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On ISSUES of the LAND

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On Issues of the Land

Territorial Disputes in the Middle East

A lenticular photo/painting is a type of art which seems to change in appearance depending on the angle from which it is viewed. Similarly, international law can be compared to a lenticular photo. The argument is that international law is a heterogenous mixture of legal principles and state sovereignty (guided by self-interest). As a result, any given international situation can seemingly change its appearance depending on the perspective and lens it is viewed from. This holds true especially in any international event involving hostility. The hostile state's perspective could be completely different from its own appearance on the international stage. This conflict of perspective can often lead to a never-ending cycle of arguments trying to determine which perspective is the right path to follow. It should be further stated at this juncture that this conflict of perspective and 'lenticular' characteristic of international law often stems from a disconnect between reality and the legal instruments meant to govern it. The interplay between these two factors leads to several interesting (and controversial) scenarios on the international stage. Through the course of this project, various authors delve into specific instances in the Middle East with regard to occupation and disputed territories, with constant emphasis on this interplay.

Before the commencement of this project however it is essential to host a few preliminary discussions. To begin, we shall examine the broad international framework on occupation and territorial disputes. Considering that occupation and other forms of territorial disputes more often than not involve the use of force, we first look at Article 2(4) of the United Nations Charter, which reads as follows: "*All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."* This principle is widely regarded as the most basic provision regarding the use of any form of force on the international stage, and has consequently become a part of customary international law. This principle was further strengthened by General Assembly Resolution 42/22. This general customary principle however comes with an exception in the form of Article 42, the essence of which is that once the Security Council has exhausted all the other means, it has the power

to pass a resolution with the objective of maintaining international peace and security through 'any means necessary'.

One of the most notable uses of this exception in the Middle Eastern context is Security Council resolution 678(1990). This Resolution was passed in the aftermath of Iraq's invasion of Kuwait, and allowed nation states to ensure that peace and stability in the region were restored through "any means necessary". However, this resolution to finally restore peace came in the backdrop of Iraq blatantly ignoring diplomatic talks and sanctions imposed by other states. In other words, Iraq was trying to exercise its own 'state sovereignty'. This information is significant simply because the international community (especially the UN) refers to the use of force as being a last resort, in spite of the fact that every other measure taken to deter a hostility can be ignored very easily. This example alone shows us the once more the clash between the international laws of sovereignty and the use of force.

Having discussed the broader topic of the use of force, we can narrow the discussion down to occupation. Article 42 of the 1907 Hague Regulations states that a "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." This 'factum of occupation' is the one and only necessity for the primary laws of occupation to apply. Specifically, the Fourth Geneva Convention, the Additional Protocol I, the Hague Regulations and Customary International Law come into play when the above definition can be applied to any given situation, regardless of which entity has authorised and executed this occupation. Before delving into the details of this legal framework, it is vital to understand why the law of occupation exists in the first place.

Over a century ago, the doctrine of *debellatio* interestingly allowed an army which was successful in completely destroying its opposition to gain sovereign control over this occupied territory. This norm clearly did not attempt to regulate occupation of any sort, and instead provided additional incentive to states intending on territorial expansion. The shift from this primitive way of thinking to the modern laws on occupation took place in the aftermath of both the World Wars. Briefly put, the modern law is based on the European norm that "sovereignty may not be alienated through the use of force". The fact that this shift took place after the greatest humanitarian crisis in mankind's history suggests that the modern framework of the laws on occupation has been developed primarily on humanitarian grounds.

Keeping in mind the Iraq-Kuwait conflict mentioned in the previous paragraph along with the doctrines mentioned above, it is safe to conclude that any form on international intervention during an occupation commences when there are humanitarian issues at play. The manner in which the four legal sources of the law on occupation are used to protect humanitarian values are explored in great detail through the course of this project.

Our next point of discussion revolves around the next aspect of this project – disputes territories. As the name suggests, this section will cater to Middle Easter lands that that are claimed by more than one state. These claims are generally founded on nine different categories: geography, history, culture, treaties, ideologies, effective control, elitism, and the principle of *uti possidetis.* Resolving territorial disputes based on these claims is always a challenge that lasts many years, as it affects not only the population living on these lands, but also the populations of the two or more countries in contention. The question arises thus: what is the best way to solve this issue? In the modern world, one would generally resort to a court.

In this case, the International Court of Justice (ICJ). While the ICJ is no doubt a well-established Court in the international community, one has to question whether it is fully capable of delivering justice in this context. Law and justice after all are based on a set of given values, which in turn depend on the culture, history, and identity of a particular region. This once again gives rise to the duality mentioned earlier, as international law on the one hand is meant to govern every nation under a uniform code of principles and values, while the very basis of state sovereignty is a unique set of values which the state has every right to protect.

In elaboration to this, the example of Iran UAE island dispute can be taken. Although the ICJ is a neutral and unbiased party, Iran consistently opposed its intervention. According to an Iranian scholar, this is because Iran has historically and culturally been committed to building its own foreign policy, and has averred from the use of any third-party intervention, neutral or not. Now, while this does reflect Iran's sovereignty, some could argue that it is a politically motivated statement as third party intervention could potentially weaken Iran's position in the territory dispute. The essence of this argument is that for many decades, the international community has seamlessly adopted western ideas of law and justice and has imposed this version of justice on other sovereigns.

This project deals with a few such instances and discusses in detail the interplay between international interveners in Middle Eastern territorial disputes. In conclusion, international law around occupation and disputed territories appears to be a grey area, which may not be rectified

anytime in the near future. The Middle Eastern political, cultural, and historical landscape only adds to this complexity. With this editorial, we hope to have irked the curiosity of the reader, and created a lenticular introduction to the project in the following pages.

Looking at the complexities of the West Bank through the eyes of International Law

By Urjasvi Ahlawat[1]*

Introduction

The aim of this paper is to analyze the applicability of international laws in the West Bank conflict. The first section will focus on the historical aspect of West Bank; what led to the formation and hence occupation of the Palestinian territory which is now known as the West Bank. The second section will focus on the current scenario of the West Bank and its possible (official) annexation by Israel. The third, fourth and the fifth sections will focus on the International Court of Justice Ruling of 2004, The Fourth Geneva Convention and the 1907 Hague Convention. The aforementioned three sections are further divided into three sections; the first subsection focuses on the relevance of the mentioned Convention in the West Bank conflict. The second subsection focuses on the international laws violated as per the mentioned Convention; it consists of a list of Articles violated in the Occupied Palestinian Territory by Israel as mentioned in the Convention. The third subsection focuses on the applicability of the international laws; Did Israel ratify the mentioned Conventions? Did the International Court of Justice's (ICJ) ruling come into effect? Did the Hague Convention come into effect as it is a customary international law? The drawbacks and limitations regarding the application of international laws, which range from structural issues of the Convention to political involvements, will be analyzed.

Historical Aspect

The Ottoman Empire ruled the West Bank from 1517 to 1917. The Treaty of Lausanne, signed by Turkey, the successor state to the Ottoman Empire, renounced its territorial rights in 1923, and the territory now known as the West Bank became an integral part of the British Mandate

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for Palestine. During the Mandate period Britain had no right of sovereignty, which was held by the people under the mandate. Nonetheless, as custodians of the land, Britain introduced the Ottoman Turks' land tenancy laws in Palestine (as specified in the Ottoman Land Code of 1858), extending these laws to both Arab and Jewish legal tenants and others. The UN General Assembly proposed that the territory that would become the West Bank be included in a potential Arab state in 1947, however, the Arab states were opposed at the time. Israel captured portions of what was designated as "Palestine" in the UN partition scheme during the 1948 war. On November 15 1948, the Coptic Bishop crowned Jordanian King Abdullah as King of Jerusalem. Jordanian citizenship and half of the Jordanian Parliament seats were awarded to Palestinian Arabs in the West Bank and East Jerusalem.

The 1949 Armistice Agreements established Israel's temporary border with Jordan (essentially reflecting the battlefield after the war). Transjordan occupied the region west of the Jordan River in 1950, calling it "West Side" or "Cisjordan," and the area east of the river "East Bank" or "Transjordan," after the December 1948 Jericho Meeting. From 1948 to 1967, Jordan (as it was then known) ruled over the West Bank. With the exception of the United Kingdom and Iraq, Jordan's occupation was never officially recognized by the international community. During the British mandate in the region, a two-state solution, splitting Palestine, rather than a binary solution, emerged. The UN Partition Plan called for two nations, one Jewish and the other Arab/Palestinian, but only one prevailed in the aftermath of the war. The West Bank and East Jerusalem were occupied by Israel after the Six-Day War in June 1967. The West Bank was not annexed by Israel, with the exception of East Jerusalem and the old Israeli-Jordanian no man's land; until 1982, it was under Israeli military rule.

Although the 1974 Arab League summit resolution at Rabat designated the Palestinian Liberation Organization (PLO) as the "sole legitimate representative of the Palestinian people", Jordan did not officially relinquish its claim to the area until 1988, when it broke both institutional and legal relations with the West Bank and stripped Palestinians in the West Bank of their Jordanian citizenship. The direct military rule was turned into a semi-civil authority, functioning directly under the Israeli Ministry of Defense, in 1982, as a part of the Israeli–Egyptian peace treaty, handing over jurisdiction of Palestinian civil affairs from the IDF to civil servants in the Ministry of Defense.

The Israeli settlements, on the other hand, were later controlled directly by Israel as the Judea and Samaria Area. Since the 1993 Oslo Accords, the Palestinian Authority has been in charge

of a strategically non-contiguous region (known as Area A) in the West Bank, which is now prone to Israeli incursions. Area B (roughly 28%) is controlled by a combined Israeli-Palestinian military and civil authority. Area C (roughly 61%) is fully under Israeli influence. Though the West Bank, including East Jerusalem, is referred to as "Occupied Palestinian Territory" by 164 countries, Israel cites the United Nations as stating that only lands conquered in battle by "an existing and recognized ruler" are considered occupied.

The West Bank areas under Palestinian control are an exclusive part of the Palestinian authority, while the Gaza Strip is controlled by Hamas, following the 2007 split between Fatah and Hamas. The Israeli government's executive branch, through the Ministry of Foreign Affairs, has classified the West Bank as "disputed" territory, rather than "occupied" territory, the status of which can only be decided through mediation. According to the Ministry, occupied territories are territories conquered by force from an existing and recognized ruler, and the West Bank should not be considered an occupied territory because it was not under the legal and recognized jurisdiction of any state prior to the Six-Day War.

Current Scenario

When Trump was the President of the United States, a joint statement issued by the three nations (the US, Israel and the UAE) in 2020 said “Israel will suspend declaring sovereignty” over the occupied West Bank areas. Benjamin Netanyahu, the Prime Minister of Israel, explained the expected annexation of the Jordan Valley and mentioned that he was keen on annexing several parts of Jordan Valley. According to a map presented by Netanyahu in 2019, the areas to be annexed would comprise 95 percent of the Jordan Valley which makes up at least 22 percent of the West Bank. The implications of this annexation are imposed on the West Bank in the following ways: firstly, the annexation would enclose the Palestinians by the Israelis. Jordan is the West Bank's sole international boundary. If Israel occupied the Jordan Valley, Israel will completely encircle the West Bank. A Palestinian state cannot survive without the Jordan Valley, according to Palestinians.

Furthermore, it will result in suspension of water and agricultural resources; in the Jordan Valley, Israeli settlers obtain eighteen times more water than Palestinians in the West Bank. The majority of Palestinian farmers are not linked to the water grid and must rely on tankers for water. Palestinians would be physically cut off from the Jordan River if it were annexed. Lastly, it will increase the speed of the construction of the settlements; as of now, the permission of Israel's defense minister and Prime Minister is required for all new zoning or

development in the West Bank. This could take weeks, months, or even years. After annexation, Israel will declare the Jordan Valley to be part of its territory, rendering all development as a local matter.

If Israel annexes Jordan, it will be a most massive violation of the international law, however, as Israel has not officially recognised Jordan as its annexed land, it continues to be an occupied territory. However, several violations in the territories of the West Bank are subject to the violation of international laws and hence have to oblige to the Fourth Geneva Convention and 1907 Hague Convention. The next section of the paper will focus on the applicability of the aforementioned conventions along with the ICJ Ruling of 2004.

ICJ Ruling

After the Fourth Geneva Convention and the Hague Convention 1909, the International Court of Justice Ruling of 2004 is analysed concerning the West Bank conflict. The ruling was in response to a 90-8 vote by the United Nations General Assembly in December 2003 that requested the Court's advice regarding the legal aspects of Israel's construction of a barrier separating part of West Bank and East Jerusalem from Israel. [1] The argument focuses on the illegality of the existence of the West Bank barrier in the occupied Palestinian land from the lens of international law.

Before laying out the Advisory Opinion, the ICJ clarified its jurisdiction and judicial propriety concerning its involvement in the Israel Palestine conflict. The Court rejected Israel's contention that the Assembly had exceeded its competence under the Charter given the active engagement of the UN Security Council with the Palestinian question. Regarding this, the Court clarified that by the resolution 1515 of November 19 2003, the Security Council endorsed the 'Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict'. It was observed that both the Roadmap and resolution 1515 did not consist of any provision regarding the construction of the barrier.

After clarifying its jurisdiction on the West Bank conflict, the judicial propriety and the judicial function of the Court were questioned; in spite of having jurisdiction, as per the ICJ Statute, the Court may use its power to refrain from giving an advisory opinion when asked for due to 'compelling reasons'. Being the UN's judicial organ, the Court illustrated that in principle they should not refuse to give an advisory opinion, and that it has never refused to do the aforementioned when asked by any competent UN organ.

In furtherance to the judicial propriety, the consent of the parties concerning the jurisdiction was raised; Israel did not give consent to the ICJ to exercise their jurisdiction. The Court clarified that the absence of consent is irrelevant to the Court's ability to exercise jurisdiction as the Court is merely giving an advisory opinion to the *UN organ which requested the advisory* rather than the States which are involved in the conflict. The Court further emphasized that its opinion was to be given to the General Assembly, and not to a specific state or entity; it is not limited exclusively to the bilateral relations between Israel and Palestine. The involvement of other states i.e. The United States was also taken into consideration as they claimed that the involvement of ICJ could result in a political disturbance in the Roadmap scheme; it had the potential to influence the negotiations concerning the Roadmap. The Court clarified that its involvement was restricted to the illegality of the construction of the wall.

After the ICJ clarified its right to exercise its jurisdiction while maintaining its judicial propriety, the rules and principles violated during the construction of the barrier are discussed. Israel argues that the purpose of the barrier is not political but rather focuses on the security of Israel against combat terrorist attacks from the West Bank and further claims that the barrier is not permanent.

The resolutions provided by the Security Council and the General Assembly referred to the customary international law which states that the acquisition of territory by war is impermissible i.e., the occupation of the Palestinian territory is inadmissible. In the Court's view, it is apparent that the wall's sinuous route has been traced in such a way as to include within the "Closed Area" between the Green Line and the wall the great majority of the Israeli settlements (and about 80% of the Israeli settlers) in the Occupied Palestinian Territory (including East Jerusalem).

As per the ICJ, the construction which resulted in destruction of the Palestinian properties which further breached the Article 53 of the Fourth Geneva Convention, which 'prohibits the destruction by the occupying Power of property, except where such destruction is rendered absolutely necessary by military operations.' Article 52 of the 1907 Hague Conventions, which 'prohibits requisition of properties except under certain circumstances' was also breached. The contravention of the aforementioned articles has had adverse implications on the Palestinian agriculture followed by lack of sufficient access to health services and deteriorating educational establishments; the demographic composition of the Occupied territory is changed in violation to the Security Council resolutions.

