	Turkey	478	1,140	1,455	3,537	6,610	2.0
18	Yemen	184	2,317	6,416	5,537	14,454	4.3
19	USA	601	1,158	4,621	16	6,396	1.9
20	Other Country	886	882	6,704	2,037	10,449	3.1
21	Stateless	-	-	4,132	4,616	8,748	2.6
22	Unspecified	5,140	1,146	2,087	110	8,483	2.5
23	Total	35,101	73,435	186,097	40,433	335,066	100.0

Source: Gertz, statistical Handbook of Jewish Palestine, 1947⁷⁸.

⁷⁷ Perlmuter, Amos. *Politics And The Military in Israel 1967-1977*. London: Frank Cass, 1978

⁷⁸ Horowitz, Dan and Mosse Lissak, *Origin of the Israeli Polity*. Chicago: University of Chicago Press, 1978.

Based on these data Hehaluzt shown to us how fast they fall back Jewish. And of course this is not good for Palestine authority. In the first time Jewish get Palestine land by buying their land, but since Jewish success to conduct their military system, Jewish try occupied Palestine land by their own way, by aggression, and it makes Palestine and Arab people should lose their land. And climax condition in Palestine is when Israel decided to get their independence on May 14th 1948.

Negotiation process toward handling Gaza Strip Crisis already has done in Camp David I agreement which initiate by President of United State of America, President Carter in 1978. Negotiation process which invite the parties who become the actor in these conflict. Gaza Crisis in first time involves Egypt and Israel as the actor. President Anwar Sadat from Egypt and Prime Minister, Golda Meir came to Camp David in December 5th 1978. Is not easier to make both top actor decide to make peace, or even disarmament condition, and President of United State of America, President Carter know well this condition. In that time 13 days they had polemic in negotiation process. But, with diplomacy skill from President of United State of America, President Carter, finally those third leaders agree two framework of peace. Two framework of peace is an agreement between Egypt and Israel to solve the Palestine conflict.

1) Peace agreement between Egypt and Israel

This agreement is kind of modification from Begin autonomy plan on December 22, 1977 about the procedure to created self-governing authority for West Edge and Gaza Strip. This agreement arranged about:

- a. Surrender of Israel military from Sinai in 3 years
- b. Secure zone endorsement
- c. After ratified the agreement, then state who has conflict opened their diplomatic.

2) End Palestine conflict

Conflict in Palestine is under consideration between Israel, Egypt, Jordan, and the representative from Palestinian. This purpose of this meeting is to solve the Palestine problem in all aspect. This agreement arranged about:

- a. 5 years period transition, and create self governing authority
- b. Israel military reduction and still placed in certain location

Palestine as a religious state in previous time, now that state become archaeological site for the conflict. Many building there already destroyed by machinery gun, and other military tools. More than a hundred people become the victim from the tragedy, and now Palestine already fall into the lowest level of civilization.

The conflicts in Middle East that involve Arab state face Israel as the public enemy was get international attention. Many state who joined in international organization shown their sympathies from these conflict, because the conflict remind them into holocausts tragedy in Austria, which a hundred or even thousand of Jewish killed there. And the tragedy in Gaza so terrible, because until now there weren't solution for handling the conflict.

Involvement of third party is needed in negotiation process in this conflict. The history noted there were 8 peace agreement between Israel-Palestine, from Camp David I, Oslo, Madrid, Gaza Jericho First, Way River, Camp David II, Road Map, Mecca Declaration, but these agreement as the effort from international community still cannot stop the conflict, and violation still exist in Gaza.

The implementations of each agreement always stag in people level. In elite level (government), both parties are agree with every single point that describe on the agreement draft. But, there still different point of view between people in each state. And the conflict getting worse when conflict in Gaza had been around escalation level. The first escalation when Israel announced their independence. It means, Israel by using anyway will occupied Palestine territory, and gets the fertile area for prosperity of Jewish.

United Nations as the international organization try end the conflict between Israel-Palestine before Israel announced their independence by released resolution number 181 on November 29th 1947. In that resolution Palestine land will separated into Arab and Israel⁷⁹. Resolution number 181 on November 29th 1947 and the Israel independence declaration is caused war between Arab-Israel and of course influence the regional stability in Middle East, because each state are rejected the content of these resolution, and the conflict between Arab-Israel are happened until now.

⁷⁹ Cohen, Shaul Ephraim. "The Jerusalem Question, 1917-1968". *Stanford*. CA: Hoover Institution Press., p. 118.

