

## INTERNATIONAL LAW ANALYSIS ON THE TERRITORIAL CONFLICT BETWEEN ISRAEL AND PALESTINE

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### *Abstract*

*The purpose of this research is to ascertain the reason behind the invasion of Israel to Palestine. The Invasion has started since the 19<sup>th</sup> century and caused a territorial conflict that has resulted in casualties. This research will also provide a historical analysis from the start of the Jewish invasion to Palestine and until the state of Israel and Palestine were born. This research also has the purpose to analyze what are the different approaches that has been sought by the International Law, and is it effective to resolve the conflict. The researcher will also provide the best solution to solve the conflict.*

*This research is a normative research. Secondary data was used as the data source. The gathering of data was done by library research. After all the data were collected, the data will be processed and analyzed by qualitative way. Then a conclusion will be made from the research and will be written in descriptive.*

*Based on this research, it can be ascertained that the reason behind the invasion of Israel to Palestine is because it is an act on where at that time the Jewish in Britain were discriminated and they need a place where they can safely settled. That action was suitable with the theory of territorial claims. It can also be analyzed that resolutions have been made by the UN, which are the UN Resolution 181 and UN Resolution 242. Negotiation had also been done resulting in Oslo Accord I. But the approaches are considered ineffective. Israel heeds the criticism from other countries regarding the acts that were considered violating the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The best way to resolve this conflict is that the whole international community has to work together by eliminating the veto system in the UN.*

**Keywords:** *Palestine, Israel, Gaza, UN, United Nations, Territorial Conflict*

## A. Background

The conflict began as a struggle for land. From the end of World War I until 1948, the area that both groups claimed was thus known internationally as Palestine. That same name was also used to designate a less well-defined “Holy Land” by the three monotheistic religions. Following the war of 1948–1949, this land was divided into three parts: the State of Israel, the West Bank (of the Jordan River) and the Gaza Strip.<sup>1</sup> By the early years of the twentieth century, Palestine had become a trouble spot of competing territorial claims and political interests. As time goes on in Palestine, the situation was getting more complicated. The rising tide of European Jewish immigration was sought, land purchases and settlement in Palestine generated increasing resistance by Palestinian peasants, journalists and political figures. They feared that the influx of Jews would lead eventually to the establishment of a Jewish state in Palestine.<sup>2</sup> In 1920 and 1921, clashes broke out between Arabs and Jews in which roughly equal numbers from both communities were killed. In the 1920s, when the Jewish National Fund purchased large tracts of land from absentee Arab landowners, the Arabs living in these areas were evicted. These displacements led to increasing tensions and violent confrontations between Jewish settlers and Arab peasant tenants.<sup>3</sup>

European Jewish immigration to Palestine increased dramatically after Hitler’s rise to power in Germany in 1933, leading to new land purchases and Jewish settlements. Palestinian resistance to British control and Zionist settlement climaxed with the Arab revolt of 1936–1939, which Britain suppressed with the help of Zionist militias and the complicity of neighboring Arab regimes. After crushing the Arab revolt, the British reconsidered their governing policies in an effort to maintain order

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<sup>1</sup> Joel Beinin and Lisa Hajjar “Palestine, Israel and The Arab-Israeli Conflict, The Primer” [www.merip.org/sites/.../Primer\\_on\\_Palestine-Israel\(MERIP\\_February2014\)final.pdf](http://www.merip.org/sites/.../Primer_on_Palestine-Israel(MERIP_February2014)final.pdf), downloaded on 2 November 2016

<sup>2</sup> *ibid*

<sup>3</sup> *Ibid*

in an increasingly tense environment. The defeat of the Arab revolt and the exile of the Palestinian political leadership meant that the Palestinians were politically disorganized during the crucial decade in which the future of Palestine was decided.<sup>4</sup>