Furthermore, the construction of the barrier "severely impedes the exercise by the Palestinian people of its right to self-determination and is therefore a breach of Israel's obligation to respect that right." (Para. 122.). The aforementioned construction breached the Article 49(6) of the Fourth Geneva Convention, which states that the ‘’Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies’’. The larger issue with the breach of the Palestinian territory is that the construction of the barrier constitutes a situation of ‘fait accompli’ which could further result in de facto annexation of the occupied Palestinian territory.

The legal consequences of the breach of the aforementioned Articles under the international law lie upon Israel, which state the Israel: (i) is required to uphold its international commitments, including its duty to uphold the Palestinian people's right to self-determination, as well as its obligations under international humanitarian and human rights law (ii) must remove the restriction on the access to Holy Places that fall under its control of the Occupation since the 1967 war (iii) has a commitment to avoid breaching its diplomatic commitments in relation to the building of the wall in the Occupied Palestinian Territories (iv) must immediately stop constructing the barrier in the Occupied Palestinian Territories, including in and around East Jerusalem, and remove the pieces that are still standing (v) must revoke any and all legislative and regulatory acts adopted concerning the construction of the barrier (vi) is subject to make reparations for the natural and legal persons damage caused in the form of returning any seized land, orchards, olive groves and other immovable property for the purpose of building the barrier or, in the case of the aforementioned suggested act being materially impossible, compensate for all damages suffered by the concerned person (vii) has a moral duty to pay any natural or legal entities who have sustained substantial harm as a result of the building of the wall.

The ICJ’s conclusion that "the obligations violated by Israel include certain obligations erga omnes" (Para. 155) is worth noting as since it documents the International Court of Justice concluding that Israel has violated the Palestinian people's inalienable right to self-determination as well as its international humanitarian law commitments. All other states have a legal interest in respectfully upholding those commitments. Under the UN Charter and the ICJ Statute, advisory opinions rendered by the ICJ in principle are non-binding. Since the legal rationale contained in those opinions expresses the Court's expert views on crucial questions of international law, their non-binding existence does not suggest that they have no legal impact. Furthermore, the ICJ meets exactly the same principles and procedures in shaping its

decisions as it does in making definitive rulings in disputes between sovereign states. The fact that an advisory opinion is the official pronouncement of the United Nations' principal judicial organ confers status and jurisdiction on it.

Fourth Geneva Convention

The applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including Jerusalem, as well as all other Arab territories occupied by Israel in 1967, has been founded by all High Contracting Groups, the United Nations, and the International Committee of the Red Cross (ICRC). This applicability has been reaffirmed by the United Nations Security Council in 25 resolutions, as well as the General Assembly and other UN bodies in various resolutions.

Israel, a High Contracting Party to the Fourth Geneva Convention, has disobeyed its commitments under the Convention notwithstanding its specific legal obligations. Despite the existence of international consensus, Israel has failed to enforce the Convention and has committed grave abuses, breaches, and significant violations of its terms on a systematic and deliberate basis. It ratified the Geneva Conventions in 1950, without expressing any concerns, and deposited its letter of ratification on July 6, 1951. In furtherance to the aforementioned ratification, Israel has a legal obligation to cooperate with the Conventions with utmost sincerity and to bring their provisions into effect where necessary, such as in the case of its belligerent conquest of the Palestinian Territories, including Jerusalem, and the rest of the Arab territories captured in 1967. Furthermore, the fourth Geneva Convention's universality and humanitarian aspect binds the international community in the same way as The Hague Regulations bind the international community.

Israel has violated a list of Articles of the Fourth Geneva Convention concerning the Occupied Palestinian Territory. Article 47, which is Inviolability of Rights, states: ‘’Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory’’. Furthermore, Article 49, which is Deportations, Transfers, Evacuations states: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to

the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive...The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." It is to be noted that Article 47 and 49 are of utmost importance in terms of violations by Israel (which will be explained in the next section of the paper)

Furthermore, Article 52, which is Protection of workers states: ‘’No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention. All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.’’ Article 53, which is Prohibited destruction, states: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." Lastly, Article 64, which is Penal legislation, states: "The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention...".

After justifying the application of the fourth Geneva Convention in the West Bank conflict, the practical applicability of the aforementioned convention is analysed as both the parties- the UN and Israel- have contrasting views on the involvement and application of the fourth Geneva Convention, which will be analysed further. The contrast exists due to two reasons: the absence of the unanimity, transparency and clarity present in the articles of the Geneva Convention and challenges posed by political biases.

Meir Shamgar, the Attorney General at the time, explained in his article *The Observance of International Law in the Controlled Territory*, written in 1913, that there is no provision of international law specifying that the Fourth Geneva Convention extends to any armed conflict, regardless of the position of the parties to the conflict; conquered territory should not necessarily constitute or equal to an occupied territory as per the application of the articles of the Fourth Geneva Convention. In relation to the Geneva Convention's applicability to the territories, the author wrote:

In my view, de lege lata, the automatic applicability of the Fourth Convention to the territories administered by Israel is at least use an understatement, and automatic application would raise complicated judicial and political problems.

In furtherance to the aforementioned claim regarding the status of the occupied territory, arguments were made regarding the legitimate sovereignty of the territory before and under occupation. The Israeli Law Review 1968 mentioned **t**hat the international laws regarding the belligerent occupation of territory is based on two assumptions: the rightful sovereign was forced out of the occupied territories and that in terms of the territory, the ousting side constitutes as a belligerent occupant. According to Glahn, "belligerent occupation... as regulated by customary and conventional international law, presupposes a state of affairs in which the sovereign, the legitimate government of the occupied territory of both an ousted legitimate sovereign and a belligerent occupant lies at the root of all those rules of international law, which, while recognizing and sanctioning the occupant's rights to administer the occupied territory, aim at the same time to safeguard the reversionary rights of the ousted sovereign. It would seem to follow that, in a case like the present where the ousted State never was the legitimate sovereign, those rules of belligerent occupation directed to safeguarding that sovereign's reversionary rights have no application."

It supported the argument made by Shamgar; he went on to argue that in Judea and Samaria and the Gaza Strip, there is no Jordanian or Egyptian sovereignty, and that it is this absence of sovereignty that the Israeli government has sought to differentiate between theoretical legal and political questions, and further acknowledges the observance of humanitarian provisions of the Fourth Geneva Convention on the other. Shamgar's explanation and justification nullified the applicability of the Fourth Geneva Convention. The nullification extended for a time period between 1967 and 1985; the Israeli Government clarified its rejection of the applicability of the Fourth Geneva Convention to the International Committee of the Red Cross in 1985. Since Israel was rejecting the application of the Convention with respect to the territorial occupations, Israel expressed its respect for the Convention's "humanitarian" clauses in order to alleviate international pressure. The Geneva Conventions, on the other hand, allow no difference between "humanitarian" and "non-humanitarian" provisions. On a whole, the Geneva Conventions represent a body of international humanitarian law, and Israel's stance is without substance.

It was Israel's approach to shift the acceptance of the application of the Convention towards the humanitarian laws; had Israel accepted the Convention's intervention in the territorial occupation, it would have resulted in a geopolitical loss for Israel. It was afraid that mandatory enforcement of the Fourth Convention would unwittingly result in a shift in the diplomatic status quo by giving Egypt and Jordan sovereign status, which Israel would be obligated to respect because of their "reversionary privileges." It refers to a state's territorial territory that has been invaded by another state, and therefore accepting its applicability to the territories could be viewed as acknowledging that the territories are under international jurisdiction. This approach is based on the contents of Geneva Convention Article 2 which states, among other things: "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party; Israel, Jordan and Egypt are parties to the Convention.''

The lack of implementation of the Convention is evident as Israel continues to illegally annex the area of the West Bank. The United Nations Security Council responded to the announcement by passing two resolutions denouncing the deportations as violations of international law, particularly the Fourth Geneva Convention (pg 613)Relative to the Protection of Civilian Persons in Time of War (the Geneva Convention or Convention).[2] Although the Security Council has consistently declared that Israel shall adhere to the Convention's criteria, Israel refuses the Convention's application to the administered territories. Resolution 607 of the United Nations Security Council, adopted on January 5, 1988, urged Israel to refrain from deporting all Palestinian citizens from the occupied territories as per the Geneva Convention (Article 49 as mentioned above) and abide by its commitments arising as an Occupying Power. The UN Secretary-General sent a letter to the Security Council proposing that it write to all High Contracting Parties to the Geneva Convention, asking Israel to rethink its stance on the Convention's applicability to the administered territories. The resolutions, along with Israel's denial of the Geneva Convention's applicability to the administered territories, demonstrate the legal tools' limited efficacy in resolving the complex political, religious, and cultural problems of a Jewish state in the midst of an Arab region**.** The decisions of the Security Council have had no impact on the insurgency in the administered territories.

Despite Security Council resolutions, the unrest has escalated, as have the harsh Israeli Army security measures that have followed it.

If the Security Council is to be successful in putting an end to the instability in the administered territories, its resolutions must be legally sound, especially when they relate to the Geneva Convention's applicability. The resolutions must therefore have a legally binding effect on Israel's actions in the administered territories and should provide legal interpretation based on the humanitarian spirit of the Convention. The aforementioned arguments further study three questions concerning the resolutions: (i) the power of the Security Council to view international treaties such as the Geneva Convention; (ii) the Convention's general applicability to Israel's existence in the administered territories; and (iii) interpretations of the Convention's particular clauses as they relate to the administered territories.

Hague Convention

The Hague Convention has been accepted as customary international law, making it legally binding. In essence, international humanitarian law is an integral aspect of international law that must be recognised and practiced, particularly by conflict parties.

The fourth Geneva Convention includes rules unique to cases of occupation in Articles 47 through 78, in addition to general rules and provisions covering the care of civilians. These provisions are identical to those listed in the 1907 Hague Rules, which are also in force and must be viewed in accordance with the above provisions. One such Hague regulation, Article 42, defines occupation as follows: *"Territory is considered occupied when it is actually placed under the authority of the hostile army."* Under international law, occupation is considered temporary in nature and involves no transfer of sovereignty. The occupation of territory during war does not confer upon the Occupying Power "state authority" over the population of the occupied territory or over the occupied territory itself. When a region is occupied, the enforcement of international humanitarian law, specifically the fourth Convention, stops only when the occupation is fully terminated or a substantive political resolution of the conflict is found in compliance with general international law.

The related clauses of the Hague Regulations are found in Articles 42-56, under the heading "Chapter III. Territoire de l'Etat Ennemi17," i.e., the Hague Regulations specifically extend the rules of war to territories belonging to an enemy State. As a result, the Rules extend to "the

occupant" on the one hand, and Israel and Arab countries on the other. The ICRC claims that the Fourth Convention's requirements for implementation are

Article 43 states "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.". Furthermore, Article 46 states: "Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.'' Article 50 illustrates "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." Moreover, Article 55 explains "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. "Lastly, Article 56 states that "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

The Israeli High Court had a different perspective, calling the 1967 territories annexed by Israel "occupied territories." The Hague Regulations of 1907 is accepted by the Court as customary international law in this regard. However, it viewed the rules in such a way that any action taken by the Israeli military was essentially allowed. The Court denied taking a stand on the applicability of the fourth Geneva Convention, instead arguing that the Convention was not justiciable before Israeli municipal courts because it had not been adopted into domestic law by the Israeli Parliament. Overall, the Court's prevailing inclination has been to refuse to enforce international law, and it has often engaged in legal formalism that limits the effect of international law on the actions of the occupying powers.

The government is yet to express a clear stance on the Hague Regulations' applicability. However, a review of the Government's general approach to the applicability of occupation laws to the territories shows that the Government's stance on the Hague Regulations is similar to its position on the applicability of the Geneva Conventions. The government has stated on many occasions that, regardless of its theoretical stance on the applicability of the Geneva

Convention to the territories, it implements the humanitarian provisions of the Convention in effect and will continue to do so. This tends to be the government's stance on the humanitarian provisions of the Hague Legislation as well. While we have no proof of the Government's express opinion on the issue, the general approach to the enforcement of belligerent occupation laws in the territories shows, as previously reported, that the Government's position on the applicability of the Hague Regulations is identical to its position on the applicability of the Fourth Geneva Convention.

Although we have no evidence of the Government's express opinion on the matter, the general approach to the implementation of the laws of belligerent occupation in the territories indicates, as mentioned above, that its position on the applicability of the Hague Regulations is identical to its position on the applicability of the Fourth Geneva Convention. In this respect, the reference to the Hague Regulations can be found in both Meir Shamgar's 1971 essay and Chaim Herzog's 1977 speech to the General Assembly.

Conclusion

The territorial position is thus sui generis, and the Israeli Government tried therefore to distinguish between theoretical juridical and political problems on the one hand, and the observance of the humanitarian provisions of the Fourth Geneva Convention on the other hand. As mentioned above, the ICJ ruling was a mere advisory opinion, which is non-binding in nature, hence, the arguments made by them, irrespective of the legality of the claims, are ineffective as they cannot be put into immediate effect on Israel. Even though it ratified the Convention, Israel is avoiding confrontation on the issue regarding the legality of the application of the Articles of the Fourth Geneva Convention as its geopolitical aims and national interest might get hampered on the aforementioned Convention’s applicability, which further allows Israel to refuse the Convention. To further strategize, Israel rather accepts the intervention of the Convention in the Humanitarian aspect.

As a result, the Israeli government distinguished between the legal question of the Fourth Convention's applicability to the territories under review, which, as stated, does not extend to these territories in my view, and agreed to behave de facto in compliance with the Convention's humanitarian provisions. The Hague Convention is an customary international law, which illustrates that the absence of ratification of the States to be a party to the Convention is irrelevant as it applies to all States due to its customary nature. However, due to constant

political involvement and non-binding nature of the convention (irrespective of the convention being customary), the international laws were not implemented in the most effective way, which has resulted in the prospects of the official annexation of the West Bank.

On the current annexation strategy of Netanyahu, Michele Bachelet, the United Nations High Commissioner, warned Israel; she claimed that annexation would result in “entrench, perpetuate and further heighten serious human rights violations, that have characterized the conflict for decades.” She added ‘’Annexation is illegal. Period. Any annexation. Whether it is thirty percent of the West Bank, or five per cent.’’ The words of the United Nations High Commissioner reflect that the UN is monitoring the conflict and would, however, as observed in the past, the lack of effective legal tools and flaws in the framework of the UN Security Council or the ICJ (non-binding resolutions/judgements) make the UN powerless. Furthermore, the aforementioned lack has allowed several violations to take place and might just allow annexation, one of the biggest violations including that of the civil liberties, to take place without the UN being able to execute its plan of action effectively.

References

“Charter of the United Nations.” United Nations. United Nations, October 24, 1945. https://www.un.org/en/charter-united-nations/.

“ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT - Full Text - Question of Palestine.” United Nations. United Nations, July 9, 2004. https://www.un.org/unispal/document/auto-insert-178825/

“ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT - Full Text - Question of Palestine.” United Nations. United Nations, July 9, 2004. https://www.un.org/unispal/document/auto-insert-178825/.

“Israel, Applicability of the Fourth Convention to Occupied Territories.” Israel, Applicability of the Fourth Convention to Occupied Territories | How does law protect in war? - Online casebook. Accessed February 26, 2021. https://casebook.icrc.org/case-study/israel-applicability-fourth-convention-occupied-territories. “

Israeli Occupation and International Humanitarian Law - Conf. of High Contracting Parties to 4th Geneva.” United Nations. United Nations,1999.