After Arab and Israel getting war in 1948, Jerusalem separated into 2 region, west which most Jewish live there, and also under Israel authority, and another place in East, Arabian live there under Jordan regime. Arab settlement in west Jerusalem such as Katamon or Malha should unoccupied. The same condition also happened in East, include Old city and Daud, people (Jewish) should unoccupied. The only one state who still under Israel for 19 years is Scopus Mountain, which Ibrani university place. After six days of war in 1967, East Jerusalem under Israel regime and bundle with west settlement with a few villages in near West. In November 1967, Security Council release resolution number 242 which give order for Israel regime to withdraw from the occupation territory. In 1980, Knesset ratifies Jerusalem law which explain Jerusalem are unity, and Jerusalem become centre of city⁸⁰, but these law do not decide the boundaries. UN as an international organization rejects this declaration by UN resolution number 478.

In the effort to solve polemic around the implementation of agreement, both parties inclined done politicization. PM. Benjamin Netanyahu as the prime minister of Israel worried if the agreement run in Gaza, they will lose some area, especially Jerusalem, and the purposes of Israel which tried to make Republic of Israel will take time longer. And the main reason is Jewish cannot living together with Arab people, because they think Arab people has lack of civilization. This condition happened when PM. Yitzhak who initiated Oslo agreement was killed

⁸⁰ Bovis, H. Eugene, Basic Law- Jerusalem- Capital of Israel, dated 11 June 2008

by Israel extremist, Yigal Amir in November 1995⁸¹. So the choice to have conflict is more rational than living together like a nation with Arab people.

In other side, Palestine already noted that Israel with all regime will ignore all agreement. Or if there were disarmament condition, Israel will strength their military by add some weaponry system. And Hamas also do not want negotiate any more with Israel, because they think getting war with Israel is kind of Islamic concept called Jihad.

The negotiation which conduct peace still on debatable, about the implementation, and the important things is about the territory, claimed of Jerusalem. The debate of negotiation process already broke up by one parties or Israel by having claimed on certain territory and they continued by having or build Jewish settlement. We assume if Israel want build Jewish settlement, they will occupied Palestine territory, and they will case away people from their land. How terrible if Israel do these things. Israel will violated the UN charter article I about the "develop friendly relation among nation based on respect for the principle of equal right and self determination of people, and to take other appropriate measures to strength universal peace". By having claimed and continued the process to build Jewish settlement, Palestinian already treated.

In the previous negotiation, United State of America always becomes single actor who initiates the effort of peace. But now, United State of America with UN, Russia, and Europe commission try to find the solution. Then this group name quartet and they create concept of peace that formulated in "peace route map".

⁸¹ Musthafa Abd.Rahman, *The Palestinian-Arab Minority in Israel, 1948-2000: A Political Study*. Jakarta: SUNY Press, 2002.

Concept of peace route map based on President of United State, George W.Bush speech on June 24, 2002 about two state solutions in Palestine-Israel crisis⁸². The value of concept route map is too strategic, not only promise for the rise of Palestine as the state in 2005, but also as one of current US foreign policy in Middle East after tragedy September 11, 2000 in New York and Washington DC.

Concept of peace route map defines into 3 step of realization, and in the end of this step is Palestine become a state in 2005⁸³.

First step, from October 2002 up to May 2003:

1. Palestine stop their fight
2. The return of security coordination between Israel-Palestine
3. The implementation of Palestine reform
4. Withdraw Israel military from West edge
5. Revoking the boycott toward Palestine cities
6. Freeze the development of Jewish Settlement

Second step, from June 2003 up to December 2003:

- a. Continuing of Palestine reform
- b. Withdraw Israel military to their position before exploded of Intifadah Al-Aqsa on December 28, 2000
- c. The return of Egypt ambassador for Israel in Tel-Aviv
- d. Will be held the first Middle East peace conference to discuss about the rise of Palestine as state.

⁸² "Peace route map still in concept", Kompas, December 23, 2003

⁸³ *Ibid*

Third step from 2004 up to 2005:

7. Held Middle East peace conference to declare the rise of Palestine as a state and in that conference, will discuss about the route of Syria-Israel and Lebanon-Israel

But in fact, the implementation of this route map is not easy, and finally this concept failed to create peace condition in Middle East. In technique, the main factor that makes this concept failed is because there is no evaluation between quartet members toward the implementation of this concept and there is no supervisor function.

B. The Lack of UN legislation Process

UN as the neutral international organization has impartial characteristic, but the lack of legislation process make UN loose the characteristic, and potentially controlled by the parties and make ineffectiveness on work.

If we talk about the legislation process, there were the kind of dimension, there are:

a. UN Delegation Process toward Alliances System

As we know that conflict in Gaza Strip war is very complicated and more dynamic. The act of the actor who involved to the conflict or negotiation process shown how difficult to search the solution for quit from the conflict that already take a longer time. The unite diaspora from 1919-1945 already change

demographic of conflict, and it become getting worse when Palestinian getting force from their land.