There are two primary issues at the core of this continuing conflict. First, there is the inevitably destabilizing effect of trying to maintain an ethnically preferential state, particularly when it is largely of foreign origin.<sup>5</sup> The original population of what is now Israel was 96 percent Muslim and Christian, yet, these refugees are prohibited from returning to their homes in the self-described Jewish state (and those within Israel are subjected to systematic discrimination).<sup>6</sup>

Second, Israel's continued military occupation and confiscation of privately owned land in the West Bank, and control over Gaza, are extremely oppressive, with Palestinians having minimal control over their lives. Thousands of Palestinian men, women, and children are held in Israeli prisons.<sup>7</sup> Few of them have had a legitimate trial; Physical abuse and torture are frequent.<sup>8</sup> Palestinian borders (even internal ones) are controlled by Israeli forces.<sup>9</sup> Periodically men, women, and children are strip searched<sup>10</sup>; people are beaten; women in labor are prevented from reaching hospitals (at times resulting in death)<sup>11</sup>; food and medicine are blocked from entering Gaza,

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<sup>4</sup> *ibid*

<sup>5</sup> John V. Whitbeck, "What 'Israel's right to exist' means to Palestinians," [http://www.ifamericansknew.org/cur\\_sit/rte.html](http://www.ifamericansknew.org/cur_sit/rte.html), accessed on 27 January 2017

<sup>6</sup> Qumsiyeh, "Palestinian Refugees Right to Return and Repatriation" (<http://ifamericansknew.org/history/ref-qumsiyeh.html>), accessed on 27 January 2017

<sup>7</sup> Ifamericansknew, "Political Prisoners in Israel/Palestine", <http://ifamericansknew.org/stat/prisoners.html>, accessed on 27 January 2017

<sup>8</sup> B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, "Absolute Prohibition: The torture and Ill-Treatment of Palestinian Detainees," [http://www.btselem.org/publications/summaries/200705\\_utterly\\_forbidden](http://www.btselem.org/publications/summaries/200705_utterly_forbidden) May 2007

<sup>9</sup> Ifamericansknew, "Israeli Checkpoint and Their Impact on Daily Lives" [http://ifamericansknew.org/cur\\_sit/checkpoints.html](http://ifamericansknew.org/cur_sit/checkpoints.html), accessed on 10 December 2016

<sup>10</sup> If Americans Knew, "Israeli Strip Searches: A Partial List", [http://www.ifamericansknew.org/cur\\_sit/strip-searches.html](http://www.ifamericansknew.org/cur_sit/strip-searches.html), accessed on 10 December 2017

<sup>11</sup> Saed Bannoura, "68 Woman Gave Birth on Checkpoints, 34 Infants and 4 Woman Died" [http://www.ifamericansknew.org/cur\\_sit/68births.html](http://www.ifamericansknew.org/cur_sit/68births.html), accessed on 10 December 2017

producing an escalating humanitarian crisis. Israeli forces invade almost daily, injuring, kidnapping, and sometimes killing inhabitants.<sup>12</sup>

The precepts of modern international law and the decades-old Israel-Palestine conflict have had a long, tangled, and disquieting relationship. Born at the same time in the immediate aftermath of the second World War and shaped by some of the same special forces unleashed by the War, the two phenomenon have matured in the shadow of each other. Yet, while one has developed into a respected and a substantial body of universal legal principles, the other has metastasized into a destructive struggle that has contaminated the entire Middle East and beyond. The tragic irony is that the Israeli-Palestine conflict has contributed decisively to the content of modern international law in a number of significant areas – giving enhanced meaning to such concepts as belligerent occupation, the right of refugees, the prohibition on the acquisition of territory by conquest, the legal status of civilian settlements in occupied lands, the concept of terrorism, and the rules of war and resistance – while its numerous victims have received few of the benefits that the emerging rule of law on international conflicts has promised to endow. Based on the elaboration above, the researcher would like to answer these following research questions: *first*, why does Israel invades Palestine? *Second*, how does the international law approach the invasion of Israel to Palestine? *Third*, what is the best solution to resolve the invasion of Israel to Palestine?