Al Jazeera. “Netanyahu Says West Bank Annexation Plans Still 'on the Table'.” Conflict News | Al Jazeera. Al Jazeera, August 13, 2020. https://www.aljazeera.com/news/2020/8/13/netanyahu-says-west-bank-annexation-plans-still-on-the-table.

Aljaghoub, Mahasen. “The Absence of State Consent to Advisory Opinions of the International Court of Justice: Judicial and Political Restraints.” Arab Law Quarterly 24, no. 2 (2010): 191–207. https://doi.org/10.1163/157302510x497330.

Bar-Yaacov, Nissim. “The Applicability of the Laws of War to Judea and Samaria (the West Bank) and to the Gaza Strip.” Israel Law Review 24, no. 3-4 (1990): 485–506. https://doi.org/10.1017/s0021223700010037.

Bekker, Pieter H.F. “The World Court Rules That Israel's West Bank Barrier Violates International Law.” ASIL, July 15, 2004. https://asil.org/insights/volume/8/issue/17/world-court-rules-israels-west-bank-barrier-violates-international-law.

Glahn. Israeli Law Review 3, no. 2 (April 1968): 297–98.

Gray, Christine. “THE ICJ ADVISORY OPINION ON LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY.” The Cambridge Law Journal 63, no. 3 (2004): 527–32. https://doi.org/10.1017/s0008197304226678.

Hajjar, Lisa. Zionist Politics and the Law: The Meaning of the Green Line 2, no. 03 (1994): 1–7. https://doi.org/Arab Studies Institute.

Heistein, Ari, Lina Raafat, and Danny Citrinowicz. “The Palestinian-Israeli Conflict: Has the Equation Changed?” Middle East Institute, February 23, 2021. https://www.mei.edu/publications/palestinian-israeli-conflict-has-equation-changed.

Kassim, Anis F. The Palestine Yearbook of International Law 1987-1988. 4. Vol. 4. 01 Feb 1997. Martinus Nijhoff Publishers, 1997.

Lesch, Ann M. “Israeli Deportation of Palestinians from the West Bank and the Gaza Strip, 1967-1978.” Journal of Palestine Studies 8, no. 2 (1979): 101–31. https://doi.org/10.2307/2536512

Olson, Wendy. UN Security Council Resolutions Regarding Deportation from Israeli Administered Territories 24 (1987): 611–30.

Peretz, Don. The West Bank: History, Politics, Society, and Economy. Boulder, CO: Westview Pr., 1986.

Quigley, John B., and John B. Quigley. The Case for Palestine: An International Law Perspective. Durham: Duke University Press, 2005.

Bahrain vs Qatar: Examining the viability of Arbitration and Mediation in International Territorial Disputes

By Rishika Pandey[3]*

Introduction

On the 16th of March 2001, the International Court of Justice witnessed the end of its longest running case. The case involved the territorial and maritime dispute of Bahrain and Qatar. It also came to be the only territorial dispute between two Arab countries that was successfully resolved by the ICJ. Understanding this dispute and how it reached the ICJ helps give context to the complex relationship between Bahrain and Qatar. This paper will explore how this dispute was not merely about two countries but finds its history intertwined with colonial interests, politics of oil and the goals of regional powers and international powers. The case dealt with the dispute over Hawar Islands, the fashts (shoals) of al-Jaradah and al-Dibal, territorial waters of the Persian Guld and the district of Zubara. (Qatar v. Bahrain). This paper however, will mainly focus on the question of Hawar islands and Zubara.

A Historical Background

Qatar's claim to the Hawar islands stems from the proximity of the country to it. Bahrain on the other hand, claim on the fact that the Dowasir tribe was granted permission to settle in the region around 1800 by an appointee of the Bahraini government- the Qadi of Zubara. Qatar has contended this claim and accused Bahrain of never producing any evidence confirming the occurrence of such an event. The tribe continued to reside in the area well into the twentieth century and there was no habitation by Qatar until the 1930s. Bahrain chose to deploy a garrison of troops and started military exercises in the islands which made the case harder to solve with the help of Saudi diplomacy and mediation. (Reply of Qatar (Qatar v. Bahrain), 2001)

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Additionally, an understanding of the role that Britain played in this dispute is essential to understanding the final judgement and perceived settlement of the same. The British supported and recognized Qatar's Al-Thani's sovereignty over Zubara and prevented interreference of Bahrain's Al-Khalifa in 1868. Qatar had started aligning its loyalties with the Ottoman Empire in the 1870s and received support in extending its authority over Zubara by the empire. What makes the claim of Qatar stronger is the fact that despite Britain's opposition towards Al-Thani's effort (as it saw this as an attempt of the Ottoman Empire to expand its authority), it did not allow Bahrain's Al-Khalifa's ruler from interfering in Zubara. This dedication to help Al-Thani secure sovereignty over the region was solidified in the 1913 Anglo-Ottoman Agreement. (Abdulla & Ibrahim, 1981)

In 1937, over 4000 men were sent by Abdullah Bin Jassim (Emir of Qatar) to crush the rising rebellion of the Naim tribe in the area whose loyalty lay with the Al Khalifah (the royal family of Bahrain) in Zubara. The tribe was taken over and they switched their loyalties towards Abdullah Bin Jasim. To this, Hamad Al Khalifah responded with an economic embargo on Qatar. On 23rd July 1937, Beirut's newspaper, Al Nida covered this exchange under the title "War declared between two Arabian States" (Roberts, David, & Bryn, 2013). This incident will be referred to as the “1937 conflict” further on in this paper.

The tribe of Zubara, Al-Naim, considered Zubara their homeland. The scarceness of the region was not an issue enough for them to migrate, they learnt how to make effective and efficient use of the scarce resources. More importantly, they did not avoid the developments happening in the region, they took advantage of their location to import goods including food. The tribe was not completely loyal to the ruler of Bahrain; due to an intratribal schism, the tribe split and one of its Sheikhs named Ramazin requested the Qatari ruler for support against Sheikh Rashid of the tribe in 1937. The ruler of Qatar took advantage of this split and extended his aid to Ramazin by acting against Radhid and his connections with Sheikh Hamad Al-Khalia. He influenced Ramazin's men to conspire against Rashid's followers and this led to a deeper divide within the tribe.

This conflict of 1937, however must be seen as more than the extension of an indigenous power conflict. It strengthened the role of Zubara as a border between the two gulf countries. In fact, the Al-Thani ruler initiated physical border practices which included surveillance and customs regimes, embargoes, bars and the use of force to separate the seminomadic Bedouin inhabitants of Zubara. (Springer, 2020)

This conflict also led the Sheikh of Qatar to build a fort as a symbolic gesture of claiming the land. This Fort of Zubara was more than just a building, located just a few hundred yards from the Al-Murair Fort, it was built as a response of Sheik Hamad Al-Khalifa's (of Bahrain) claim to the historical built landscape of Zubara. (British Library: India Office REcords and Private Papers, 1947). The builders went to the extent of using the remnants of the ruins to build the new fort. This structure may not have had the history but it compensated that with its building feature which were traditional and usage of local materials like limestone mud, juss and stones give it a highly indigenous feel and acted as the perfect symbol of the Al-Thani's claim of sovereignty over Zubara. This new but traditional and ancient looking fort served as a tool to carry out actions of modern states such as customs inspection and detainment of border crossers who did so illegally. (Birmingham Archeology, 2010)

Al Thani mentioned that fort was constructed as Sheikh Hamad had done the same by constructing his own fort in the Hawar islands. The construction of the Fort of Zubara is also important to study because of the implications it had on the regional stability of the region. For instance, in 1953, a few students had visited Zubara on a school trip. They decided to draw graffiti on the walls of the fort which said "Al-Bahrain". Qatar's Sheik Ali took this matter very seriously and saw it as a deep insult towards his father who had built the fort. Bahrain's Sheikh tried to dismiss it by calling the entire event just a prank played by the children but the Qatari government's way of handling the issue was perceived as an act of state aggression. (Schofield & Blake, 1988)

Assessing the different dispute resolution mechanism employed

This section will assess the role of different third parties in trying to resolve the territorial dispute between Bahrain and Qatar. It is necessary to clarify the difference between arbitration, mediation and litigation to understand this section better.

Arbitration is when a third party serves in the capacity of a judge to resolve the dispute, their decisions cannot be appealed. An arbitrator is one who holds a formal arbitration between two parties before passing a judgement; Britain in this case is referred to an arbiter (as opposed to an “arbitrator”) because while its judgement remains binding and unappealable (like an arbitrator's would), it did not hold any formal session with the two parties to resolve their conflict.

Mediation involves a neutral third party helping the disputants to come on a resolution on their own accord. A mediator's decision is no way binding on the parties and this process is considered to be informal and friendly. In the case of the two Gulf countries, Saudi Arabia served as their mediator. Finally, on litigation, this type of dispute resolution the face-off between a defendant and a plaintiff in front of a judge (or a judge along with a jury). This option was sought by Qatar when it felt that the meditation sessions were not going in a desirable direction. In this case the International Court of Justice served as a judge. (Pon staff, 2020)

The Arbiter

The first arbitrator of these two gulf countries was Britain. Pirates based in Bahrain and Qatar were raiding British ships in the 1800s. This strategic position of Bahrain amidst the Persian Gulf's important trade routes invoked colonial interest in the country. The relationship between Britain and Bahrain grew to such an extent that an agreement between the British Political resident in the Gulf and the Chief of Bahrain restricted the Bahraini chief and his heirs from entering into any agreement with a power other than the British Government and stopped the entry of agents of other nationalities from entering terrain of Bahrain without the approval of the British.

Qatari tribes too had entered into agreements with Britain during the 1800s. However, Qatar aligned its interests with the Ottoman empire more than the Britishers in response to Bahrain's growing affinity with Britain. After the Ottoman's influence started diminishing the tribal leaders of Qatar started shifting their loyalties towards the British which resulted in more agreements being signed in 1913 and 1916 between the two and these agreements guaranteed the independence of Qatar and banned the influence of Bahrain in its territory. These agreements may not have dealt with land agreements in detail, but they did put Britain in a position to turn into the first arbiter to resolve the dispute.

It is pertinent to note the years and the nature of these agreements (between Qatar and Britain) as they become a relevant point of discussion during the case, which this paper will explore in the subsequent section.

Political loyalties were considered to be more important as compared to land in the 1800s, which is why both the countries were focusing on aligning themselves with a superpower. Hence, the territorial dispute between the two countries did not emerge out of nowhere or in a

vacuum, in fact, the reason the territorial dispute emerged was because of oil. The Bahraini Petroleum company discovered oil in May 1932, this made the regions which were previously not occupied, valuable. Soon enough, Qatar moved towards claiming Hawar islands and signed an oil concession in 1934. As mentioned earlier, Qatar tried to claim Zubara and remove Bahrain's hold over it. It was in 1939 that Britain put forward its decision to allow Bahrain to have Hawar islands under it but not have Zubarah. Qatar seemed to reluctantly agree as it could not challenge an arbiter's decision easily (as mentioned earlier) let alone afford to face the repercussions of aggressively protesting a colonial power with significant influence over the region. It did however lodge a formal protest in 1938 which will be discussed in the context of ICJ's judgement. This was how Britain exercised its role as an arbiter, the ICJ seems to have reinforced this decision in its ruling.

The constant usage of the word arbiter to refer to Britain becomes important as even the ICJ respects the authoritative position held by the colonial power and that in turn gives legitimacy and credibility to the agreements signed under its supervision and direction.

The Mediator

Saudi Arabia played the role of a mediator between the two gulf countries for around 10 years. It was able to do so because of the general tendency of gulf nations to opt against the option of third-party intervention from institutions or states that are not with in the Arab region as well as Saudi Arabia's position as a major power in the region and the nation with the highest level of military and economic capabilities. The country's inclination towards keeping this dispute along with others "within" the Gulf region stemmed from two aspects: realism and Islamic law.

In brief, according to realism, states should prioritize their own interests such as protection of territory which is sovereign to it or maintaining power preponderance. Hence, this theory can explain Saudi Arabia's choice of personally overlooking the territorial dispute in question by the way of mediation as it did not have enough authority to act as an arbiter. This could have been a way to stop western mechanisms which brings us to the second aspect of Islamic Law. The trend of the ICJ ignoring Islamic law in its ruling makes the option of approaching it undesirable to an Islamic law state like Saudi Arabia. Islamic law prefers informal resolution procedures and believes that formalized legal adjudication brings about unwanted hatred and strains relationships whereas reconciliation brings them together. (Wiegand, 2014)

Saudi Arabia failed in resolving the dispute between the two nations as Qatar believed that it had a strong enough case to present in court which will be expanded on in the next section.

Analysing the International Court of Justice's judgement

Finally, the territorial dispute reached the International Court of Justice and the matter was settled for once and for all. This section will deal with the different rulings given out by the court such as that of its jurisdiction, the question of intent, maritime delimitation, specific judgements over Hawar islands and Zubara and then the relationship between Islamic law and international law as carried out by the ICJ in this dispute will be assessed.

On the question of "intent" during negotiations & jurisdiction

Other than the final ruling and the way in which the ICJ dealt with maritime delimitation in this case, the court's ruling on what constitutes an "international agreement" and when intent is formed. Qatar filed an application before the ICJ, it argued that the court had jurisdiction of this dispute based on two agreements between the parties in December 1987 and December 1990. Before coming to the court and in the process of resolving the issue outside of it, the two countries exchanged letters in 1987, which was accepted by the heads of the states but no action was taken was ever taken. A tripartite committee was created in 1987 with Bahrain, Qatar and Saudi Arabia, "for the purpose of approaching the ICJ and to satisfy the requirements to have the dispute submitted to the Court in accordance with its regulations and instructions so that a final ruling which is binding upon both parties can be issued."

The meetings of the committee resulted in minutes which reasserted the process and gave the Saudi King a certain period of time to resolve the dispute, the failure of which would allow the dispute to go to the ICJ. The committee, despite meeting several times could not reach a resolution. In 1990, Qatar had accepted the Bahraini formula (Doha minutes) which was a request to the court to "Decide any matter of territorial right or title or interest which may be a matter of difference between their respective maritime areas of seabed, subsoil and suprajacent waters". The Doha minutes reaffirmed the previous understanding between the two parties that they will work along with Saudi Arabia until May 1991 after which the matter will be taken to the ICJ while conforming to the Bahraini formula. This step by Qatar of filing the application to the ICJ was opposed by Bahrain.

Hence, one of the main issues that arose in front of the court was if the exchange of letters between two countries and the minutes of meetings can create rights and obligations for the signatories. The Court ruled that it did and was binding in nature. Bahrain did not get behind this decision and argued that these minutes were simply a record of the meeting and not under the court's jurisdiction. The ICJ did not agree with this and there is precedence that supports this decision; the Vienna convention of laws and treaties states that international agreements can take many forms and this court has enforced this rule in the past. In this dispute the minutes of the meetings reaffirm the obligations of the countries that they had previously agreed to such as the agreement on allowing Saudi Arabia to find a resolution and indicating the involvement of the ICJ. The foreign minister of Bahrain asserted that there couldn't have been an agreement because he did not "intend" to get into one. The court countered this claim by stating that he did sign the documents in question which in turn created rights and obligations for his country. This case thus expanded the ICJ's power by enforcing the precedent which was set out in the Vienna Convention. (Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), 2021)

On Hawar islands

The parties argued over six legal grounds on which sovereignty over Hawar Islands must depend, the Court only chose to deal with one, res judicata. Res judicata is a concept that is used in civil law and common law legal systems which states that if a final case for a judgement has been given, it is can no longer be subject to appeal.