Related with delegation process on negotiation process in Middle East, there were simplified explanation:

First, the representative of Israel in weapon regime. In this case, international community faced difficulties to search way for Israel do not used the dangerous weaponry system, because Israel are not related with any weaponry regime. Weaponry regime in this case is about the Non-proliferation treaty. So, it is quite easy for Israel used White Prosperous to attack Hamas basis in the beginning of 2009. And Israel cannot punish by any weaponry regime, because Israel is not member yet.

Second, the representative of Israel in UN. To create harmony living between states is part of UN task, but it is hard task for UN with the problematic causes. For the first things is UN tried to make sure that every single state should run the charter, the charter which arrange about the living together as a state, used the weaponry system, and also the punishment for those who violated the charter, but it is hard task for UN to punish Israel as the effect of military aggression

The United Nations Security Council unanimously adopted resolution 1540 (2004) under Chapter VII of the Charter of the United Nations on 28 April 2004. Legally binding on all UN member states, it obliges them to take a range of steps aimed at preventing the proliferation of nuclear, chemical and biological weapons, their delivery systems and related materials, especially by non-state actors.

Two concerns led to this far-reaching resolution: terrorism, and the proliferation of nuclear, chemical and biological weapons (weapons of mass destruction or WMD), their delivery systems and related materials. International terrorism has long been on the Security Council's agenda, both before and after the attacks of 11 September 2001. Non-proliferation, tied to disarmament and arms trade control, has been a concern of the international community for many years, in various bilateral, regional and more global fora. The resolution has to be seen in the context of existing treaties and arrangements. The Council has recognized a possible link between terrorism and WMD before: in resolution 1373 (2001) it noted the close connection between international terrorism and illegal arms -trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials.

Third is the policy of Israel government to continue the process of build Jewish settlement. While negotiation process still run, and while Vice President of United State visit Jerusalem to find solution, Israel by PM. Benjamin Netanyahu announced plan to build 1.600 Jewish Settlement, and this policy derive the negotiation process more complex.

Four, the implementation of every single agreement just in elite level, people are not involve on implementation. This condition shown how people believe their elite to arranged or negotiate the agreement, but the problem is after the agreement ratified by the parties, just a few people know about the content of agreement, so it quite possible for existence of conflict in Gaza Strip.

The last negotiation that involves the third parties for search the solution is the proposal from United State of America which propose two state solutions. In that proposal United State of America deliver their idea to conduct two independent states, Israel and Palestine as the independence state, and the territory based on UN resolution number 181 in 1948. By these proposal, United State of America try pursue for the commitment from these parties to end the conflict.

United State of America run the double standard policy on UN Security Council by defend the proposal by negotiate UN member state, and United State of America also try to get support from other permanent member.

For that policy, there are 2 possibilities of the purposes from United State of America. First, United State of America tries to protect Israel from international community pressure. As we know that based on international community view on UN Security Council, Israel looks like public enemy with the dangerous military system that already protect by any regime yet. For those possibilities, United State of America could use their veto right to make it real

Second, United State of America tries to run their standard in foreign policy as the police of world. After cold war era, there are two policy of world which responsible to conduct peace in entire of world, there were Russia (USSR) and United State of America. In every single international, United State of America tries to make image as the main actor who conduct peace by hold negotiation. In many time United State of America become the actor of negotiation between Israel and Palestine.

The complicity of negotiation process that happened in Gaza, make each party should to think pragmatism, that they should make negotiation and create the agreement, and then mobilize the implementation process. In these conditions, we can conclude delegation process has lower level of compliance. We know from this matrix:

Table 4.2
Indicator of Delegation Process that Related with Conflict Resolution
with Implementation Level

	High
Conflict resolution	<ol style="list-style-type: none"> 1. 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 2. Using international court, but has limitation on jurisdiction 3. Legal binding of Arbitrate 4. Unlegal binding of Arbitrate 5. Mediation 6. Weaken process that already legalize 7. Weaken of political process
	Low

Source: Nanang Pamuji Mugasejati, "Concept of Legalization on International politic", Journal of Social and political science of UGM, Vol. 10. No. 2, November 2006

To analyze the effectiveness of UN legislation on Gaza Strip crisis, we take a look on that matrix above. Point 5 is UN legislation placed. Based on the matrix, UN has function as negotiator.

According to Fisher⁸⁴, a negotiator has the characteristics as follows⁸⁵:

1. Identity; the relationship of the third-party with the conflicting parties, as this will have a bearing on status and impartiality. It is essential to know if the third party is to serve in an official or formal role. Identity is also related with motives and interest. Third parties who play as negotiator also become the additional actor who also plays in conflict, and they pursue their interest in that conflict, such as in economically. And by becoming the third party, he could keep their relation with other states as an alliance.
2. Qualities and Competencies, becoming the third parties or negotiator are not easy as they imagine. They should have capability and capacity as the third party, because they should facilitate the actor who is involved in the conflict, and also the third party should have the ability to manipulate the data when due.