## **B. Research Methodology**

To carry out this research, the researcher uses a type of normative legal research. The data that the researcher mostly used in doing this research is the secondary data that consist of primary legal materials which are The United Nations Charter, The Balfour Declaration, The Mandate of Palestine, The 181 United Nations Resolution, The 242 United Nations Resolution, The Geneva Convention Relative to

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<sup>12</sup> If Americans Knew, “Major Israeli Invasions Into The West Bank and Gaza”  
[http://ifamericansknew.org/cur\\_sit/invasions-articles.html](http://ifamericansknew.org/cur_sit/invasions-articles.html) , accessed on 10 December 2017

the Protection of Civilian Persons in Time of War approach, Declaration of Principles on Interim Self-Government Arrangements, and The Vienna Convention. The secondary legal materials consist of books of law, legal journal, doctrines, and legal documents coherent with the object of the research. Tertiary legal materials that were used are some dictionaries. The method used to gather the legal materials was by doing a study of documents or literature studies. The data that has been gathered will be analyzed by using the qualitative method and will be presented on a descriptive essay. The research was done by doing data collecting, data processing, data interpretation and analysis and was ended by making a conclusion regarding the analysis of the data.

### **C. Research Findings and Discussions**

#### **1. The reason on why Israel invades Palestine**

The start of the invasion of Israel to Palestine may be the result of events that lead Jewish people to be evicted from their previous land and they have to seek a new land for them to reside. This is a real practice of the Remedial Theory, a theory about territorial claims. Allen Buchanan describes how a territorial claim could take the shape of a generalized right to have a territorial state, rather than as a right to a particular state. The group, might have a history of domination, discrimination and violation of rights, which cannot be protected against without giving that group a state of its own. In order to protect itself, the people in question must achieve full independence in the meaning of international law. They must, in short, become a state. This suits the condition that the Jewish People experienced.

The Jewish People were to escape discrimination in Europe where mass killings of Jews had erupted from time to time going back to the eleventh century during the time of the Crusades when Jews had been forcibly converted to Christianity. In the fourteenth century they were held responsible for the Black Death, and large numbers were executed. Jews were frequently expelled from their places of

residence, and in many places they were forced to reside in designated sectors. This brought up ambition of having to own a land and territory where it will constitute as a remedy for past injuries. The Jews seek a place where they can defend themselves and manage to survive in peace.

But after securing a land given by The British Government through The Balfour Declaration and The British Mandate, The Jews Agency seek more authority of territory because they feel that they have granted the right from The British Government. Palestine at that time was actually not in *res nullius*, the Arab people lived on the land but the land itself was owned by absentee that happened to have sold the land to the Ottoman Empire. The Ottoman Empire then fall under the British Government allowing the Jews Agency to purchase the land. On paper, the land belongs to the Jews Agency. This is a practice of the Direct Territorial Theory, in which a group is entitled to a particular territory on its own merits, as a consequence of international law concerning rightful acquisition.

## 2. The Approaches from the international Law towards the invasion of Palestine

### 1. The United Nations Resolution 181

On November 29 it adopted a draft resolution embodying the partition plan as Resolution 181.<sup>13</sup> The resolution narrowly gained the required majority of two-thirds—33 in favor, 13 opposed and 10 abstaining. The Jewish Agency, a league for the Jewish people that resides in Palestine, accepted Resolution 181.<sup>14</sup> The Jewish Agency proceeded with its plans to establish a Jewish state, although it did not promise to limit itself to the area proposed in Resolution 181.<sup>15</sup> On November 30 the Arab Higher Committee

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<sup>13</sup> John Quigley “*The Case for Palestine : An International Law Perspective*” (Durham & London: Duke University Press 2005), p.37

<sup>14</sup> John Quigley “*The Case for Palestine : An International Law Perspective*” (Durham & London: Duke University Press 2005), p.38