Interestingly, in this case the court decided to treat Britain’s decision of letting Bahrain occupy Hawar islands as a judgement which cannot be decided up on again. The decision in question was made on July 11th 1939 by the British government, the coloniser made this decision based on the exclusivity agreements it signed in 1892 and 1916 with the ruler of Bahrain and Qatar. The two rulers agreed to not communicate or have diplomatic communications with other powers or cede land to them. Here is where the aspect of oil politics discussed earlier becomes relevant and most prominent. A British oil company in 1928, had started negotiating with the ruler of Bahrain for concessions over the Bahraini land which was not allocated to it.

These negotiations stopped in 1933 but were brought alive with another oil company wanting to take a part in the bidding over receiving concession on the Hawara islands. This other oil company was enjoying concession over the land of Qatar and it turned to Britain to explain its

view on the matter of Hawar island's sovereignty. Britain "ruled" in favour of Bahrain after which its ruler decided that Bahrain would take occupation of the main part of the islands and he did so in May 1938. The ruler of Qatar did not like this move and in two years (May 1938) it lodged a formal protest with Britain. This launched a short series of claims and counter claims made by the British political agent in Bahrain and the ruler of Qatar. Great Britain felt that Qatar did not give any concrete evidence of why they should have claim over the islands and their assertion of sovereignty was bare in nature and not sufficient. Based on this, Britain reasserted its prior decision and gave a final answer of Hawar islands belonging to Bahrain. (Plant, Maritime Delimitation and Territorial Questions between Qatar and Bahrain)

On Zubarah

In deciding who Zubara belonged to, the court referred to the Anglo-Ottoman Convention of 1913 which confirmed the British recognition of Zubarah as a part of the sheikhdom of Qatar. The court was quite brief in its decision of granting the land to Qatar. The court observed and depended on the British acknowledgment of Qatar's authority over the territory and how it consolidated the land under it. This acknowledgment by the British was certainly formal as it was noted in treaties between the Ottoman Empire and Britain.

Brief reflection on the maritime delimitation aspect

The fact that the ICJ was able to resolve a dispute which had both territorial and maritime issues under it set a remarkable precedent to deal with cases with both these components. This was the first time that ICJ applied the equidistance method to a delimitation relating to adjacent coasts under customary law. Since neither of the countries were a party to the 1958 Geneva Conventions on the Law of the sea, Qatar was just a signatory of the 1982 UN Convention on the Law of the Sea (even though Bahrain ratified it), customary law was applied to this case. The approach taken by the ICJ was not that common in institutions carrying out international law and this may be why scholars may consider this case to be a landmark judgement when it comes to maritime delimitation. (Tanaka, 2003)

Islamic law and the Court’s judgement

Countries which follow Islamic law tend to be weary of international law being used in a legally binding manner mainly because of how such mechanisms and institutions (like the ICJ) leave out Islamic law in its assessions. For instance, after studying 83 contentious cases that were

taken up by the ICJ from its establishment till 2006, it was observed that only two of these judgements mentioned Islamic law. This makes it difficult for such countries to agree to a binding judgement by an institution which is not inclusive of their laws. Hence, when it comes to this dispute as well, it is not surprising that the two Gulf countries only approached the ICJ after exhausting all their options. A major aspect that Islamic law deals with is the question of sovereignty and territoriality. It places the focus and importance on the people or inhabitants over the territory in question. This is in contrast to the traditional notion of sovereignty which is based on territory. (Wiegand, 2014) Tribal allegiance hence, becomes an important component to consider.

In the case of Bahrain vs Qatar, the judgement does not mention Islamic law nor was there much importance given to the choice of the inhabitants of the disputed lands. In fact, in one of its letters to the ICJ, Bahrain had mentioned how it had proposed holding a plebiscite among the Naim tribe to find out who they considered Zubara to be under, this was rejected by Qatar. (Bahrain to ICJ Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) This conversation does not come up again in the judgment and the option of a plebiscite is not explored in depth whatsoever. ICJ's decision to avoid concepts of Islamic law and to make a purely law decision based on "credible" legal documents made it turn towards treaties and agreements which were overlooked by a colonial entity time and again. Its decision of assigning Hawar islands to Bahrain and Zubara to Qatar is exactly in line with Britain's decision in these disputes.

However, it can be said that integrating Islamic law might have been more difficult in this case than it appears to be. Islamic law traditions have been developing over a long period of over a thousand years and according to some scholars its application can be difficult on states that are independent and dont run on the concept of personal sovereignty but territorial sovereignty. In this case especially, personal sovereignty would have become difficult to assess due to the ambiguous and fluid loyalties of the tribes involved as is mentioned in the first part of this paper. The Naim tribe initially supported the ruler of Bahrain as their ruler firmly but changed its stance after 1937. It cannot be guaranteed that they would not have been influenced by other factors in the future and maybe if the ICJ made their decision solely based on personal sovereignty, it might have worked out in the immediate future. However, if the tribes changed their stance again, that would undermine the decision of the court and it might have become easier to hinder its binding nature.

Conclusion

This case goes to show how important it is to contextualize the history of territorial disputes before passing any judgement on it. This dispute was not just about two countries being at loggerheads with each other over some pieces of land- multiple actors impacted this dispute. The conflict over oil concessions (in 1934) highlights how the question of sovereignty over the Hawar islands did not arise due on the prior claims of the rulers of Bahrain and Qatar or on the inhabitants of the region. It also raises the question that if these lands did not potentially foster oil, would this entire dispute have ever even taken place when it did or not. One way to look at it is that the British government simply had to split the land between two oil companies which belonged to its very own country. Had this not been the case and/or if there was no sign of the presence of oil in these regions, then would the British government have played such an active role and given clear and unambiguous judgements as it did or not? Because in this case, while Bahrain and Qatar had their vested interests in the disputed land, it is difficult to say that this would have been reason enough for the colonial power to interject.

Which would then mean that there would have been no formal agreements which are "binding" in nature. This would have significantly handicapped ICJ's ability to give a legally sound decision. While this case is considered to be a landmark judgement and the court is applauded for its efforts, it still had to depend on colonial documents extensively. This hints at the fact that modern international dispute resolution mechanisms are highly dependent on the colonial frameworks that were set ages ago and are now outdated. Maybe it is time for the ICJ to start exploring methods through which it can incorporate regional laws (like Islamic law) or are more accommodative of a country's history outside its colonial past. This can help the court in attracting more countries which face disputes surrounding sovereignty and build a more comprehensive legal framework for the world.

References

Abdulla, A., & Ibrahim, Y. (1981). *A Study of Qatari-British Relations, 1914-1945.* Doha: Orient Publication and Translation.

Alter, K. (2014). Chapter 5: International Dispute Settlement. In *The New Terrain of International Law: Courts, Politics, Rights* (pp. 172-177).

Birmingham Archeology. (2010). *Zubara Fort, Qatar: Conservation Assessment.* Retrieved February 5, 2021, from https://www.academia.edu/7917422/Zubara_Fort_Qatar_Conservation_Assessment. [Google Scholar]

British Library: India Office REcords and Private Papers. (1947). *File 19/243 IV Zubarah.*

Interstate dispute settlement in action. (2014). *The new terrain of international law*, 172-178. Retrieved February 5, 2020, from https://faculty.wcas.northwestern.edu/~kal438/NewTerrainFromDepot/docs/BahrainvQatarTerritorialDispute.pdf

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), 87 (ICJ July 8, 2021). Retrieved February 5, 2021, from <https://www.icj-cij.org/en/case/87>

Pon staff. (202, October 8). *What are the Three Basic Types of Dispute Resolution? What to Know About Mediation, Arbitration, and Litigation*. Retrieved from https://www.pon.harvard.edu/daily/dispute-resolution/what-are-the-three-basic-types-of-dispute-resolution-what-to-know-about-mediation-arbitration-and-litigation/

Reply of Qatar (Qatar v. Bahrain) , 87 (ICJ July 8, 2001).

Roberts, David, & Bryn. (2013). Qatar and a changing conception of security. *Durham theses*, 88.

Schofield, R., & Blake, G. (1988). *Arabian Boundaries: Primary Documents; 1853-1957.* Archive Ed., 1988.

Springer, P. (2020). Bordering Zubara: oil politics, the 1937 Qatari-Bahraini conflict, and the making of a modern Arabian (Persian) Gulf Borderland. *Journal of Borderlands Studies* .

Tanaka, Y. (2003). Reflections on Maritime Delimitation in the Qatar/Bahrain case. *The International and Comparative Law Quarterly*, 53-80. Retrieved February 5, 2020, from https://www.jstor.org/stable/3663209

Wiegand, K. (2014). Resolution of Border Disputes in the Arabian Gulf. *The Journal of Territorial and Maritime Studies, 1*(1), 33-48. Retrieved 2020

The Fallacies of Occupation: Iraq's Invasion of Kuwait

By Simran Mehrotra[4]*

Introduction

After World War II, there was an established new world order on the prohibition of the use of force against another state's territorial integrity enshrined in Article 1 and 2 of the United Nations Charter (UN Charter). However, Iraq's invasion of Kuwait directly challenged the new world order with complete disregard for international law. On 2nd August 1990, Iraqi forces successfully overwhelmed Kuwait's defence allowing for a successful invasion. Subsequently, the United Nations Security Council (UNSC), through resolution 660, condemned the invasion and demanded Iraqi troops' immediate withdrawal from Kuwait. To make Iraq comply, the UNSC imposed a worldwide trade ban on Iraq via resolution 661. Iraq's response to the economic sanctions was formally annexing Kuwait by declaring it the 19th province of the Republic of Iraq on 8th August 1990. What ensued was a seven-month period of intensive diplomacy to mediate the conflict between Iraq and Kuwait. However, Iraq's continued ignorance towards UN resolutions and diplomacy resulted in the UNSC passing resolution 678 authorizing the use of force. Resolution 678 was passed on 29th November 1990 and gave Iraq until 15th January 1991 to withdraw from Kuwait. If they failed to, UNSC authorized member States to take *all necessary measures* to restore international peace and security in the Middle East. Saddam Hussein's ignorance of the 15th January deadline resulted in two weeks of armed conflict between Iraq and a U.S led UN coalition known commonly as Operation Desert Storm.

The UN coalition deployed in the Gulf Air (Operation Desert Storm), land (Operation Desert Sabre) and naval forces of about 700,000 troops drawn from twenty-eight states. They engaged in a six-week military campaign driving the Iraqi armed forces out of Kuwait. Seven months after the Iraqi invasion, Kuwait's government was restored to power and liberated. However,

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the invasion and annexation of Kuwait took most States and international organizations by surprise. Primarily because in the new era of prohibition of armed conflicts to uphold international peace and security, there was no legal basis for Iraq's invasion and annexation of Kuwait. Therefore, the conflict must be analyzed against the background of Iraq's claims and justifications that led to the invasion on 2nd August.

Territorial Claims

Iraq has long claimed that Kuwait was a part of the Republic of Iraq and has made claims over the territory during Kuwait's independence in 1961. Iraq believed that Kuwait's existence as a separate State was a product of British colonialism to prevent an Arab nation from holding large amounts of resource-rich land and strategic access to the Gulf. Iraq maintained that Kuwait came under Wilayat of Basra, one of the three Ottoman provinces which later made the State of Iraq. Additionally, Iraq states that Kuwait was separated from Basra by the British, who concluded a secret treaty with the Sheikh of Kuwait in 1899 and 1914, recognizing Kuwait as a separate State. Kuwait status as a British protected State was terminated in 1961, after which Iraq claimed Kuwait as part of its territory.

Iraq moved troops to the border to block Kuwait's admission into the Arab League and United Nations in 1961. However, British forces were sent to Kuwait to prevent military action. It became clear that most Arab States rejected Iraq's claim over Kuwait due to an Arab League peacekeeping force, eventually replacing the British troops. Kuwait, being admitted to both the UN and Arab League, resulted in the international community recognizing Kuwait as an independent State. Additionally, Iraq in October of 1963 accepted Kuwait's independence in an UN-brokered agreement between the two countries known as the Agreed Minutes Regarding the Restoration of Friendly Relations, Recognition and Related Matters However, Iraqi's encroachment on Kuwait's border in 1973 and annexation in 1990 witnessed the consistent Iraqi claim that the former agreement is invalid as Iraq's constitution at the time did not ratify it.

Nevertheless, if the Iraqi government in 1961 failed to comply with the constitution when agreeing to ratify the agreement, it would still not be sufficient ground to invalidate the agreement today. The Vienna Convention on the Law of Treaties, 1969 (VCLT) emphasizes in Article 46 that States invoking a violation of its domestic law in order to invalidate consent to a treaty can only do so if the violation was manifest to any State conducting itself in good

faith and concerned a rule of the domestic law of fundamental importance. Additionally, Article 45 of VCLT prohibits a treaty's invalidation if the State has agreed—expressly or implicitly—to the treaty's validity after becoming aware of relevant facts. In 1958 an Interim Constitution was invoked in Iraq with a pending permanent law yet to be promulgated after a free referendum. The interim Constitution seemed talented as the powers of legislation and executive were vested in the Council of Ministers.

Abd al-Karim Qasim resumed the prime minister's role shortly after the interim Constitution came into force in 1958. However, he had a complete disregard for the constitution as his administration descended into autocracy promptly. In this context, therefore, the 1963 Iraqi constitutional arrangements and the concentration of power in General Qasim makes it unlikely that Iraq met the requirements of Article 46 to invalidate the treaty. Additionally, Iraq continued to transact with Kuwait as an independent State until 1990 and therefore forfeited the right to invalidate the treaty via domestic law violation under Article 45 of VCLT. Additionally, even if Iraq’s historical claim to Kuwait had merit, the invasion would not be justified under international law. The use of force to assert historical claims to territory against a State goes against Article 2(3) of the UN Charter that conditions all Members to settle international disputes by peaceful means, not to hinder international peace and security.

Additionally, Iraq further suggested that boundaries between the Arab States should be considered temporary demarcations between parts of a holistic Arab nation. However, this argument has no legal substance in domestic or international law. The duty to respect international boundaries is not inapplicable to the Arab States, which is clear from the Pact of the Arab League. The Pact of the Arab Leagues aims to strengthen close relations which bind the Arab States. However, the Pact is also determined to support and stabilize these relations based on respect for all States independence and sovereignty. Iraq was one of the founders of the Arab League and therefore participated in recognizing sovereignty. Therefore, it is clear that Saddam Hussein tends to contradict Iraq’s current position against the ones taken by previous Iraqi governments.

Economic Claims

Another popularly cited reason for Kuwait's invasion is the economic-related disputes between the two countries leading up to the invasion. Iraq had engaged in an eight-year war with Iran that ended in 1988. What ensued was a weak economy and enormous international debt Iraq

owed to Kuwait, Saudi Arabia and the other Arab States who supported Iraq in the war. The international debt is estimated to be around $80 million, with roughly $30 million owed to Kuwait and $50 million to other Arab monarchies and creditors. Furthermore, during the Iran-Iraq war, Iraq initiated a large-scale economic liberalization and privatization program that resulted in high inflation, unemployment, shortages of essential goods, visibly high economic inequality and the rise of a black market in foreign currencies. Kuwait was a small country with a weak military; however, wealthy due to large oil reserves. Therefore, Kuwait was strategically valuable and a monetary prize for Iraq, especially after the war with Iran.

In furtherance, Iraq, who was before the war with Iran, wealthy due to oil, now claimed to have found itself in an international conspiracy. Iraq accused Kuwait of exceeding the Organization of Petroleum Exporting Countries (OPEC) oil production quotas that caused the collapse of oil prices due to overproduction. This cost Iraq billions of dollars in revenue, which would have been used towards reconstruction post the Iraq-Iran war. Additionally, Iraq also accused Kuwait of stealing oil from the Rumaila oilfield in southern Iraq worth $2.4 billion. To reduce Iraq's foreign debt, Saddam Hussein used the abovementioned reasons to ask Kuwait outrightly to forgive the debt, which Kuwait rejected. Kuwait's rejection and Iraq's economic instability are the most cited reasons for the invasion on 2nd August; however, there are no legal grounds for the invasion and annexation.