Negotiation is the most common method for settling international differences. It involves direct discussion between or among the parties to the dispute with the objective of reaching an agreement. No outside party is involved in the process. Negotiation is the essence of the practice of diplomacy.

UN as the main international organization that is responsible to maintain peace and global security has responsibility for every conflict that threatens the peace,

⁸⁴ Ron Fisher is Professor of conflict analysis and management at Royal Roads University, Victoria, Canada.

⁸⁵ Jean-Sébastien Rioux, *Third Party Interventions In International Conflicts: Theory And Evidence*, Institut québécois des hautes études internationales: Université Laval, 2003

but without broke state authority. UN has good track record of negotiator in every issue, from democracy issues in Cambodia, weapon issues in North Korea, and the last in Iran. For those issues, UN sends their senior diplomatic to hold the negotiation while they discuss in Security Council for the legal binding.

To end the conflict in Middle East, he tried to mobilize their agencies that related with the issues for search for every possibility to make solution, and sometimes UN send their senior diplomat to negotiate the party. UN always involves the representative of Palestine and also Israel. Before goes to elite level, sometimes UN hold negotiation on ministerial level, and if there were commitment, the result of meeting brought to elite level which invite the president from the parties.

The weaknesses of UN delegation based on the law making process, while national interest which involve direct or indirect on the conflict. When UN tries to propose brought the result of negotiation, there will be debate between states. And UN member states will be separated into so many parties, based on which parties is their alliance. In Gaza issues, UN member states are separated into Islamic states and west state which lead by United State of America. On debate session, Islamic state are become the winner, they are as the major voice, but when brought into Security Council, they will disappointed with the result, because United State of America will used the veto right.

b. Precision of Negotiation Process toward Conflicting Issues

Gaza Strip crisis is become complex crisis and already construct by variety of setting from all parties who involved on the process. The perspective between one actor and another actor, from elite level up to mass, there aren't congruent.

The Security Council is the United Nations' most powerful body, with primary responsibility for the maintenance of international peace and security. Five powerful countries sit as permanent members along with ten elected members with two-year terms. Since 1990, the Council has dramatically increased its activity and it now meets in nearly continuous session. It dispatches military operations, imposes sanctions, mandates arms inspections, deploys election monitors and more.

The Security Council is part parliament, part secret diplomatic conclave. It follows a Program of Work set out each month by its rotating President. We present information on the different types of meetings of the Council, including a section on Informal Consultations where the Council conducts most of its business behind closed doors. GPF has also collected information on Council field missions who go to crisis regions and panels of experts that provide some of the UN's most explosive and revealing reports.

To resolve international conflicts, the Security Council sometimes imposes sanctions. International community considers the debate on Sanctions and includes proposals on ways to make sanctions more effective, better targeted, and more humane and lawful. The Council also frequently deploys Peacekeeping missions that bring soldiers and police directly into conflict zones. Peacekeeping

is the UN's largest and most expensive activity and it can also be controversial, especially when robust operations apply lethal force. GPF looks at Peacekeeping Data, including the number of peacekeepers, the country of origin and the cost of these operations. We look at the lessons from past UN peacekeeping experiences as well as current operations. We also look at Peacekeeping Reform and consider the role and future of peacekeeping operations.

The key issues in Security Council is around veto right, and this issues still in debatable, because the used of veto right is related with five permanent member interest. United State for example. The United States of America has used its veto power more than any other permanent member since 1972. Totally since 1972, United State already used veto until 83 times, and all resolution are related with the existence of Israel in Gaza Strip

Table 4.3
List of US Veto toward Israel Resolution

No	Year	About:
1	1972	<ul style="list-style-type: none"> • Syria complained against Israel military (Ceasefire 1967 Violation) • Lebanon complained against Israel Aircraft (Ceasefire 1967 Violation)
2	1973	<ul style="list-style-type: none"> • Supporting of Palestine • Right and spurred Israel military to withdraw from Palestine.
3	1975	<ul style="list-style-type: none"> • Lebanon complained against Israel military
4	1976	<ul style="list-style-type: none"> • Lebanon complained against Israel military toward civil • Resistance of international community toward Jewish settlement • Supporting Palestinian to decide their own life • Supporting Palestine right
5	1978	<ul style="list-style-type: none"> • Evaluation of Palestinian as a nation • Human right violation of Israel in Palestine
6	1979	<ul style="list-style-type: none"> • Recalling whole Palestinian • Requested which address to Israel government to stop violated human right