<sup>15</sup> Simha Flapan, *The Birth of Israel: Myths and Realities* (1987) pp.30-33

rejected Resolution 181.<sup>16</sup> It hoped that the General Assembly might reconsider the issue and recommend an alternate solution other than that. The Arab League also still hoped for a political solution and made no preparations for intervention.<sup>17</sup>

On March 19 the United States suggested to the Security Council that partition be abandoned. It advised the council to ask the General Assembly to set up a temporary trusteeship over Palestine until the two parties reached a settlement.<sup>18</sup> On April 1, at the urging of the United States, the Security Council asked the General Assembly to “consider further the question of the future government of Palestine”; in other words, to seek a solution other than partition.<sup>19</sup> The council did not seriously consider the possibility of using UN troops to force partition on the Palestine Arabs.<sup>20</sup> Thus the United Nations abandoned the partition idea scarcely four months after laboring long and hard to approve it. The General Assembly had approached the Palestine issue with the aim of making proposals that the parties might accept.<sup>21</sup> In Resolution 181 it had recommended the adoption and implementation of the partition plan and asked the inhabitants of Palestine to take “such steps as may be necessary on their part to put this plan into effect.”<sup>22</sup>

When it posed the Palestine question to the General Assembly in 1947, Britain had asked the assembly to exercise its power of recommendation. In its request it referred to the assembly’s power under Charter Article 10, which

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<sup>16</sup> *Keesing's Contemporary Archives*, vol.6, p.8979 (1946-48)

<sup>17</sup> John Quigley “*The Case for Palestine : An International Law Perspective*” (Durham & London: Duke University Press 2005), p.38

<sup>18</sup> *Foreign Relations of the United States 1948*, vol.5 p.801 (1976)

<sup>19</sup> S. C. Res. 42, March 5, 1948

<sup>20</sup> “Power of the UN Security Council to Aid Political Settlement with Force,” *Stanford Intramural Law Review* (June 1948), pp.105-118

<sup>21</sup> Pitman B. Potter, “The Palestine Problem Before the United Nations,” *American Journal of International Law*, vol. 42, p.858, at p.860 (1948)

<sup>22</sup> G. A. Res. 181, paras.4, 5 November 29, 1947

gives the assembly the power to make recommendations.<sup>23</sup> In the Resolution 181 itself, the assembly had made reference to charter provisions giving it a power of recommendation by stating that it “considers that the present situation in Palestine is one which is likely to impair the general welfare and friendly relations among nations.”<sup>24</sup> The phrases “general welfare” and “friendly relations” are drawn from Charter Article 14, which gives the General Assembly the power of recommendation.

Member states viewed Resolution 181 as a recommendation.<sup>25</sup> In the Security Council discussion that led to the abandonment of Resolution 181, the United States said that General Assembly recommendations have only “moral force.”<sup>26</sup> Britain told the Security Council it would not implement partition so long as Arab or Jewish authorities objected. Syria, Egypt, Saudi Arabia, Yemen, Pakistan, and Iraq told the council they did not consider the partition recommendation binding them.<sup>27</sup> Resolution 181 contemplated voluntary compliance in its mechanism for selecting provisional leader of the two projected states. A UN commission “after consultation with the democratic parties and other public organizations of the Arab and Jewish States,” was to “select and establish in each States as rapidly as possible a Provisional Council of Government.”<sup>28</sup> Since this cooperation did not materialize, Resolution 181 remained a recommendation only.<sup>29</sup> Resolution 181 also requested the Security Council “determine as a threat to the peace”

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<sup>23</sup> Letter from the United Kingdom Delegation, *General Assembly Official Records*, 1<sup>st</sup> spec. sess., vol.1, Plenary Meetings, April 2, 1947

<sup>24</sup> G.A. Res. 181, Part A, operative para.1 November 29, 1947

<sup>25</sup> Hans Kelsen, *The Law of the United Nation: A Critical Analysis of Its Fundamental Problems* (1950), p.195