The prohibition of the use of force is maintained in Article 1(1) of the UN Charter that upholds the objective of international peace and security. Additionally, Article 2(4) maintains that Members should refrain from the threat or use of force against any state's territorial integrity. Territorial integrity is an element of Statehood that refers to the 'wholeness' of a State and is a norm of international law to protect the territorial framework and sovereignty of an independent State. Territorial integrity, if violated, is associated with the territory, land or sea, to come under another States sovereignty or control. Therefore, Article 2(4) prohibits annexations and occupations of one State by another and is the legal provision that would apply to Iraq's invasion and annexation of Kuwait.

Additionally, the prohibition of the use of force is a peremptory norm of general international law. This means that the international community recognizes the prohibition on using force as a norm from which no derogations are allowed. A peremptory norm, also known as *jus cogens*, is modified only by a subsequent norm of general international law with a similar character. In

the hierarchy of international law, peremptory norms occupy the uppermost tier. Additionally, the 1966 Draft Articles on the Law of Treaties, the International Law Commission (ILC) identified the provision prohibiting the use of force in the UN Charter to be a '*conspicuous example of a rule of international law having the character of jus cogens'*. Therefore, the prohibition on the use of force has been on top of the international law hierarchy and is a dangerous norm to violate with no legal basis.

The prohibition on the use of force is not an absolute one and is liable to exceptions enshrined in Chapter VII of the UN Charter. Use of force may be permitted only if (i) authorized by the UNSC under Article 42 of the UN Charter or when a State is acting in self-defence under Article 51 of the UN Charter. The UNSC may authorize the use of force if softer measures under Article 41 of the UN Charter, such as sanctions, fail to enforce compliance. UNSC resolution 661 imposed economic sanctions on Iraq; however, it failed due to non-compliance by Iraq. Therefore, UNSC's resolution 678 authorizing the use of force under Article 42 gave the UN coalition legal validity to attack Iraq.

However, Iraq's invasion of Kuwait does not conform to the exceptions enshrined in Chapter VII of the UN Charter. The economic claims cited by Iraq for the invasion was not recognized by the West nor UNSC to be valid. Furthermore, Iraq could not claim the second exception of self-defence as Iraq initiated the use of force. A self-defence claim is only valid if a nation acts in retaliation to a threat or armed attack. An economic set back does not amount to a threat and therefore the self-defence claim is negated. Therefore Iraq failed to find a legal ground in the UN Charter to apply force in Kuwait, resulting in the violation of *jus cogens*.

Additionally, annexation refers to the acquisition of territory via the threat or use of force and is strictly prohibited under Article 2(4) of the UN Charter. This principle has been supported in the Friendly Relations Declaration (1970) adopted unanimously by the UN General Assembly, declaring '*the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal'*. The UN Charter does not mention reasons for which use of force may be allowed in pursuance of the objective of international peace and security. Therefore, even if Iraq's insecurities regarding an international conspiracy crippling its economy was correct, the act of annexation violates international law.

Political Claims

Iraq is guilty of being fickle-minded on reasons for the invasion of Kuwait. Iraq has cited territorial claims dating back to before Kuwait's independence. Saddam Hussein's eccentric personality then derives the conclusion that the invasion took place due to economic instability and Kuwait's rejection of forgiving international debt. However, before the territorial and economic claims were made and annexation took place, Iraq claimed that it had intervened at the request of elements in Kuwait who opposed the Emir rule and formed the Provisional Government of Free Kuwait (PGFK). This seemed like an odd justification for intervention as the PGFK consisted of men unknown in Kuwait and, in most cases, were Iraqi army officers. Additionally, these men boycotted prominent figures in Kuwait's opposition and never experienced acceptance in Kuwait.

However, even if the factual matrix favoured Iraq's claims, it would not have legitimized Iraq's invasion of Kuwait. The UN Charter prohibits intervention by use of force in another country, especially to replace the government. Article 2(4) of the charter maintains that '*all Members should refrain from the threat or use of force against …political independence of any state'*. Political independence is the other element of Statehood required for recognition of a State in the international community. The use of force to threaten the political independence of a nation is associated with intervention aimed at expelling a government to install another in its place, changing the political composition of the State. Iraq's invasion with the objective to aid an opposition group in Kuwait would be conducted with the aim to expel the sitting Emir. Therefore, Iraq's invasion based on a request made by PGFK is expressly against Article 2(4) of the UN Charter as it tends to alter the political composition and threaten Kuwait's political independence. The invasion based on political claims has no legal basis. The claim is further meritless as Iraq quickly relinquished the PGFK collaboration to maintain an outright annexation based on an old claim that Kuwait was historically part of Iraq.

Conclusion

Iraq's invasion of Kuwait was conducted with complete disregard for international law. This is evident as the three commonly cited claims of Iraq, which are territorial claims over Kuwait, economic disputes with Kuwait and political request by the PGFK, have no legality in the international law framework. The UN Charter in Article 1 and 2 prohibits the use of force to uphold the objective of international peace and security. There are no provisions that allow the use of force based on requests for intervention made by elements in the other State, nor is the

use of force allowed based on socio-economic claims. The UN Charter only allows the use of force when the UNSC authorizes it, or a State is acting in self-defence.

Additionally, before and during the conflict, Iraq behaved with absolute ignorance towards the international community and the UN's diplomacy and sanctions. Therefore, the Iraq and Kuwait conflict are a unique case study in international law. More so because it put the shortcomings of international laws response to despotic dictators forward. Comparatively, a democratic country is favoured due to the ease of compliance with international law through soft and hard measures enumerated in Chapter VII of the UN Charter. Failure to comply with the international communities and the UN's objectives is seen as a detriment to any democratic administration, who can be debated about and replaced in a democracy due to popular will. Therefore, democracies are more open to a compliant dialogue when such conflicts arise. The political composition of autocracy functions on unilateral decision-making without consideration for the rule of law. Therefore, to make a despot comply is difficult within the framework of international law. This is true in the Iraq and Kuwait conflict as well. The UN and the international community reacted swiftly and in compliance with the law, which was unprecedented. Nevertheless, they were unable to render fast remedies.

References

Britannica, T. Editors of Encyclopedia 'Persian Gulf War' *Encyclopedia Britannica,* (2021) <https://www.britannica.com/event/Persian-Gulf-War> accessed 1 March 2021

Burns H Weston, 'Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy' (1991) *The American Journal of International Law* 85, no. 3: 516-35. Accessed March 1, 2021. doi:10.2307/2203110.

Christopher Greenwood, 'New World Order or Old? The Invasion of Kuwait and the Rule of Law' (1992) The Modern Law Review , Vol. 55, No. 2: pp. 153-178

Maha Alkenaee, 'The Boundary Dispute Between Kuwait and Iraq: Has it Subsided?' (Master of Arts in International Law, Lebanese American University 2011

Agreed Minutes between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters. (Signed on 4 October 1963) UNTS 7063

Vienna Convention on the Law of Treaties art. 46, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.

F. Gregory Gause, ‘Iraq's Decisions to Go to War, 1980 and 1990’ (2002) *Middle East Journal* 56, no. 1: 47-70.

Kiren Aziz Chaudhry, ‘On the Way to Market: Economic Liberalization and Iraq's Invasion of Kuwait’ (1991) Middle East Report , No. 170, Power, Poverty and Petrodollars), pp. 14-23

W. Michael Reisman, ‘Article 2(4): The Use of Force in Contemporary International Law’ Proceedings of the Annual Meeting (American Society of International Law) , April 12-14, 1984, Vol. 78. pp. 74-87

Sharif Ghalib, ‘Iraq: Its Economy and External Debt’ (2003) The Journal of Energy and Development , Vol. 29, No. 1 (Autumn, 2003), pp. 17-24

Samuel K N Blay, ‘Territorial Integrity and Political Independence’ <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1116> accessed 26 February 2021

Iran, the UAE, and International Law: A Tumultuous Timeline

By Vanshika Tandon[5]*

Introduction

Peacefully resolving disputes over territory constitutes an important goal for the international community as issues of sovereignty continue to cause friction between states, and many of these conflicts remain unresolved (Huth, 1996). The legal associations among various city-states date back to treaties of commerce, diplomatic ties, and mechanisms of military deterrence. The relations that dwelled upon international regulations, created a highly developed system of laws concerning the integrity and sovereignty among countries. Treaties of commerce, coinage agreements, treaties enabling many different kinds of claims to be enforced in the courts, and a highly-developed system of diplomatic missions gave rise to a fairly effective organization of international relations (Amerasinghe, 2001). Owing to the establishment of political order around the globe and the growth of democratic ideals, the need for peaceful negotiations to end war and rivalry was felt. The international peace-keeping forces, however, remained centric to the notions of First World. Such nature of the international conventions and treaties have gathered much intellect attention which aims at examining the role of the International Court of Justice (ICJ) in the settlement of territorial disputes among the Islamic States which function on historical and Islamic core values of faith for the promulgation of justice.

Issues such as annexation and land disputes have daunted the Middle-East for decades owing to its geopolitical and strategic importance. While it cannot be denied that during the formation of the earlier Islamic states, there were some forms of divisions of territories, one of the chief

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principles of Islamic law is not to separate Islamic states from other states of international legal and political communities (Malekian, 2011). However, post imperialism and during the Cold War years, these States underwent drastic political upheavals which altered the demographic and social trends. The change in trend was signified by the increased economic importance of oil-rich regions. To date, many Islamic nations struggle for autonomous nationhood and aim at establishing harmonious relations with the neighbouring nations, thereby seeking freedom from repetitive political breakdowns and military control. One such prevalent trend is set by the territorial distress between United Arab Emirates (UAE) and Iran. The long-standing, yet low-intensity, the dispute between Iran and the United Arab Emirates over the ownership of the three islands predates the 1979 Islamic Revolution (Majidyar, 2018).

The article aims at analysing the contours of the territorial dispute which has led to meddling of the international forums but no substantive solutions have come about to unravel the ever evolving and persisting issues. International law puts into force a perspective which enables deeper analysis given the historical context of the Islamic States, along with their strategic significance. It is pertinent to mention that the Westernised perceptions of the East which in-builds a rather “exotic image” of these disputes remain intrinsic to the analysis from an international legal lens owing to the Eurocentric regulations.

Pontius Pilate Solution: an analysis of historical claims over the disputed islands

The historiography of the contentious invasion of the islands reveals series of nuanced versions of complex negotiations between the British, Ras Al Khaimah, Sharjah and Tehran over conflicting demands of control and sovereignty. The Abu Musa Island accounts for good percentage of oil reserves due to which the economies of UAE and Iran remain dependent upon the control of these islands. The location of islands in the Strait of Hormuz, the mouth of the Persian Gulf could allow a country to influence the Gulf's valuable shipping lane, or even to close off the Gulf all together (Mandala Projects , 1997). The strategic location of islands substantiates the existing interests of other nations in the region. The dispute essentially formulates the issue of ownership of these islands which indulges the scholarship pertaining to the period before British rule and when the British announced its departure.

The historical claims over the islands can be scrutinized through set of literature from Iranian standpoint and the Arabian claims over the islands. The scholars who support the Iranian claims

over the islands usually tend to associate the Persian empires with the political geography of Eastern Arabia in terms of political development in the entire region (Mojtahed-Zadeh, 2006). For instance, Guive Mirfendereski, a lawyer who supports Iran's claim to the islands, writes, "the political and commercial domination of Iran over the Persian Gulf in the Seleucial (312-150 BC), Parthian (238 BC-224 AD), and Sassanid (224-641 AD) period points to the conclusion that in pre-Islamic times the [Tunbs] and Abu Musa most likely [emphasis added] belonged to Iran" (Mirfenderski, 1996). On the other hand, the scholars who support the Arab claim reiterate their disagreement with the Persian claims and mandate the analysis of anthropological data which states that the Gulf became a purely "Arab lake" with the Islamic conquests in the seventh century AD (Roken, 2001). Further, even when the Caliphate declined, local powers such as that of Oman controlled the islands and exercised sovereignty. Both versions of the history possess contradictory claims but the prime issue rests in the absence of surviving evidence of the historical claims. The existence of mere assumptions by various historiographers does not substantially account for furtherance of claims in the eyes of law.

The references for the claims find its inception in the British documentations and the preservation of these evidences indicate the diplomatic interests of the British in the region. In 1968, the imperial British power announced withdrawal from the Gulf by the end of 1971which is remarked has the initiation of the dispute over the three-islands. It was observed by Richard Schofield that:

"At that time, Iran pressed claims for Bahrain based on its majority population of Shia Muslims along with the presence of ethnic Iranians. However, the people of Bahrain voted for independence, achieving it on August 15, 1971. In the case of Bahrain, Iran argued a recurrent theme in territorial matters – that other countries had conspired against Iran. According to this argument, Mohammed Reza Shah wanted Abu Musa and the Tunbs as a political consideration after losing Bahrain." (Schofield, 2002)

Kourosh Ahmadi through his book titled *Islands and International Politics in the Persian Gulf* describes how for 170 years Britain eroded Iranian influence in the Gulf, both directly by asserting colonial rule over Iranian islands and port districts, and also through claiming Iranian islands for their protégés on the Arab littoral (Ahmadi, 2008). Given the pretext of Britain's withdrawal, the islands constituted as mere pawn in the loathing conflict which had eroded the relations between the nationalists and radicals of Arab against monarchical rein of Iran, and decades later the animosity turned conservative-moderate Arab against the Islamic Iran.

However, the failure to resolve the sovereignty issue in 1971 set the stage for the dispute that exploded when Tehran asserted its control over the island in 1992 (Mobley, 2003).

While the issue remained ancillary to the British, it became pertinent to settle the dispute over the islands before the official departure owing to the increasingly inflexible nature of Sharjah and issuing of public threat to seize the islands, which further inculcated the need to tie loose ends, keeping in perspective the future of Bahrain, Qatar and Trucial States (Parsons, 1991). The British pondered upon Pontius Pilate solution which called for joint civil administration over the island by the two regional powers. Series of complex negotiations, resulted in signing of Memorandum between Tehran and Sharjah which had become part of United Arab Emirates (UAE). The memorandum rendered division of Abu Musa into two-portions and joint administration of the island by UAE and Iran. The MoU allowed Sharjah to establish a police station in the southern zone, while Iran was allowed to place military troops within the northern zone thereby agreeing to provide island's security.

The Annexation and Occupation of the Islands

The departure of the British was followed by Iranian occupation of Tunb Islands and partial control of Abu Musa. In-order to examine the claims over the Islands, it becomes pertinent to distinguish between conquest and occupation. Under International Law the former practice of conquest is considered to be inadequate for providing legitimate control of the territory. According to the 1907 Hague Regulation, occupation, occurs when a conqueror's forces actually take administrative control of conquered territory and the conquering state's control only extends to the actually occupied territories of the defeated opposing state (International Committee of the Red Cross, 2009). The distinction between conquest and occupation is relevant in the context of Persia's initial official claims to the Tunbs and Abu Musa in the latter part of the nineteenth century (Al-Mazrouei, 2015). While it is true that the Persians conquered the Lingeh in 1887, they failed to occupy the disputed islands, which remained under the administrative control of the Al-Qawasim rulers of Ras Al-Khaimah and Sharjah (Al-Mazrouei, 2015). Thus, it was noted that Iranian occupation of the islands regarded disgraceful.

