

Protecting The Marine Environment of The Gaza Strip Under The Provisions of International Humanitarian Law

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Abstract

The purpose of this study is to examine the role of international humanitarian law in protecting the marine environment of the Gaza Strip in light of the Israeli violations, as well as to clarify the effectiveness of the rules of international humanitarian law in protecting the marine environment of Palestine in light of the violations of the Israeli occupation. The mere conclusion of international treaties to protect the marine environment is not enough without a supreme authority imposing penalties on violators. On the other hand, the Israeli occupation violates on a daily basis the rules of international humanitarian law that provide protection for the marine environment of Palestine without deterrence from the international community. Therefore, the study recommends the need for the international community and international organizations to take all necessary measures to deter Israel, oblige it to the provisions of international law, stop its violations against the marine environment and carry out its duties as an occupying military force.

Keywords: international law, marine environment, Gaza Strip, Israeli violations.

Introduction

The state consists of three basic elements, which are a region, a people, and a political authority. What interests us in this study is the region. The region consists of several elements, these elements are land, territorial waters and airspace, the water region is considered one of the most important components of the country's territory, the political authority must have full sovereignty over its water region according to international law.

International humanitarian law has been concerned with protecting the marine environment during armed conflicts, so many international agreements have been concluded that prohibit damage to the marine environment during armed conflicts, as well as impose on the parties to the conflict the need to preserve the marine environment, and not to target civilian objects, whether by restricting their movement and movement or by bombing or arresting them during their work at sea, and not to impede the work of commercial ships, or to steal the resources and riches in the subsoil of the marine environment.

Since the Gaza Strip is considered one of the coastal provinces located on the Mediterranean basin, thus the territorial water should be completely subject to the sovereignty of the state of Palestinian because it is one of the components of the Palestinian state, but the Palestinian Territories, including Gaza Strip, has been subject to Israeli occupation since 1967 until the present time, and the Israel withdrawal from Gaza in 2005, it was only a redeployment of its forces, Israel still controls the border, sea and air territory of the Gaza Strip, it still also controls the crossings for the transport of goods and travelers to and from the Gaza Strip. From 1967 until today, Israel imposes many restrictions on the marine environment of the Gaza Strip (Munir Al-Buwaiti, 2018). These restrictions are represented in reducing the fishing area, restricting maritime navigation, stealing resources at sea, arresting fishermen etc.

Consequently, we prepared this study to explain the role of international humanitarian law in protecting the marine environment of the Gaza Strip under the military occupation. Thus the study aims to clarify the role of international humanitarian law in protecting the marine environment during armed conflicts, and the extent of this application of this protection to the marine environment of the Gaza Strip of Palestine. It also aims to show the Israeli violations of various international conventions that provide protection for the marine environment during armed conflicts. In addition to confirm that the Israeli practices are an occupation, not dispute as Israel claims.

Method

Methodology is an analytical approach and a Statute approach, by analyzing the provisions of international treaties that provide protection for the

marine environment during armed conflicts, to prove their suitability for providing the necessary protection for the sea of the Gaza Strip. In addition to extrapolating official reports that show the extent of Israeli violations of international conventions and treaties that provide protection for the marine environment of the Gaza Strip.

Results and Discussion

The Legal Status and Geographical Environment of The Sea of The Gaza Strip

The Gaza Strip is located in the southeastern corner of the Mediterranean Sea, with a coastline of 41 km. The coast of the Gaza Strip is characterized by its lack of meandering due to the tendency of the coastline to be straight. The fishing area in the Gaza Strip fluctuated with the passage of time. At first, the fishing area extended for a distance of 20 nautical miles, according to the Oslo Accords of 1995. After that, it was limited to 12 nautical miles according to the Bertini Agreement of 2002, and it fluctuated from 2006 to the present time between 3 and 15 nautical miles, according to the desire of the Israeli occupation. Palestinian sea plays an important role in food security and is a source of income for many families who practice the fishing craft, as the latest statistics talk about the presence of 3951 fishermen in the Gaza Strip, this means that there are at least 110,000 people benefiting from the fishing sector in Gaza, and given the number of the Gaza Strip, what 10% of the population of the Gaza Strip depends on the fishing sector for their livelihood. On the other hand, the marine environment is exposed to pumping large amounts of untreated sewage water. As a result of Israel, preventing the entry of fuel needed to operate the sewage treatment plants (Ahmad Helles, 2021, p. 16). Look at Figure 1 for more details.

Figure: Gaza strip map image



Source: OCHA

In order to clarify the legal status of the sea of the Gaza Strip, we will talk about the United Nations resolution issued in November of 2012, according to which the State of Palestine was granted the rank of a non-member state in the United Nations, as this resolution confirms the sovereignty of the State of Palestine over its lands that occupied in 1967 and the natural resources, including the sea of the Gaza Strip. (United Nations General Assembly, A/67/PV.44: 2012).