<sup>26</sup> *Security Council Official Records*, February 24, 1948, 3d year, 253d mtg., p.265

<sup>27</sup> John Quigley “*The Case for Palestine : An International Law Perspective*” (Durham & London: Duke University Press 2005), p.45

<sup>28</sup> G.A Res.181, para.4. November 29, 1947

<sup>29</sup> James Crawford, *The Creation of States in Internatonal Law* (1979), p.331



any attempt “to alter by force the settlement envisaged by this resolution.”<sup>30</sup> This provision was later cited as indicating that the General Assembly intended “a solution to be imposed by force,” and therefore “not a simple recommendation”<sup>31</sup> The assembly used the term “request”, an indication it was aware of the limit of its power.<sup>32</sup>

Moreover, the General Assembly, when it asked the Security Council to deal with a possible attempt to alter by force the settlement envisaged in Resolution 181, contemplated a situation in which the two parties were creating the two states voluntarily but there an outside party might intervene militarily.<sup>33</sup> Resolution 181 did not purport to convey title to territory,<sup>34</sup> and since partition had not been accepted by the parties no territorial rights were created.<sup>35</sup> Resolution 181 had failed,<sup>36</sup> it was a “dead letter.”<sup>37</sup>

## 2. United Nations approaches towards the 1967 War, West Bank and Gaza Strip (Resolution 242)

The UN Security Council called for a cease-fire in the 1967 hostilities, but as a result of the position taken by the United States it did not issue a clear call to Israel to withdraw.<sup>38</sup> In November 1967, in the Resolution 242, the council asked Israel to withdraw but in the context of an envisaged general settlement with Arab states.<sup>39</sup> The United States blocked an alternative

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<sup>30</sup> G.A Res. 181, part A, November 29, 1947

<sup>31</sup> Hans Kelsen, *ibid* p.197

<sup>32</sup> Pierre-Marie Martin, *Le conflit Israélo-Arabe: Recherches sur l'Emploi de la force en droit International public positif* (1973), p.53

<sup>33</sup> John Quigley, *ibid* p.46

<sup>34</sup> Julius Stone, *Israel and Palestine: Assault on the Law of Nations* (1981), p.60

<sup>35</sup> Antonio Cassese, “Legal Considerations on the International Status of Jerusalem,” in Hans Kochler (ed.), *The Legal Aspects of the Palestine Problem with Special Regard to the Question of Jerusalem* (1981), p.144, at pp.145-146

<sup>36</sup> John Quigley, *ibid*

<sup>37</sup> Antonio Cassese, *ibid* p.146

<sup>38</sup> John Quigley, *ibid* p.170

<sup>39</sup> S.C Res.242, November 22, 1967. Henry Cattan, *ibid* p. 44, at pp.50-55

resolution proposed by Latin American states to make an unconditional call on Israel for withdrawal.<sup>40</sup>

Resolution 242 sought to deal with the recent hostilities and did not address the question of Israel's borders. The Security Council adopted Resolution 242 under Chapter 6 of the UN Charter, which gives it the power to recommend solutions for disputes, this can be seen from article 36 of the UN Charter: (1) The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.; (2) The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties; (3) In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. The council did not act under Chapter 7, which gives it the power to make decisions binding on member states to resolve breaches of the peace. Thus, Resolution 242 was not binding on UN member states.

### 3. 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War approach

The Geneva Convention requires an occupying power to change the existing order as little as possible during its tenure. One aspect of this obligation is that it must leave the territory to the population it finds there. It may not bring in its own people to populate the territory.<sup>41</sup> This prohibition is found in the convention's Article 49 that states, "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it

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<sup>40</sup> John Quigley, *ibid*

<sup>41</sup> John Quigley, *ibid* p.177

occupies.” On the basis of that, many states criticized Israel for establishing and maintaining settlements. Israel responded that the settlers themselves had established the settlements and, therefore, it had not “transferred” its own people. To that it was replied that Israel funded the settlements and that it had used the IDF to establish many of them. One particular use was that the government placed many recent immigrants in the settlements.