		<ul style="list-style-type: none"> • Requested the report of condition in Palestine that occupied by Israel • Giving aid to Palestine • Attendance of Palestinian woman on UN conference about woman
7	1980	<ul style="list-style-type: none"> • Requested that recall Palestinian refugee • Complaining about Israel policy about Palestinian condition • Complaining about Israel that still violated the human right • Supporting Palestinian to decide their own life
8	1981	<ul style="list-style-type: none"> • Request for Israel government to stop excavation activity in East Jerusalem, because according to UN these area were occupied land • Resistance toward Israel bombed activity in Iraq nuclear facility • Resistance toward Israel policy about condition of Palestinian • Determining of Palestinian right • Status of Jerusalem • Status of Palestine refugees • Status of Palestine refugees and their right to come back to their home • Status of Palestine refugee and their property • Aid conferment from Jerusalem university for Palestine refugees • Supervisory toward Israel human right violation in Palestine • Resistance of Israel policy to closed Palestine universities • Resistance of Israel policy to build canal which connect Dead ocean and centre ocean • Sovereignty of national resources in Palestine and other resources in other Arab state that occupied by Israel • Resistance of Israel law toward Golan plateau
9	1982	<ul style="list-style-type: none"> • Lebanon complaining against Israel military toward civil • Resistance of Israel policy toward Israel aggression in Lebanon • Status of Lebanon civil right • Resistance of Al-Aqsa Mosque in Jerusalem attack • Resistance of Ramallah dismissal • Fully withdrawal Israel military from Golan plateau in 1967

10	1983	<ul style="list-style-type: none"> • Resistance of Arab toward Israel occupation
11	1984	<ul style="list-style-type: none"> • Lebanon complaining against Israel military toward civil • Resistance of Israel policy toward Israel aggression in Lebanon • Resistance of Israel aircraft attack toward Iraq nuclear system • Supported deracialize • Supported Palestine right • Preparation of peace conference in Middle East • Resistance of Israel aggression which violated human right • Resistance of Israel decimate toward Palestine • Resistance of Israel nuclear system under international community supervisory • Economic aid for Palestine
12	1985	<ul style="list-style-type: none"> • Resistance of Israel policy toward Israel aggression in South of Lebanon • Resistance of military used excessive in Israel aggression
13	1986	<ul style="list-style-type: none"> • Syrian Complaint against Israeli Interception of Libyan Civilian Aircraft • Violation of Haram Al-Sharif (Jerusalem) • Complaint by Lebanon against Israeli Aggression
14	1987	<ul style="list-style-type: none"> • Requested for Israel to obey Geneva Confession toward maintain relation with Israel • Requested for Israel to stop gave the burn's rush the Palestinian • Resistance of Israel aggression in Lebanon • Requested for Israel to withdraw their military from Lebanon • Cooperation between UN with League of Arab
15	1988	<ul style="list-style-type: none"> • Arab complaining against Israel military toward civil • Resistance of Israel policy toward Israel aggression in Arab • Lebanon complaining against Israel military toward civil • Lebanon complaining against Israel military • Status of Arab right • Israel human right violation toward Arab civil • Lebanon complaining against Israel aircraft attack
16	1989	<ul style="list-style-type: none"> • Created UN resolution based on previous resolution for Arab-Israel conflict
17	1990	<ul style="list-style-type: none"> • Complaining of Palestine toward Israel occupation

18	1995	<ul style="list-style-type: none"> • Support toward East Jerusalem status, and claimed as part of Israel occupation
19	1997	<ul style="list-style-type: none"> • Demanding Israel's immediate cessation of construction at Jabal Abu Ghneim in East Jerusalem • Calling upon Israel to refrain from East Jerusalem settlement activities
20	2001	<ul style="list-style-type: none"> • on the withdrawal of Israeli forces from Palestinian-controlled territory and condemning acts of terror against civilians • Send controlling team without weaponry system to Gaza Strip and edge west
21	2002	<ul style="list-style-type: none"> • on the killing by Israeli forces of several United Nations employees and the destruction of the World Food Programmed (WFP) warehouse
22	2003	<ul style="list-style-type: none"> • On the security wall built by Israel in the West Bank. • On the Israeli decision to "remove" Palestinian Authority leader Yasser Arafat.
23	2004	<ul style="list-style-type: none"> • On the demand to Israel to halt all military operations in northern Gaza and withdraw from the area. • on the condemnation of the killing of Ahmed Yassin, the leader of the Islamic Resistance Movement Hamas
24	2006	<ul style="list-style-type: none"> • On the Israeli military operations in Gaza, the Palestinian rocket fire into Israel, the call for immediate withdrawal of Israeli forces from the Gaza Strip and a cessation of violence from both parties in the conflict. • On the demand for the unconditional release of an Israeli soldier captured earlier as well as Israel's immediate withdrawal from Gaza and the release of dozens of Palestinian officials detained by Israel.
25	2008	<ul style="list-style-type: none"> • Resolution calling for an end to the massive ongoing Israeli attacks against the Gaza Strip.

Sources: UN site

Since July 26, 2002, United State declared Negroponte Doctrine, the continue from Israel First doctrine that claimed United State will ready to refuse for every Security Council resolution that will punish Israel.