It is interesting to note that America and British never supported UAE's claim over the island when Iran remained strategic partner to both the countries and was subsequently perceived as the country which would replace Britain for security purposes. Various scholarships examined that ever since 1971 the Arab League supported UAE's claim while Britain believed that the

Islands were rightfully the territory of Iran. According to Anthony H. Cordesman, an expert on the Middle East who has worked at the US State Department, US Department of Energy, and the NATO International Staff:

Britain, which saw the Shah as the principal future source of stability in the Gulf, was not prepared to make an issue of the matter and an arrangement with Iran that would allow it to occupy the islands immediately after the British departure. The evidence is uncertain, but the presence of a British carrier in the immediate area during Iranian occupation, and a number of British actions, indicated British complicity in the Shah's invasion (Cordesman, 1984).

The contention with the super power did not arise at the time of occupation but only during the Iranian Revolution which was followed by bombing of the US embassies in Tehran. The government policies of the Islamic Republic of Iran remained adamant about the islands' ownership which fuelled the rivalry but this time even against Britain and America. The timeline that followed from the revolution encompassed Iraqi invasion of Iran in the year 1980 which threatened oil shipping in the Strait of Hormuz as Iran fired missiles at Iraqi and Kuwaiti ships from Abu Musa island (BBC News, 2005). In 1981 Gulf Corporation Council (GCC) was established which supported Iraqi forces owing to the agenda regarding liberation of the islands. By 1982, the Iraqi forces were anticipated to lose the war, hence the nations of GCC who grew sceptical of Iranian retaliation made gestures to pacify the impact. For instance, the Saudi fear of Iranian retaliation against the GCC states' oil installations, because of Iraqi bombardments of its oil installations, led them to export refined petrochemical products to Iran to make up for the shortage (Zabih, 1976).

The events of 1992 signify the complete Iranian control of Abu Musa by directly alluding the MoU and annexing the portion which was previously under the control of Sharjah. According to Ayman Alouri and Brian O'Connell Iran prevented UAE citizens and residents from entering the island without obtaining an Iranian visa and even refused to provide urgent medical assistance or water to a large number of passengers including citizens and Arab teachers with their families (O'Connell, 2002). In September, the bilateral talks took place in Abu Dhabi between Iran and UAE but the talks broke down without any conclusive solution. The following December, the GCC supported a strategy of submitting the three islands dispute to the International Court of Justice (ICJ) if direct bilateral talks between the UAE and Iran could not be restarted, and demanded that Iran ends its occupation of the Tunbs (Al-Mazrouei, 2015). These events were followed by UAE's submission of the issue before the ICJ which were in-

turn supported by Arab League and several European nations such as Britain that had made no initial steps to estop the annexation. In 1995, the bilateral talks were held yet again in Doha but the uncompromising nature of Iran rendered the negotiations failed (European Union, 2004).

In present times, polarization of sectarian tensions in the Middle East which defines the realpolitik strategy and business strategy for states in the region has significantly influenced the island dispute. The phrase "sectarian tensions" refer to the politically and discursively framed rivalry between Sunni and Shiite Muslims. The politicization of sect, spearheaded by the Islamic states and Iran after the 1979 revolution, have mutated the salience of sect from a largely private spiritual matter into a political vehicle to realize state interests (Zahawi, 2016). Demographically, Iranian population constitutes for 90% Shia Muslim while UAE population largely comprises of 85% Sunni Muslim. This division may be regarded as a reason for failed international negotiations, owing to the regional policy establishment of the two regions.

According to European Council on Foreign affairs, two rivalry blocs can be identified in the Middle Eastern region based on the demographic distinction. Subsequently, it was reported that Iran appears to have intensified efforts to support its proxies in the region, fuelling sectarian tension and undermining the integrity of the nation state (Al-Ketbi, 2019). Above all, UAE is one of the founding members of the GCC, which seek to establish an "agenda of regional moderation" targeting two perceived threats: the Muslim Brotherhood and Iran. Thus, one of the major reasons behind failed international negotiations appears to be the outmost ignorance of need for cultural cooperation which the international law does not entail. The next section thrives to analyse the existing notions of international law through which the dispute may be resolved but over-all the absence of cultural-cooperation renders the mode of resolution meaningless or at times as coerced.

Setting a Peremptory Norm: *Jus cogens*

International law is very clear: annexation and territorial conquest are forbidden by the Charter of the United Nations," said Michael Lynk, the UN Special Rapporteur... "The Security Council, beginning with Resolution 242 in November 1967, has expressly affirmed the inadmissibility of the acquisition of territory by war or force on eight occasions, most recently in 2016." (United Nations Human Rights High Commission , 2019).

Legal jurists such as John Austin and other legal positivists claim that law, is an emanation of the command of a 'political superior' on a 'political inferior' or subordinate (Sucharitkul,

2010). Failure by the political inferior to obey his superior's command would result in a sanction being meted out to the inferior (Elliot, 1918). The command theory as developed by Austin essentialises the existence of element of "command" or "sanction" but the fact that there exists no central authority in the strict sense does not mean international law has no authority (Zongwe, 2019). The international law for instance, engages the functioning of UN Charter which allows the Security Council to authorize the use of force by states individually and/or collectively which even incorporates the power to establish peacekeeping missions in various countries (Zongwe, 2019).

The nation-states ascertain their support and will to bind by the prevailing international law by becoming signatory to the respective convection, but the scope and binding nature of the international law is not limited to this extent. The international law must comply with '*Jus Cognes*' which are fundamental rules of customary international law to which all states become bound (Vienna Convention of the Law of Treaties , 1969). It has been emphasised that a norm of general international law was not enough for the identification of jus cogens and that, in addition, there had to be acceptance and recognition (Tladi, 2018). To this relevance, nation-states over the decades have come realise the importance of sovereignty and the need to maintain strategic relations with other countries. Thus, with respect to annexation of occupied territories, the customary international law mandates absolute prohibition, resultant to which, all countries are bound to respect the sovereignty of each other.

In 2008, UAE celebrated completion of 37th Independence Day and yet again invited Iranian representative to resolve the Island dispute through ICJ referral owing to the failed bilateral negotiation and Iranian stance. Iran repeatedly notifies its tough stance and infers that with due support of GCC and Arab League, UAE's claims become persuasive even if the claims are false. It is to be inferred that despite the fact that Iran committed heinous act of annexation, the ideological and historical claims seem to be blurred in the light of the lobbied interests of UAE. The occupation of the Tunb Islands was in direct contravention with the principle of *Jus Cognes* but the alternative of resorting to ICJ does not seem viable at the option of Iran to gather impartial judgement because the claim that Iran's occupation of the islands occurred as a result of "an unwritten understanding" is not persuasive in a legal sense (Sumner, 2004).

Flip Side of the Same Coin: examination of evidences presented by Iran and UAE

Before dwelling into the scope of International Law, it is relevant to scrutinize the claims made by Iranian representatives over the Islands as against the claims made by Arab nations. The legal arguments from both ends indicate the crucial role played by Britain. The representatives of Iran and the scholars who support the Iranian claim over the Islands argue through the lens of law of prescription. The argument goes that by the virtue of immemorial prescription Iran should be declared as the rightful owner. The prescription is based on the principle that if any-one uninterruptedly possessed a thing or right beyond the memory of man, he should be regarded as its lawful owner or holder (Sherman, 1911). The Iranian leadership has repeatedly claimed that centuries prior to British established imperialism in the Gulf, the Islands were under Persian control and the ownership should not be hindered owing to the absence or lack of written documentation. While Iranian scholars sometimes present documentation that refers to taxes collected by the Lingeh island (on the northern coast of the Gulf) authorities on behalf of Persia at Sirri Island from 1877 until 1887 but the evidences does not substantiate for a solid legal claim in terms of Abu Musa Island and mere Tunb Islands (Al-Mazrouei, 2015).

The ICJ in 2011 while according the sovereignty rights to Bahrain in Maritime and Territorial dispute of Hawar islands observed that "geographical contiguity" does not constitute for sufficient basis to claim sovereignty. UAE as of today enjoys the support of British and historical data complied to supplant the MoU previously signed between the two countries. The legal argument from UAE thereby follows that historical map and documents pertaining to taxes embody UAE as the rightful owner. As it will be discussed in the next section, interpretation of treaties by the ICJ enables the judgement to be perceived as sound and reasonable. To this extent, Iran claims, the MoU must be regarded as a document which should not be intervened by any third-party by its virtue along with the principle laid in law of prescription, Islands should belong to Iran. UAE as a counter response recapped that Sharjah was in-turned coerced into signing the MoU and Iranian claim over Abu Musa remains invalid by the virtue of Article 52 of Vienna Convention which states that: *"A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."* Maintenance of the claim of duress was accounted by the scholar Al-Moalla who argued that in the colonial period, the

ruler of Sharjah was forced to give up his territories, so, Iran could not claim its sovereignty over Abu Musa based on the MoU (Al-Moalla). Thus, even the treaty remains contentious.

International Law and Territorial Integrity of the Islands

The international law pertaining to the issue of annexation can be inferred from the Article 2, paragraph 4 of the UN Charter:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations (UN Charter).

The UN Charter by the virtue of Article 2(4) prohibits unilateral use of force but the prohibition is read in context with Article 51, which recognizes "the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations" (Franck, 2001). The drafters were keen on including the "inherent right of self-defence" to enable the implication of stand-by forces of the countries. However, this suggests that in response to an armed attack, the action by the victim state should be "immediate" and not planned. The charter recognises the rational approach to war scenes and does not provide scope for armed attack to in-turn become a response or revenge tactic.

Owing to the context of Article 2(4) it is to be inferred that the rivalry between Iran and UAE cannot pave way for wars as a retaliation strategy to forced occupation. As significant as the historical claims may account for in the given situation, the claims can never be used as an excuse to "self-defence" by either of the nations to announce war. To this extent, the policies of each regional power were designated to sought concrete objectives in terms of international relations. For instance, with regard to territorial disputes whose resolution leadership of Iran considered essential before the transfer of former colonial authorities to the local sheikhdoms, the Bahrain issue was the first to be resolved in a statesmanlike manner (Zabih, 1976). Iran has frequently cited this resolution as indicative of her peaceful and non-belligerent attitude toward territorial disputes (Zabih, 1976). However, the withdrawal of British created power vacuum which resulted in scepticism pertaining to the territorial claims over economically strategic islands of Abu Musa and Tunb Islands. For strategic as well as historical and prestige reasons, Iran felt that the British colonial decision in assigning these islands to two of the sheikhdoms should not survive the British departure east of Suez (Zabih, 1976).

By letter dated 3 December 1971 addressed to the President of the Security Council, the representatives of Algeria, Iraq, the Libyan Arab Republic and the People's Democratic Republic of Yemen requested an urgent meeting of the Security Council to consider "the dangerous situation in the Arabian Gulf area arising from the occupation by the armed forces of Iran of the islands of Abu Musa, the Greater Tunb and the Lesser Tunb, on 30 November 1971" (UN.org, 2014). While the representative of Iraq subsequently maintained that "Greater and Lesser Tunb which were an integral part of Ras Al-Khaime, and by partial occupation of the adjacent island of Abu Musa under the pretext of an alleged agreement with the Shah of Al-Sharjah of whose territory that island was a part, Iran had violated its international obligations under the Charter, in particular Article 2, paragraph 4, which recognized the inadmissibility of the acquisition of territory by the use of force, the representative of Somalia observed that the parties should settle their dispute amicably so that the region might be assured of peace, security and stability (UN.org, 2014). The two-countries reached consensus on the issue of Abu Musa initially but failed negotiations over the Tunb Islands mandated international intervention which essentialises the peaceful presence of each country. The negotiations cannot however proceed on the basis of mere historical claims but the persisting economic and commercial claims must also be rendered important.

Another significant aspect which is worth scrutinizing is the role played by the International Court of Justice (ICJ), an independent structure of the United Nations. This Court which is entrusted with the great task of effecting binding settlements in disputes between States on the basis of international law, consists of fifteen independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to high judicial office, or who are jurisconsults of recognized competence in international law (Hambro, 1954). Cases may come before the ICJ, by referral through a compromise (special agreement) between two or more states, by a treaty provision committing disputes arising under the treaty to the court, or by the parties' statements of compulsory jurisdiction (International Court of Justice , 1945). Article 36 of the Statue encompasses the jurisdiction of the Court in the following cases:

a) the interpretation of a treaty;

b) any question of international law;

c) the existence of any fact which, if established, would constitute a breach of an international obligation;

d) the nature or extent of the reparation to be made for the breach of an international obligation (Article 36(2), ICJ Statue).

Moreover, Article 38 of the Statute of ICJ encompasses the scope of the Court to decide cases through various sources of law such as:

a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b) International custom, as evidence of a general practice accepted as law;

c) The general principles of law recognized by civilized nations;

d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law (Article 38, ICJ Statute).

For the purposes of issue pertaining to annexation and sovereignty, the above-mentioned articles provide the context to the international lens. The issue concerning the Island dispute can be resolved through binding implication of the Statue of ICJ. Brian Tylor Summer through his note titled "Territorial Disputes at the International Court of Justice" argued that nine categories may be considered for justifying territorial claims: treaties, geography, economy, culture, effective control, history, *uti possidetis*, *elitism*, and ideology (Sumner, 2004).

By the virtue of ratifying treaties, the parties aim at relinquishing historical claims over the property in question and pave way for consolidated control over the region. Likewise, the MoU signed between Sharjah and Tehran intended to formulate joint-civil administration which sustains support as an evidence before the ICJ but the matter cannot be resolved only on the basis of the treaty because there exists a cultural repulsion to international mediation in Iran. For instance, according to the Iranian scholarship, the Islamic regime in Iran is inherently opposed to any third-party role in the islands dispute because of its revolutionary commitment to Iranian autonomy in the context of foreign policy issues (Al-Mazrouei, 2015). It is however an irrefutable fact that UAE enjoys support from Western nations and that the claims made by the country remain more persuasive because throughout the colonial period the Shah worked to accumulate historical evidences. On the other hand, Iran claimed that Sharjah had violated the MoU by constructing new buildings without permission from Iran as well as importing third-party nationals (Al-Mazrouei, 2015). The legal approach in this aspect fails because Iran

remains sceptical of the support UAE managed to rally from the Arab League, the GCC, Western nations, the UN and the European Union.

Is Iran Under an Obligation to Negotiate?

The process of negotiation is a formal tactic used by the countries to reach consensus over an issue. It is defined as a process in which explicit proposals are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realization of a common interest where conflicting interests are present (Ikle, 1964). Although an obligation to negotiate may be highly desirable, it appears that at present there is no general obligation imposed on states, applicable in all situations of dispute or disagreement, to enter into negotiations as a matter of customary or conventional international law (Rogoff, 1994). The ICJ however has previously ruled that under certain circumstances, the countries become obligatory to negotiate with one another. In addition, once it is determined that an obligation to negotiate exists as a matter of customary or conventional international law, the content of that obligation may be determined by closely scrutinizing the nature of the substantive rights of the states involved (Rogoff, 1994).