Israel also argued that the General Convention was not applicable to its administration of the West Bank and Gaza Strip. It pointed out that Article 2 of the convention refers to the territory of a High Contracting Party and said that this means the convention applies only to territory lawfully held by a contracting party. Jordan did not have a good title to the West Bank, and Egypt did not have good title to the Gaza Strip.<sup>42</sup> However, it would apply de facto those provisions of the convention it deemed “humanitarian.”

Israel’s view that the Geneva Convention did not apply to its occupation of the Gaza Strip and West Bank was rejected by other states. They argued that, according to Article 1 of the Convention, it applies “in all circumstances”, and according to Article 2, it applies to “all cases of declared war or of any other armed conflict. All states that indicated a view on the matter, other than Israel found the convention to be applicable to Israel’s occupation of the Gaza Strip and West Bank.<sup>43</sup>

#### 4. Oslo 1 Accord (Declaration of Principles 1993)

Secret discussion had begun in Oslo between Israel and the Palestine Liberal Organization (PLO). The PLO did not insist that Israel agree to freeze settlements. Israel would turn over partial control in Gaza and the West Bank to the PLO, and the two parties would begin negotiating within three years

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<sup>42</sup> John Quigley, *ibid*

<sup>43</sup> *Ibid*

about borders, Jerusalem, refugees, settlements, and security arrangements. These agreements were recorded in a Declaration of Principles, which the parties signed at a ceremony in Washington in September 1993.<sup>44</sup>

After the negotiating was done, Israel still continued to expand its settlements. In 1995 it announced that it would expropriate new tracts of land in east Jerusalem to build housing for Jews. The UN Security Council met on the matter. The delegate from the United Kingdom said that Israel should “refrain from taking actions which seek to change the status quo on this most sensitive of all issues before the conclusion of the final-status negotiations.”<sup>45</sup> Delegates of Russia, Indonesia, Italy and France all expressed concern that the land seizures were intended to preempt the Palestinian claim to east Jerusalem.<sup>46</sup>

The PLO viewed this settlement activity as inconsistent with the Declaration of Principles for the same reason. It demanded “cessation of all actions that may preempt negotiations on the final settlement, including the termination of all colonial settlement activities, whether old or new.”<sup>47</sup> Although the Declaration of Principles did not forbid new settlements, under international law parties must fulfill treaty obligations in good faith. A state that agrees to resolve a contentious issue may not take action that renders the issue more intractable.<sup>48</sup>

In 1997 Israel announced yet another major settlement initiative. It would construct 6,500 units of housing for Jews in a section of east Jerusalem called Jebel Abu Ghneim. The projected settlement, to be named Har Homa.

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<sup>44</sup> “Text of Declaration of Principles,” *Jerusalem Post*, September 15, 1993, p.4A

<sup>45</sup> *Security Council Official Records*, 50<sup>th</sup> year, 353 8<sup>th</sup> mtg., p.7, UN Doc. S/PV/3538 (1995)

<sup>46</sup> *Ibid*, pp.3,4,5,8

<sup>47</sup> *Palestine and the UN* (Monthly Bulletin of Permanent Observer Mission of Palestine to the United Nations), vol.1, issue 1, p.4 (October 1996)

<sup>48</sup> Vienna Convention on the Law of Treaties, art.26, UN Treaty Series, vol. 1155, p.331

The UN Security Council met to discuss this issue. A European-sponsored resolution was proposed to condemn Israel's settlement plan as illegal, and as a "major obstacle to peace." Fourteen of the Council's fifteen members voted in favor of the draft resolution, but the United States vetoed.<sup>49</sup> The General Assembly then took up the matter and adopted the failed Security Council on its own. This resolution asked Israel "to refrain from all actions or measures, including settlement activities, which alter the facts on the ground, preempting the final status negotiations, and having negative implications for the Middle East Peace Process."<sup>50</sup>