Because the protection from United State, Israel had already ignored the implementation of resolution number 271, 298, 452, and 673. Which is Israel

ignore UN advisory to stop build big wall that cross in Gaza, although International Court of Justice ban this policy, and even America judicature claimed this policy is ipso facto.

Relationship between United States with Israel is very good. According to The New York Times (September 23, 2001), United States was giving fresh money to Israel around US\$ 77 billion since 1967. And United State also gives modern military technology.

Because get full support from United State, Israel feel free to against Israel, and by Operation Cast Lead in December 27, 2008, Israel already killed a thousand of civil. And according to leader of Hamas, Israel had already done their own holocaust.

This operation already violated:

- a. International law, because Israel massively attacked Hamas basis, and Israel also attacked hospital, mass media, and UN facilitation. The 192 of President of General Assembly, Miguel d'Escoto Brockmann from Nicaragua say that "The vialation of international law had already been noted in Gaza Strip war: Collective punishment, used massive military agression, agression to civilians, and also publict services such as houses, mosque, university, and scholls".
- b. Universal Declaration of human rights 1948 toward the obligation for respect the humanitarian
- c. UN charter. Although Israel claimed his aggression as self-defense, according to UN Charter article 51, Israel should communicate the

aggression to UN, and allow UN Security Council to take an action based on the mechanism adopted in UN

- d. UN Charter on the 1970 Declaration on principles of International Law.

This declaration was about the principles in international law in 1970 on obligation of state to obey the rule for peace and security condition

- e. Israel has already violated international humanitarian law, because Israel attack public services

- f. Israel aggression was named unjust war, because in this aggression, Israel was not proportional anymore. They attacked all building that they claimed as Hamas basis. And in this case, Israel had already violated Geneva Convention that should separated area combatant and civil area.

- g. Den Haag convention in 1907 about Humanitarian

- h. Israel continuously violated Annapolis agreement. Israel still continued their plan to build Jewish settlement in east Jerusalem. The occupation that was done by Israel military was shown to us how Israel did not run the agreement that had already been ratified in Annapolis, United States.

- i. Ignore UN Security Council Resolution no.1860 that requested for disarmament and stop violating civilian in Gaza Strip

- j. Used WP or White Phosphorus as the main tools military, because this weapon rose danger effect for the people.

- k. Zionist regime had already done their own holocaust toward the people in Gaza Strip. This aggression killed a thousand of people. Since Israel give

embargo and economic sanction, and now Israel against Gaza massively, and these things categorize as dehumanization.

1. Monevideo convention in 1933 on draft of Declaration of the Rights and Duties of Nations about the obligation of state to respect other states sovereignty.

Table 4.4
Indicator of Precision toward Conflict Resolution
Related with Affectivity of Implementation

High
1. The rule that direct already clear enough with the explanation
2. There were substantive things that could explain whether limit
3. There were current issues that get disreaction
4. Just used standard
5. Do not operationalized well
Low

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

On table 2 shown about the implementation related with precision on low level, eventhough UN pursue diplomatic ways by hold negotiation between parties. In that level I think UN cannot strength the role and also the rule.

To run the function of UN, every member of state should based on the charter, and for those who violated the charter, they could punished by UN, and possible for UN to retire the state who violated the convention. To make sure it run well, UN has supervisory function over the implementation of regulation.

On supervisory function, by UN agencies, they provide the information that related with the issues, and could manimize the possibilities violated the

agreement. And by supervisory function, it possible for UN to classified the issues in a crisis. In Gaza issues, there were 2 main issues. First about the humanitarian, and second is about the use of weapon of mass destruction. Some actor in UN try derive the issues into humanitarian, but major state such as United State of America try to derive the issues into non-substantive issues, so the issues become un-sensitive issues, and quite possible for United State of America and he's alliance to protect Israel.

In UN Security Council, there was lack of democracy toward handling Gaza Issues. Security Council that has big power to handling conflict, in Gaza Issues, Security Council feels as though weak, he cannot defeat the existence of interest from member of state.

On precision process, Israel get beneficial caused they do not member of any regime of Weapon of mass destruction, so they cannot punished by the regime of arm. And also they told to international community that he already done pre-emptive action, after he feels under threatens.

c. Lack of Obligation Process on UN that Run by the Agency

The important things if we discuss about the obligation process on negotiation is who the actor that do the obligation is, and how about the implementation of obligation itself. In the negotiation process there were so many actors involved, and these states joined on UN, and United State of America also practically run double standard, as a UN member states, and also as the police of

world. For the last position of United State of America, it caused United State of America as the major state which has a big power to influence.