Article 33 of the UN Charter states that*: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security… shall their own choice."* The use of "any dispute" resonates to the fact that the dispute shouldn't necessarily be international in nature and to this extent the ICJ had held that the scope of Article 33 is broader than perceived by mere reading of the Article. For instance, in North Sea Continental Shelf Cases, the ICJ held that the states involved in the continental shelf boundary disputes were obligated under customary international law to delimit the disputed areas by negotiation and eventual agreement (North Sea Continental Shelf Cases, 1969 I.C.J). It is a recognised fact that states are under an obligation to negotiate, at least in those situations where the extent of their rights can only be defined by reference to the rights of other states (Rogoff, 1994). Thus, in the given the case, various international law principles may be applied to conclude that Iran holds a general obligation towards negotiations but by the virtue of Article 33 and ICJ precedents, it becomes evident that if security concerns solidify, the negotiations will become pertinent and essential to reach a solution that best fits the interests of both the parties. Moreover, it is observed that "nations' sovereignty" must be maintained and its independence from any political factor is important. Hence, Iran must become obligatory to negotiate in this context to prevent exploitation and violation of UAE's sovereignty if it holds any.

Conclusion

In the light of foregoing facts and analysis it can be concluded that the dispute between UAE and Iran over the occupation of Abu Musa and Tunb Islands is complex in historical and ideological aspect. Through historical analysis it was concluded that both Iran and UAE present contradictory stories in the pretext of British imperialism. While the scholars heavily criticise, the role played by British empire and their inadequacy in reaching a solution, it must be kept in mind that present legal dimensions convey nuanced arrangements of negotiations which goes against the cultural roots of Islamic States. Iran rightly accuses the international forum of being a centre of western manifestations and UAE of its claims gaining momentum at the outset of persuasive value of western nations. The tough stance of Iran imposes the discrediting nature of the UN negotiations and ever-persisting nature of the dispute. It can be also concluded that Iran remains under an obligation to settle the negotiations with UAE owing to the claims regarding sovereignty, security concerns of the nations and probable situation of war.

References

Ahmadi, K. (2008). *Islands and International Politics in the Persian Gulf: The Abu Musa and Tunbs in Strategic Context.* Routledge.

Al-Ketbi, E. (2019). *THE MIDDLE EAST'S New Battle Lines* . European Council of International Affairs .

Al-Mazrouei, N. S. (2015). *Disputed Islands between UAE and Iran:Abu Musa, Greater Tunb, and Lesser Tunb in the Strait of Hormuz.* Gulf Research Centre Cambridge .

Al-Moalla. (n.d.). "Is the Policy Adopted by Iran towards the United Arab Emirates Regarding the Three Islands (Greater Tunb, Lesser Tunb and Abu Musa) since 1971 a Policy Based on Imperialism? *Gulf Research Centre Cambridge*.

Amerasinghe, C. F. (2001). The Historical Development of International Law - Universal Aspects. *Archiv des Völkerrechts , Dezember 2001, 39. Bd., No. 4*, pp. 367-393.

BBC News. (2005). *Iranian Sensitivities over Disputed Island.* , http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/4427778.stm.

Cordesman, A. (1984). *The Gulf and the Search for Strategic Stability.* Boulder: Westview Press.

Elliot, E. (1918). Future of International Law. *California Law Review*, 268-89.

European Union. (2004). “14th EU-GCC Joint Council and Ministerial Meeting. *ec.europa.eu/external_relations/gulf_cooperation/docs/14jcf.pdf* .

Franck, T. M. (2001). Terrorism and the Right of Self-Defense. *The American Journal of International Law*, 839-843.

Hambro, E. (1954). The International Court of Justice. *Royal Institute of International Affairs*, 31-39.

Huth, P. (1996). *Standing Your Ground: Territorial Disputes and International Conflict.* University of Michigan Press.

Ikle, F. C. (1964). *How NATIONS NEGOTIATE.*

International Committee of the Red Cross. (2009). *Occupation and International Humanitarian law*. Retrieved from www.icrc.org/eng/resources/documents/misc/634kfc.html

International Court of Justice . (1945). *Statute of the International Court of Justice* . International Court of Justice .

Majidyar, A. (2018). *UAE official calls for international action to end “Iranian occupation” of disputed islands.* Middle East Instittute.

Malekian, F. (2011). THE NATURE OF ISLAMIC INTERNATIONAL LAW. In *Principles of Islamic International Criminal Law: A Comparative Search* (pp. 3-26). Brill.

Mirfenderski, G. (1996). The Ownership of the Tunb Islands: A Legal Analysis. In H. Amirahmadi, *Small Islands, Big Politics* (pp. 120-121). New York: St. Martins Press.

Mobley, R. A. (2003). The Tunbs and Abu Musa Islands: Britain's Perspective. *Middle East Journal , Autumn, 2003, Vol. 57, No. 4* , 627-645.

Mojtahed-Zadeh, P. (2006). *A Look at Some of the More Recently Propagated UAE Arguments.* Geostrategics.

O’Connell, A. A. (2002). *Iranian Occupation of the Three UAE Islands: Toward a Peaceful Resolution and Regional Stability* . Washington D.C.: Washington Center for International Studies & Government of Ras-Al-Khaimah.

Parsons, A. (1991). The Gulf Episode. In G. Balton-Paul, *End of Empire in the Middle East: Britain 's Relinquishment of Power in Her Last Three Arab Dependencies* . New York: Cambridge University Press .

Rogoff, M. A. (1994). The Obligation to Negotiate in International Law: Rules and Realities. *Michigan Journal of International Law, 16*(1), 141-189.

Roken, M. A. (2001). Dimensions of the UAE-Iran Dispute Over Three Islands. In *n United Arab Emirates: A New Perspective* (p. 179). London : Trident Press.

Schofield, R. N. (2002). Anything but Black and White. In L. G. Sick (Ed.), *Security in the Persian Gulf: Origins, Obstacles, and the Search for Consensus* (p. 184). New York: Palgrave.

Sherman, C. P. (1911). Acquisitive Prescription. Its Existing World-Wide Uniformity. *The Yale Law Journal*, 147-156.

Sucharitkul, S. (2010). International Law as Law. *Annual Survey of International and Comparitive Law*, 2-15.

Sumner, B. T. (2004). Territorial Disputes at the International Court of Justice. *Duke Law Journal, 53*(6), 1779-1812.

Tladi, D. (2018). *Third report on peremptory norms of general international law (jus cogens).* United Nations General Assembly, International Law Commission .

UN Charter . (n.d.). *Artile 2(4).*

UN.org. (2014). *QUESTION CONCERNING THE ISLANDS OF ABU MUSA, THE GREATER TUNB AND THE LESSER TUNB* . The Security Council 1610th meeting.

United Nations Human Rights High Commission . (2019). *Annexation is a flagrant violation of international law, says UN human rights expert.* Geneva: Special Rapporteurs .

Vienna Convention of the Law of Treaties . (1969). Article 53.

Zabih, S. (1976). Iran's Policy toward the Persian Gulf. *International Journal of Middle East Studies, 7*(3), 345-358.

Zahawi, K. A. (2016). DIVESTING FROM SECTARIANISM: REIMAGINING RELATIONS BETWEEN IRAN AND THE ARAB GULF STATES. *Journal of International Affairs , Vol. 69, No. 2, Shifting Sands: The Middle Eastin the 21st Century* , 47-64.

Zongwe, D. P. (2019). What international law is. In *International Law in Namibia* (pp. 15-33). Langaa RPCIG.

Politics of Occupation and Normalization: The Case of Golan Heights

By Sumit Tripathi[6]*

Introduction

Above the Sea of Galilee lies a long cliff with a height ranging from 800 to 1000 metres popularly known as the Golan Heights. Its highest point known as Mount Hermon rises to 2814 metres at its peak, which acts as a strategic point to get a view right up to Syria's capital Damascus- a considerable asset from the military's perspective. It is located in the southwest of Syria and northeast of Israel in the Middle East (ESHEL, 2007). The Golan Heights has a total landmass of 1,860 square kilometres & it represents one percent of Syria's landmass. After the 1967 Arab-Israeli conflict, Israel occupied approximately 1000 square kms of land & has been under its control since then.

In 1981, Israel annexed the Golan Heights & implemented Israel's domestic law in the region. This action by Israel received widespread condemnation by the international community & from the perspective of 'Law of Occupation', Golan Heights was still an occupied territory & the occupant does not have any discretionary power to violate Syria's territorial sovereignty. The annexation was recognized by the US to approve of Israel's sovereignty over the occupied Golan Heights. The Israeli occupation has conducted human rights violations in many forms since its control over Golan Heights. Its actions have forced deportation & evacuation of Syrian citizens from the Golan Heights, destruction of private property & establishment of Israeli settlements violating all forms of regulations & conventions under the International Law.

Golan Heights is significant for Israel because of its geo-strategic location & its access to rich water resources. Golan Heights and the Jordan River provide up to 50% of Israel's

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freshwater. Because of its height, it acts as a vantage point to monitor the movements of Syrian Army. Since time immemorial, Golan has been involved in various military conflicts.

This paper first gives a background that led to the occupation of Golan Heights. This is followed by the reasons for its annexation & US recognition of Israeli sovereignty over Golan Heights. It talks about the destruction caused to the human population & natural resources mainly caused due to Israel's presence over the heights. It then examines the legality or illegality based on International Law based on Israel's occupation & annexation along with recognition by the US. And finally, it examines the violations of International Law on Israel's actions over the Syrian population.

Background

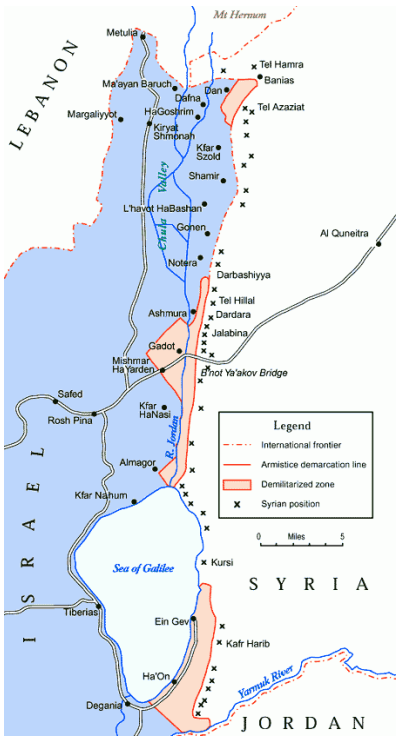
In the early 20th century, Jews across the world under the Zionist movement started migrating & settling in Palestine. Under the British mandate of Palestine after World War 1, Britain pledged to build a Jewish national home in the country as per the Balfour declaration. The Jews started creating vehicles for agrarian settlements, & a viable socialist economy with national health systems, universities, reforestation & infrastructure in Palestine. This was resented by the Arabs as they regarded Yishuv as a form of western imperialism, a culture alien to their traditional way of life. The continuous waves of immigration of the Jews to the land of Palestine ignited more violent Arab reactions resulting in the revolt of 1936 against the Jews. Seeing a backlash, the British issued a white paper nullifying the Balfour declaration. The revolt that lasted for three years till 1939, aroused a nationalistic spirit of Pan-Arabism against the Zionist movement. The people of the Arab world called for erasing the borders of Syria, Lebanon, Transjordan, Palestine, and Iraq & asked for an independent Arab state. On November 30, 1947, United Nations proposed the partition of Palestine between Jewish & Arab people. This led to severe civilian protests across the Arab world. Civil strife broke out between the Palestinians & the Jews. Once the state of Israel got created in 1948, the civil strife burning since November exploded into a regional war between Israel & the five nearest Arab countries. The invasion was led by Syria & Iraq followed by Lebanon, Transjordan & Egypt. The Arab armies penetrated through Negev & Galilee bringing Tel Aviv, Israel's largest city under siege. By the fall of 1948, Israel's Defence forces (IDF) broke through the Arab blockade & fought the Arab armies for a stalemate. It ended up occupying Umm al-Rashrash on the Red Sea which acted as Israel's lifeline through the Gulf of Aqaba and the Straits of Tiran, to the markets of

Africa and Asia, & captured another 30 percent Palestinian territory than UN had allotted it as per the partition plan (OREN, 2002).

The war ended in 1949 with the signature of an Armistice agreement between Israel & Arab forces under the leadership of the UN to establish peace in Palestine. The terms of the agreement were pretty ambiguous because the Arab side claimed their rights to renew hostilities at will & deny Israel any form of legitimacy or recognition. UN official Ralph Bunche who acted as a mediator stated that the agreement will sustain the conflict & prepare the ground for war (OREN, 2002).

Syria Israeli Armistice July 20, 1949

The agreement stipulated that an Armistice Demarcation Line shall follow a line midway between the truce lines and where the truce lines run along the international boundary between Syria and Palestine. A demilitarized zone was also established between the demarcated line & boundary because of a pending final territorial settlement between both the parties (Syrian-Israeli Armistice- July 20, 1949, 2002).



Source- Mideast Web

The peace after armistice agreements didn't last long. By 1953, Egypt began sponsoring groups to carry out guerrilla raids into Israel & renewed propaganda calls for the second round. Israel

viewed these calls as a threat to their existence & an attempt to anesthetize Israel before slaughtering it (OREN, 2002).

In response to the Guerrilla attacks, IDF units launched raids across the border blowing up dozens of houses & killing civilians. On the Syrian side, Israelis drained the Hula swamp in northern Galilee. Egypt captured one of Israel's ships in the Suez Canal & rejected Operation Alpha (Peace initiative between Israel & Arab neighbours). Israeli responded with Gaza Raids in 1955 claiming 51 Egyptian soldiers & 8 Israeli soldiers inaugurating the countdown to war. Egypt in response nationalized the Suez Canal which led to the second Arab- Israeli war. Israel with the help of British & French forces shattered the Egyptian Army & occupied three-quarters of the canal. By this time, the Israelis were controlling all of Sinai, Gaza, and the Straits of Tiran. Both parties Egypt & Israel signed an agreement under the leadership of UNSC. Israel was given the right to respond in self-defence under Article 51 of the UN charter if Egypt attempts to revive the Tiran blockade of Israeli ships. Throughout 1955 & 1956, Israel & the neighbourhood witnessed large-scale border fighting, retaliations, and guerrilla attacks that took the lives of hundreds of people (OREN, 2002).

In 1958, Egypt registered an achievement by unifying Egypt with Syria also called the United Arab Republic. With this rose the expectation of people to liberate Palestine. It started with an Israeli attempt to cultivate the DZ's along the northern border. Syrian troops use to fire on the tractors working at DZ and IDF guns blasted at Syrian positions on the overlooking Golan Heights. As things heated up, the Soviets stepped in and informed Egypt that Israel was planning to invade Syria. Egypt forces entering Sinai caught the Israeli forces completely caught off-guard. The Israeli army was mobilized for retaliation. Both sides flexed their muscles but with minimal damages. In totality, the period between 1956-1966 saw several serious military confrontations including artillery, fighter planes & patrol boats clash between both parties at the borders leading to 189 civilian deaths. These factors were enough for the Israeli state to be prepared for any threats emanating from its neighbours (OREN, 2002).

In 1964, Israel was planning to channel the water at Galilee to the Negev desert. This invoked fear in Arabs because that desert could support additional 3 Mn Jewish immigrants & strengthen their grip on Palestine. This called for people's war to destroy the Zionist plot. This led to the creation of the United Arab Command (UAC) with a ten-year budget of $345 Mn to prepare for an offensive campaign for liberating Palestine. Expecting an all-Arab assault, Israel came up with a comprehensive defense plan designed to rebuff attacks on all fronts and then

enable the army to take the offensive. The continued events of provocation & retaliation finally led to the Six-Day Arab-Israeli war. It ended in a decisive victory for Israel by bringing under control territory four times the size of existing Israel. This includes the capture of Golan Heights from Syria. The heights were brought under the Israeli military administration & were integrated into Israel's financial & communication network. The war ended with a UNSC resolution calling for the withdrawal of the Israeli armed forces from territories occupied in the conflict (OREN, 2002).