When Israel began construction of Har Homa, yet another draft resolution was proposed in the Security Council, to demand that Israel "immediately cease construction of the Jebel Abu Ghneimm settlement in East Jerusalem, as well as all other Israeli settlement activities in the occupied territories." Thirteen states voted in favor, but again the United States vetoed.<sup>51</sup>

When by mid-1997 no action had been taken by Israel to stop construction of Har Homa, the General Assembly met again in special session. This time it asked states to prevent even private parties from involvement in Israel's settlement construction. It also called on Israel to provide information on goods produced in its settlements, so that the other states might determine if their nationals were involved.<sup>52</sup> The Oslo negotiations has failed and is not achieving a resolution that was hoped.

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<sup>49</sup> *Security Council Official Records*, 52<sup>nd</sup> year, 3747 mtg., p.4 March 7, 1997, UN Doc. S/PV.3747 (1997). Paul Lewis, "U.S. Vetoes U.N. Criticism of Israel's Construction Plan," *New York Times*, March 8, 1997, p.A3

<sup>50</sup> G. A Res. 51/223, March 13, 1997

<sup>51</sup> *Security Council Official Records*, 52<sup>nd</sup> year, 3756<sup>th</sup> mtg., p.6, March 21, 1997

<sup>52</sup> G. A Res. ES-10/3, July 15, 1997

### **3. Possible Solution on Resolving the Invasion of Israel to Palestine**

As far as we can see, several resolutions have been proposed by the members of the United Nations. Some proposals attempt to do immediate action to halt the hostility done by Israel towards Palestine but the proposals are vetoed down by United States. Veto is a special power granted to the permanent members of the Security Council in which if any one of the five permanent members cast a negative vote in the 15-member Security Council, the resolution or decision would not be approved. United States is one of the state that has the power to veto. In the conflict between Palestine and Israel, United States has shown the power of veto to disprove the resolutions aided towards the conflict, an example was when United States vetoed an European-sponsored resolution was proposed to condemn Israel's settlement plan as illegal, and as a "major obstacle to peace." Fourteen of the Council's fifteen members voted in favor of the draft resolution but because United States vetoed, the resolution was not brought up. Also when Israel began construction of Har Homa, another draft resolution was proposed in the Security Council, to demand that Israel "immediately cease construction of the Jebel Abu Ghneimm settlement in East Jerusalem, as well as all other Israeli settlement activities in the occupied territories." Thirteen states voted in favor, but again the United States vetoed.

The right to veto was actually created to maintain international peace and security but nowadays it was highly politically driven. This can be seen from how the United States vetoed the resolutions (which are mainly acting under Chapter 7 of the United Nations) that is actually able to resolve the conflict between Israel and Palestine. This has proved on how the veto system has made the Security Council and thus the United Nations has failed at doing the job to maintain the peace and security.

A solution to solve the conflict is that the United Nations has to change its veto system. The veto system has now turned into a political weapon by the permanent states to secure their own interest. If there is no veto system present in the

Security Council, any decision will be ruled out according to Article 27 of the UN Charter that stated; (1) Each member of the Security Council shall have one vote; (2) Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members; (3) Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting. This article itself has provide a fair way to decide a resolution in which this article provides an equal vote count for each state which is 1 vote for each state. By eliminating the veto system, all of the member states of the Security Council are able to express their true vote and will be counted in the decision making without being overdriven by the veto power from the Big-five members.

International law is higher than domestic law. According to R.N Gilchrist, International Law is the body of rules which civilized states observe in their dealings with each other. This was done to achieve peace and security between states. A domestic law thus should obey the international law in order to avoid conflicts. Modern states nowadays mostly follows the dualism theory. Dualism is a theory in which the state clearly separates international law and domestic law. Dualists require the translation of the latter into the former. Without this translation, international law does not exist as law. International law has to be national law as well, or it is not a law at all. If a state accepts a treaty but its national law does not adapt to it, then it violates international law. Thus dualism theory suits the modern international law which is today. By looking at that theory, any treaties ratified by Israel has to be followed by Israel, if not then Israel violates international law. This also means that if Israel was given a resolution from the United Nations in which the resolution acts under chapter 7 of the United Nations, then Israel must submit to the resolution.