United State of America as the major states do not want any other state tried to develop and also used the weapon. United State of America used Chemical weapon convention as the legal binding. By these conventions, perhaps United State of America could monitor and control the use of nuclear in other state. First about the monitoring. By Chemical weapon conventions that explain on article I, every single state who develop nuclear facilities should under convention agencies, IAEA. And second if states do not cooperate with the convention or with the agencies, convention has the right to destroyed the nuclear facilities. This step taken by convention agencies if the development of nuclear facilities close with the development of military uses, it means it will treat the global security. But in Israel issues, United State of America cannot apply the convention, because United State of America want to secure Israel position in international community, but there were a signal for United State of America to give pressure to Israel for obeying the convention. It necessary for Israel to obey the convention, because chemical weapon convention is the only weapon convention that possible for Israel to ratified, and NPT also.

To run the function as police world, United State of America also played on other standard, as the UN member states. By having veto right, United State of America play as the key actor, as explain before that United State of America already used the veto right until 83 times, and these resolution are related with

Israel. This veto is part of protection that given by United State of America government for Israel.

Because getting support from United State of America, Israel feel free to attack Palestine by used White Prosperous, and Israel also ignore almost all resolution from Security Council, resolution about disarmament, withdrawal from Palestine, requested to stop re-build Jewish settlement, and other resolution. But, Israel now getting pressure from international community after they used White Phosperous to attack Hamas basis, and hurt a thousand of people.

Table 4.5
Indicator of obligation toward Conflict Resolution
Related with the affectivity of implementation

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

Source: Nanang Pamuji Mugasejati, "Concept of Legalization on International politic", Journalof Social and political science of UGM, Vol. 10. No. 2, November 2006

The lack of UN obligation process influence the effectiveness of implementation on UN obligation process level. By internal condition and the effectiveness of UN agencies, it show how lowest obligation process in UN. To implement UN task to maintain peace and keep global security without any treat from weaponry system, UN give order to the UN agencies to provide the task.

IAEA as the UN agencies which operated on the monitoring and controlling process toward the development and used of weapon of mass destruction which related with nuclear, are responsible for the tragedy in Gaza while Israel used White Prosperous to attack Hamas basis.

In another weapon of mass destruction issues, IAEA could run the function well, and they could prove the ownership of weapon of mass destruction in certain state, and by these evidence, IAEA bring that things into Security Council and he will make the resolution that related with. And it was happened in North Korea, while IAEA delegate their staff to North Korea and found that state develop and quite possible to used nuclear as weapon of mass destruction.

In the ownership of White Prosperous in Israel military system that already used in Gaza Strip crisis, IAEA does not take an action based on the convention. It quite possible for major state such as United State of America controlled and even derives the IAEA decision. By controlling IAEA, United State of America will protect Israel and also their nuclear system, because United State of America are contribute on the development of nuclear facilities in Israel.

From the explanation above, we can conclude that there were lacks of legislation process on UN, and influence the process in UN itself, and make UN ineffective, there are three factor that cause:

First, there were existences of alliances between states in UN. The effect of alliance system is UN Security Council cannot decide objectively about current issues, and for those has majority in alliance system, they could get maximum

protection from their alliance. And the important thing is state should get their own alliance from permanent member.

Second, there was existence of major power which could derive the issues, from sensitive one brought to simply one. It shown clearly when international communities try to punish Israel maximally by drive the issue from violation of weapon mass convention to humanitarian issue. And perhaps by humanitarian issues, international community could bring Israel regime to International Court of Justice in Deen Hag.

Third is the lack function of UN agencies. This condition influence the work of these agencies, they could not maximize the effort by investigating and monitoring some issues. This could be happened because the major states try to controlled the agencies, they has power to do that, and because the actor from these state and also major power is the main actor or founding father of these agencies.

Following the precedent of its declaration of 1992, the Council stated that the proliferation of WMD and their means of delivery constituted a threat to international peace and security. The Council was thus able to adopt the resolution under Chapter VII, and to lay down binding rules.

The resolution imposes three major obligations on states:

- a. to refrain from providing any support to non-state actors who are attempting to manufacture, possess, transport or use WMD and their means of delivery;

- b. to prohibit in their domestic law any such activities by non-state actors, particularly for terrorist purposes, and to prohibit any assistance or financing of such activities;
- c. to adopt domestic measures to prevent the proliferation of WMD, their means of delivery and related materials, including by accounting for and physically protecting such items; establishing and maintaining effective border controls and law enforcement measures; and reviewing and maintaining national export and trans-shipment controls (with appropriate criminal or civil penalties).

The major impact of the resolution, if states carry out their obligations, will be on non-state actors. However, the third major obligation (set out in paragraph 3 of the resolution, and relating to domestic controls) is not limited to private entities: domestic control measures have to be established and enforced in relation to all WMD, their means of delivery and related materials, whether in relation to states, industry or developed state.