Both Egypt & Syria wanted to reoccupy Sinai & Golan Heights respectively from Israel's occupation. Therefore, they build an alliance & launched the Yom-Kippur war against Israel. It ended up submitting more land of Golan Heights to Israel. The war ended with negotiations from both sides. A disengagement agreement was signed & both sides agreed to establish a demilitarized zone, disengage forces & release the POWs under the supervision of UNDOF. At the same time, UN maintained that Golan Heights is an occupied territory & Israel has to vacate its presence from the occupied Golan Heights as per UNSC's resolution 242.

Occupation of Golan Heights in 1973 (Blanchard, n.d.)

Source- EveryCRSReport.Com

In 1981, Israel went for its annexation by adopting the Golan Heights Law under which jurisdiction and administration of the State of Israel shall apply to the area of the Golan Heights. The move was justified by arguing that the application of Israeli law on Golan Heights is not annexation because it fills a vacuum caused by the absence of Syrian institutions such as the judiciary. The vacuum was caused because of people running away from the area after Israel occupied the territories post the 1967 war. In the absence of Israeli or Syrian law, day-to-day

disputes & legal questions were solved based on the customs of the indigenous communities. It further added that the Israeli legal and administrative system does not relate to the Golan as a part of Israel, and when it does relate to the Golan Heights as a part of Israel, it will be exceeding its authority (Sheleff, 1994).

The United States under Donald Trump in 2019 recognized the sovereignty of Israel over Golan Heights. The majority of world leaders including the United Nations condemned the decision arguing that Article 51 under the UN charter confirms Israel's annexation of Golan Heights to be in grave violation of International Law which implies that US recognition of Israel's sovereignty is an illegal move. On the contrary, United States argued that International Law backs the US decision to recognize Israel's sovereignty citing 1967 UNSC resolution 242. They blame Syria for being bad, breaking the rules & claim Syria rejecting the negotiating framework of Resolution 242. Besides, Syria has been at war with Israel since 1948, it's an ally of a very brutal Iranian regime & therefore, by giving Golan Heights back to Israel, the US has afforded the only secure & recognized boundary that can exist under the circumstances- the objective of Resolution 242 (Mulian, 2020).

Since Israel's occupation at the Golan Heights in 1967, it has undertaken several measures & actions that have negatively impacted the Syrian population. Their actions forced more than 130,000 Syrian citizens to evacuate the area & were forbidden from returning. The authorities consciously de-populated the region to build their settlements. They also destroyed numerous villages & farms to force the evacuation of citizens. These actions have severely violated the Hague Resolutions & the Fourth Geneva Conventions under International Law (Murphy & Gannon, Changing the Landscape: Israel's gross violation of International Law in the occupied Syrian Golan, 2008).

Impact of International Law on Occupation, Annexation of Golan Heights & Israel's sovereignty over occupied territory.

Occupation under customary international law is defined as the control of territory by a foreign power. If we look at Article 42 of the 1907 Hague Regulations it states that "territory is considered occupied when it is placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." The term "hostile army" has been used consciously to give it a military character & emphasize the temporary character of the situation. The 1907 Hague regulations made a law for the occupant power to establish its administration based not on the legal right to govern but as per

Article 43 “the authority of the legitimate power having passed into the hands of the occupant”. It emphasizes that the authority belongs to the “occupant” as opposed to the “occupying State.” The insistence on the occupant was required to distinguish between the authority of the occupant in running an administration & its sovereign to avoid future actions & claims with regards to the status of a territory. The failure of this would lead to establishing surrogate institutions, annexation, or puppet states/government by the occupying state (Benvenisti, The International Law of Occupation, 2012).

To determine if a territory is occupied, an assessment based on facts called the “effective control” test is undertaken. Its guiding elements are:

- One State’s armed forces are physically present in the territory of another State, without the consent of the local government in place at the time of the invasion.
- The local government is incapable of exerting its authority by virtue of the foreign forces’ presence.
- The foreign forces are able to exercise authority over the territory concerned (or parts thereof) in lieu of the local government.

Israel acquired its occupation over Golan Heights in 1967 post the Arab- Israeli war. The authorities of the Syrian government were replaced with the legislative authorities of Israel managed by its military commanders to administer the occupied territory. The assessment clearly holds ground for Israel as an occupant of Golan Heights (Jurist, 2019). The ICRC commentary to the Fourth Geneva Convention also confirms the line of reasoning & states that “the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its powers to exercise its rights” (Murphy & Gannon, Changing the Landscape: Israel's gross violations on International law, 2008). Occupation of territory through military means is always temporary in nature. It comes to an end only when the occupant signs a peace agreement with the sovereign authority for the return of the occupied territory or by transferring authority to an indigenous government supported by its population through an act of referendum (Benvenisti, The International Law of Occupation, 2012). One of the instances is the transfer of occupied Sinai Land from Israel back to Egypt through peace negotiations. In 1979, Egypt & Israel concluded a peace treaty in which Israel agreed to withdraw from Sinai in three years. On the contrary, Israel & Syria entered into multiple peace negotiations since the 1990s but it

always came to a dead end because of Israel's annexation of Golan Heights & its refusal to withdraw from the territory in response to Syria's consistent threat to the destruction of the Jewish state.

In 1981, Israel extended its domestic laws over the occupied territory calling for its annexation by passing the Golan Heights Law. The law granted people residing in Golan Heights as residents to gain permanent resident status. The then Prime Minister of Israel Menachem Begin stated that historically Golan Heights for many generations were an integral part of Israel. He added that between 1948 & 1967, Syrian forces used the topographical advantage of the heights to target Israeli farmers in the Galilee Valley & turned their lives into a reign of blood & terror. Further Begin said, Israel was finally making the move to incorporate the 500 square miles of the Golan Heights into Israeli territory from a "moral-political aspect" based on Syria's constant refusal to recognize the existence of the Jewish state (Claiborne, 1981).

Israel's UN Ambassador Yehuda Blum argued that the deep Syrian hostility towards Israel & the calls for the destruction of the Jewish state are a few reasons for the annexation. After the 1967 war, Syria refused to accept Security Council Resolution 242 (1967) which affirms the right of every state in the area to live in peace within secure and recognized boundaries. In its quest for peace, Israel withdrew forces from the territory captured in the war of 1973 & 1967 but still Syria refused to go beyond agreements on a cease-fire and a disengagement of military forces. The Syrian attitude of repeated acts of aggression with the aim of conquering and even destroying a neighbouring country violates Article 2(2) of the Charter, which states that "All members in order to insure to all of them the rights and benefits resulting from membership shall fulfill in good faith the obligations assumed by them in accordance with the present Charter." The government of Israel could not wait endlessly for Syria to begin to show the political will to make peace and agree on secure boundaries. Israel cannot be expected to maintain indefinitely a military administration merely to accommodate Syria's interest in persistent conflict. The government of Israel is willing to negotiate unconditionally with Syria for a lasting peace in accordance with Security Council resolutions 242 & 338 (Blum, 1982).

Syria argues that after the Israeli occupation of Golan Heights, more than 500,000 Syrians were driven out of their homeland. Some 20,000 Syrians continue to live in the occupied Syrian Golan. The Israeli forces have destroyed Syrian cities, towns & villages & have built over 40 illegal settlements. Syrians continue to wait for the murderous and illegal occupation of their land to come to an end. Syrian diplomacy has launched many calls in order to resume peace

talks. Syrian President, Bashar Al-Assad, has sent several messages in this regard. However, the provocative visit of former Israeli Prime Minister Ariel Sharon to the Al-Aqsa Mosque in Jerusalem, which sparked the 2000 Palestinian Uprising, the U.S. invasion of Iraq in 2003, along with Israeli aggression against the Palestinians and Lebanon in 2006 has widened the gap and complicated the picture (Permanent mission of the Syrian Arab Republic to the United Nations, n.d.).

The UNSC resolution 497 adopted in 1981, rejected the Israeli occupation of the Golan Heights. It stated, "The Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect." Therefore, Israel's annexation is a clear and grave violation of international law, particularly Security Council Resolution 497. Again, the Golan Heights is referred to as the "Syrian territory occupied by Israel" in Security Council Resolutions 242 (Council, 1981). This annexation also violates article 2(4) of the UN charter since it's a move against the territorial integrity & political independence of the Syrian state inconsistent with the purpose of the United Nations (Mulian, 2020). Moreover, it violates the Law of Occupation since it allows occupation by Israeli forces but doesn't give Israel any authority for the transfer of Golan Heights sovereignty. The foundation on which the Law of Occupation is based is the principle of inalienable sovereignty which allows occupation by a foreign power but does not authorize the transfer of sovereignty to the foreign power. Therefore, the definition of occupation included the control of territory & establishment of an administration for its inhabitants by the occupying power without the violation of the sovereign of that territory (Benvenisti, The International Law of Occupation, 2012).

The US recognition of Israel's sovereignty also stands null & void since the annexation of occupied territories violates International Law. The annexation of territories as per International Law is viable through "cession" which is the transfer of sovereignty over State territory by the owner State to another state or if an independent government managed by the local inhabitants of the area with the help of a referendum agrees to become part of the occupant state. Say, for instance, Sikkim now a part of India back in 1947 enjoyed de-facto independence after the British left India. By 1975, the prime minister of Sikkim appealed to the Indian Union for a change in Sikkim's status & to join the Indian Union. A referendum was held where more than 97 percent of its population agreed to become a state of the Indian Union. This action was recognized by the International community which made the move attainable. Similarly, in the case of Israel's occupation & annexation of Golan Heights, the move was contrary to the desire

of the parent state from which the territory was captured & therefore the legal status of the territory will remain vague until the agreement of the parent state. Another important point to highlight is the success of such actions always depends on the reaction of the international community. For an annexed territory to be recognized, the international community has to come out in cohesion to its support. In the case of the US recognition, it was a unilateral decision since the whole world condemned the move of granting recognition on Israel's sovereignty over Golan Heights (Mulian, 2020).

Israel was the first country since 1949 to be called upon by the international community to implement the provisions of Geneva Conventions (4) in the occupied territories. Israel ratified all the four Geneva Conventions by 1951 & was fully obliged for its implementation in the occupied territories. Any country controlling an occupied territory is obliged by the International Law of Occupation to implement the provisions given in the Hague Regulations, Fourth Geneva Conventions & certain provisions of Protocol I of 1977 Additional to the Geneva Conventions of 1949. But Israel never fully acquiesced to the application of any of the regulations or conventions in its occupied territories. With regards to Hague Regulations, Israel stated that it does not apply de jure to the occupied Golan but it is applicable when the regulations comply with the Israeli law. It also rejected the rightful application of the Geneva Conventions but implied its obligations towards the humanitarian provisions of the conventions. Israel was responsible for the forceful transfer of the Syrian population from the occupied Golan Heights, destruction of private property & establishment of Israeli settlements in occupied territory.

After the occupation of Golan Heights, more than 130,000 of the native Syrian inhabitants were displaced or deported from their homes. The Israeli military began a widespread campaign to demolish their homes, farms, a city & 340 villages. They were replaced with more than 30 Israeli settlements. They were also responsible for the exploitation of natural resources (Al-Marsad, 2018).

Under the Fourth Geneva Conventions, Article 49 states that "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." It also prohibits the "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory" (ICRC, Practice Relating to Rule 129. The Act of Displacement, n.d.). In its written statement submitted to the ICJ in Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory in 2004, Saudi Arabia stated: Both the 1907

Hague Regulations and the Fourth Geneva Convention of 1949 make clear that the occupying Power has a general duty to respect and protect private property. Article 46 of the 1907 Hague Regulations states the simple proposition: "Private property cannot be confiscated." Article 53 of the Fourth Geneva Convention of 1949 likewise states: "Any destruction by the occupying Power of real or personal property belonging individually or collectively to private persons … is prohibited, except where such destruction is rendered absolutely necessary by military operations" (ICRC, Practice Relating to Rule 51. Public and Private Property in Occupied Territory, n.d.) As an occupier state, Israel is forbidden from using land & natural resources on Golan Heights for purposes other than military needs or for the benefit of the local population. This appropriation amounts to pillage which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court (Amnesty, n.d.).

Conclusion

Israel's occupation & annexation of Golan Heights is a grave violation of International Law. It triggers the international responsibility of the offending state & obliges full reparations for the losses caused because of its actions. The Customary International Law practices do not suggest an occupant force on a de-facto annexation of the occupied territory without the permission of its sovereign authority. Despite the extension of its domestic laws on Golan Heights, it remains occupied territory under the Law of Occupation. Israel can only attain sovereignty over the occupied Golan Heights if the sovereign state or the local inhabitants through negotiations allow for the same. Furthermore, its recognition by the US is illegitimate & violates the UNSC resolutions of 242 & 338 of the 1967 & 1973 war. If Israel & Syria have to attain peace, both sides have to initiate negotiations based on the adopted resolutions of UNSC. Israel has to agree on giving up the occupation of Golan Heights in exchange for Syria's giving up on the destruction of the Jewish state for both sides to co-exist with peace & tranquillity in the future.

References

Al-Marsad. (2018). *Human Rights Violations Committed by the State of Israel in the Occupied Syrian Golan.* Golan Heights: Al-Marsad Arab Human Rights Centre in the Golan Heights.

Amnesty. (n.d.). *Status of settlements under International Law*. Retrieved from amnesty.org/: https://bit.ly/3r8APwq

Benvenisti, E. (2012). *The International Law of Occupation.* Oxford: Oxford University Press.

Benvenisti, E. (2012). *The International Law of Occupation.* Oxford: Oxford University Press.

Blanchard, C. M. (n.d.). Retrieved from everycrsreport.com: https://bit.ly/3dZw44W

Blum, Y. (1982). *94 Statement by Ambassador Blum on the Golan Heights Law*. Retrieved from mfa.gov.il/: https://bit.ly/3kBP22t

Claiborne, W. (1981, December 15). *Israel, in sudden move, annexes Golan Heights*. Retrieved from washingtonpost.com: https://wapo.st/3raEv0I

Council, U. N. (1981, December 17). *Resolution 497 (1981).* Retrieved from unispal.un.org: https://bit.ly/3kAJWUv

ESHEL, D. (2007). The Golan Heights:A Vital Strategic Asset for Israel. *Israel Affairs*, 225.

ICRC. (n.d.). *Practice Relating to Rule 129. The Act of Displacement*. Retrieved from ihl-databases.icrc.org: https://bit.ly/2PpkBkM

ICRC. (n.d.). *Practice Relating to Rule 51. Public and Private Property in Occupied Territory*. Retrieved from ihl-databases.icrc.org: https://bit.ly/3sBADpW

Jurist, I. C. (2019). The Road to Annexation- Isarel maneuvers to change the status of occupied palestine territory. *International Commission of Jurist*, 4-5.

Mulian, S. A. (2020). The Legal Nature of Recognition in International Law. *Solid State Technology*.

Murphy, R., & Gannon, D. (2008). Changing the Landscape: Israel's gross violation of International Law in the occupied Syrian Golan. *Cambridge*, 146-147.

Murphy, R., & Gannon, D. (2008). Changing the Landscape: Israel's gross violations on International law. *Cambridge*, 156-157.

OREN, M. B. (2002). *Six Days of War: June 1967 & the making of the Modern Middle East.* New York: Oxford University Press.

Permanent mission of the Syrian Arab Republic to the United Nations. (n.d.). Retrieved from un.int: https://www.un.int/syria/syria/syrian-golan

Sheleff, L. (1994). Application of Israeli Law to the Golan Heights Is Not Annexation. *Brooklyn Journal of International Law*, 337-341.

Syrian-Israeli Armistice- July 20, 1949. (2002). Retrieved from mideastweb.org: http://www.mideastweb.org/isrsyrarmistice1949.htm