By having no veto system in the United Nations together with the application of the dualism theory in Israel, a solution can be achieved. A resolution that falls

under Chapter 7 of the UN Charter which has the power to bind the parties can be easily achieved without any interruption by veto and the resolution has to be followed by both parties. The international community bears a responsibility to ensure an outcome consistent with the legal rights of the parties. If the matter is left exclusively to the parties, there is a serious risk of an inappropriate outcome. That would be unfortunate for the inhabitants of the region. It would also increase the likelihood that the international community, which has dealt with the Palestinian-Israeli conflict for half a century, will face many more years of turmoil in the region.<sup>53</sup>

#### **D. Conclusion**

Based on the discussion in the previous chapter, the Researcher has make conclusions to answer the research questions for the topic International Law Analysis on the Territorial Conflict between Israel and Palestine:

1. The reason on why Israel invades Palestine

The invasion of Israel to Palestine starts as an act of finding a safe place to settle for the Jewish People that received discrimination from the British Countries. This invasion suits both the theory of territorial claims which is the Remedial Theory and the Direct Territorial Theory. In order to protect itself, the Jewish People must achieve full independence in the meaning of international law. They must, in short, become a state in order to have a safe place for them. The Israel state uses the UN Resolution 181 as a legal foundation for its statehood. The UN Resolution 181 did not specify any borders for Israel thus Israel need to secure a land for the settlements and violence is the way used.

2. The approaches from the International Law towards the invasion of Palestine

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<sup>53</sup> Quigley, *ibid*



There are several approaches from the International Law which mainly are products from The United Nation as an international organization that has the purpose to keep peace between states in the world. The first is the Resolution 181. This Resolution suggests the partition of Palestine. In other words, the UN recognized the existence of the Jewish Agency who in a dire need to make a Jewish State. This resolution was resisted by the Arab League since they do not want to recognize a Jewish State. Sadly, The UN Resolution 181 did not specify any borders for Israel thus Israel need to secure a land for the settlements and they choose violence and hostility to take bits by bits the land of Palestine.

242 UN Resolution was made but unfortunately it is unclear whether withdrawal was to be from all the territories it had occupied, or only from some portion. The UN Resolution 242 sought to force Arab states to recognize Israel's control over the territory inside the 1949 armistice lines in exchange for Israel's withdrawal from the Gaza Strip and West Bank and received many critics. The UN Resolution 24 acted under Chapter 6 instead of Chapter 7 of the UN Charter resulting that this resolution only acted as a recommendation and is not binding for the related parties.

Looking at the hostility of Israel, a lot of countries criticized Israel by saying that the violent act done especially to the people in Palestine violates the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. But the Supreme Court of Israel argued that they don't meet the criteria stated in 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War approach by saying that the settlers themselves had established the settlements. Israel also argued that the General Convention was not applicable to its administration of the West Bank and Gaza Strip. Negotiation also have been attempted by the Oslo Accord 1, but Israel didn't show any good faith and still continued to expand its settlements.

United States vetoed twice on the issue regarding a resolution for the development of Israel's settlements, resulting no resolution to be given.

### 3. Possible solution on resolving the Invasion of Israel to Palestine

The solutions provided by the United Nation and acts done by the international community sadly doesn't resolve the core issue since there are countries such as The United States that rally behind it with personal goals. The possible solution is actually to change the veto system in the United Nations Security Council since it has been proved to be a big hindrance to achieve a resolution. The United States has used the power to veto several good resolutions. By eliminating the veto system, resolutions will be based on votes from the Security Council members, resulting in a more fair and equal way to achieve a decision.

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