The resolution took several months to pass through its different stages of negotiation before its adoption by the Security Council on 28 April 2004. Early versions were initially discussed between the United States and the United Kingdom, which then involved the three other permanent Council members (Russia having its own informal draft) and reached an agreement on the terms of a final draft that was presented to other Council members. At an open Council meeting on 22 April, Council members and more than 30 nonmembers

commented on this draft. The non-members were fairly representative of different regions. They included Ireland (speaking on behalf of the European Union), Malaysia (speaking on behalf of the large Non-Aligned Movement grouping), South Korea, Japan, Argentina, Nigeria, South Africa, Jordan, Israel and India. The holding of an open meeting is an unusual procedure for draft resolutions, which are more normally debated only by Council members in closed sessions. Thereafter a few changes were made to the draft before the Council voted on it on 28 April.

The records of the meetings of the Council on 22 and 28 April⁸⁶ show that the participating states recognized that the aim of the resolution was to fill a gap in existing international law. The web of bilateral and multilateral treaties and other arrangements concerning WMD on the one hand and international terrorism on the other did not adequately target the threat posed by develop state. However, representatives of the states participating in the Council meetings voiced a number of significant concerns about the resolution.

- a. Disarmament: the total elimination of WMD and related programmed. The resolution expressly mentions disarmament once, in the preamble, where the Council reaffirms 'the need for all member states to fulfill their obligations in relation to arms control and disarmament'. That provision made its way into the resolution only after consultations on an earlier draft. But the resolution did not emphasize that, as is the view of many states, a related aim should be the total elimination of such weapons. Norway

⁸⁶ The records of the Council meetings of 22 Apr (S/PV.4950, and S/PV.4950 (Resumption 1), 4950th meeting) and 28 Apr. Accessed December 24, 2009, Available from UN's website, www.un.org/documents/

spoke for many in saying, 'Non-proliferation and disarmament are two sides of the same coin. The irreversible destruction of stockpiles of WMD is the best guarantee that such weapons do not fall in the wrong hands.' Concerns were also voiced that the Council should not replace or undermine open, global disarmament negotiation for a such as the Conference on Disarmament and the Non-Proliferation Treaty review; nor should it hinder the acquisition, development and use of nuclear, chemical and biological systems, technology and materials for peaceful purposes.

- b. The 'legislative' nature of the resolution, binding upon all member states but adopted by a Council that consists of only 15 of them. It is only the second time since 1945 that the Council has, invoking its Chapter VII powers, taken sweeping, general decisions that can be described as being of a legislative nature; the resolution is in response to – or in anticipation of – a threat that is no doubt real but not as specific as is usually the case with Council resolutions. The other instance is resolution 1373 (2001), adopted while the fires were still burning in the rubble of the Twin Towers. Having determined that the attacks of 11 September, like any other act of international terrorism, constituted a threat to international peace and security, the Council adopted wide-ranging and legally binding decisions aimed at countering international terrorism generally, rather than a specific instance of terrorism.

The concern was well voiced by India: 'Our recognition of the time imperative in seeking recourse through the Security Council does not

obscure our more basic concerns over the increasing tendency of the Council in recent years to assume new and wider powers of legislation on behalf of the international community, with its resolutions binding on all states. In the present instance, the Council seeks to both define the nonproliferation regime and monitor its implementation. But who will monitor the monitors? I take concern that the exercise of legislative functions by the Council, combined with recourse to Chapter VII mandates, could disrupt the balance of power between the General Assembly and the Security Council, as enshrined in the Charter.'

Some speakers considered it more appropriate that a multilateral treaty be negotiated among the wider UN membership, as in other cases of international regulation of WMD, and suggested that such a process be launched. But it was also recognized that multilateral treaty negotiations can take years, and that the threat posed by the proliferation of WMD and related items was too pressing.

- c. A related concern about the adoption of the resolution under Chapter VII. Might its invocation be seen to authorize the use of force to ensure compliance? Pakistan noted: 'A legitimate fear arises that when one sees the draft resolution under Chapter VII, with language such as that used – 'to combat by all means' – an authorization is being sought which could justify coercive actions envisaged in Articles 41 and 42 of the Charter, including the use of force.' The UK, however, confirmed that 'the draft resolution is not about coercion or enforcement. Many delegations have

raised questions about the Chapter VII legal base for the draft resolution and about what that implies ... What this draft resolution does not do is authorize enforcement action against states or against non-state actors in the territory of another country. The draft resolution makes clear that it will be the Council that will monitor its implementation. Any enforcement action would require a new Council decision.' The US, after having explained why Chapter VII should be invoked, said that the draft resolution 'is not about enforcement'. Other speakers acknowledged these reassurances. For example, Germany noted that in case of non-implementation, 'the resolution does not foresee any unilateral enforcement measures. If necessary, such measures must be subject to specific further decisions, to be adopted by the Security Council as a whole under paragraph 11 of the resolution and in conformity with the United Nations Charter.