This resolution also came to refute the Israeli allegations that the Palestinian territories are disputed lands, not occupied lands. The resolution confirming all the resolutions issued by the United Nations, which confirm that the Palestinian lands occupied by Israel in 1967 are still lands under Israeli occupation, which the Palestinian people have right to liberate them by all means available to achieve their right to self-determination.

As for the agreements concluded between the Palestinian and Israeli sides, there is no room to talk about them in this study, because Israel did not abide by the contents of these agreements, especially the Oslo Accord of 1995, which limits the fishing area in the sea of the Gaza Strip to 12 nautical miles.

It appeared to us earlier that the length of the coastal strip of the Gaza Strip is 41 km, and 10% of the total population of the Gaza Strip depends on the fishing profession as a source of livelihood for them. The violations of the Israeli occupation of the sea of the Gaza Strip constitute a source of threat to the livelihood of Palestinian fishermen. It also shows us that the nature of the Palestinian-Israeli conflict is subject to the provisions of international law regulating belligerent occupation, as Israel as an occupying power occupying Palestinian lands including the Gaza Strip since 1967, and it must abide by its duties as an occupying power towards the occupied territories, thus it must abide by all provisions of international humanitarian law regulating belligerent occupation.

The Role of International Humanitarian Law In Protecting The Marine Environment During Armed Conflicts.

The interest of international humanitarian law in the protection of the marine environment began indirectly, through the legal rules for the protection of civilian objects such as the Fourth Geneva Convention of 1949 and the Geneva Protocol annexed in 1977. In fact, an urgent need arose among the international community to find special international rules for the protection of the marine environment during conflicts, thus many international agreements were concluded to protect the marine environment during armed conflicts, such as the San Remo Guide of 1994, among these agreements as follows:

1. **The Hague Convention of 1907:** This agreement includes many provisions for the protection of the marine environment during armed conflicts, some of these texts include provisions for the protection of

commercial ships during armed conflicts based on the principle of distinguishing between commercial ships and military ships, also, include some provisions prohibiting the use of some sea mines in some cases (Hussein Obaid, 1999).

2. **The Fourth Geneva Convention of 1949:** Article 53 stipulates that “the occupying power is prohibited from destroying any private, immovable or movable property related to individuals, groups, the state, public authorities, or social or cooperative organizations, unless such destruction is required by military operations.” The convention considered the widespread destruction a war crime. Hence, the Geneva Convention's interest in protecting the marine environment appears indirectly during armed conflicts and by belligerent occupation (the Fourth Geneva Convention, 1949, 53&146).
3. **The 1976 Convention on the Prohibition of the Use of Environmental Alteration Techniques:** This agreement prohibits the use for war or for hostile purposes of environmental change technologies that result in widespread, permanent or dangerous effects that may cause destruction and harm the environment of any other country, and changes of the environment for military purposes may result from two types of phenomena, the first type arising from the use of Conventional means of warfare, weapons of mass destruction, or nuclear weapons, while the second type results from deliberate interference with natural processes or changing the ecosystem (Convention prohibiting the use of environmental modification techniques for military or any other hostile purposes, 1976).
4. **The Geneva Protocol of 1977 AD attached to the Fourth Geneva Convention of 1949 AD:** This agreement includes many provisions related to the protection of the environment during armed conflicts. For example, Article (35) stipulates that “it is prohibited to use means or methods of combat that are intended or may be expected to cause severe, widespread and long-term damage to the natural environment.” We found that this article prohibits the use of any means that may lead to serious damage, even if incidentally, and Article (55) of the Convention stipulates that “1. During combat, protection of the natural environment from severe, widespread and long-term damage shall be taken into account, and this protection includes the prohibition of the use of methods or means of combat that are intended or expected one of them is to cause such damage to the natural environment and thus harm the health or survival of the population. 2. Deterrence attacks against the natural environment are prohibited.” Through the foregoing, although the agreement provided for the protection of civilians, it restricted the parties to the armed conflict in

the use of weapons, but it explicitly stipulated that the use of weapons should not result in any serious damage to the natural environment, even if it was accidental (International Review of the Red Cross ,1991:11-99).

Article (52) of the Convention stipulates that “the parties to the conflict must distinguish at all times between civilians or other protected persons and combatants, as well as between objects of a civilian nature that are immune from attack and military objectives.” This text clearly shows the need to implement the principle of distinction. Between military objectives and non-military objectives, and non-military objectives include the natural environment that is not used in military operations. It appears to us that the previous text makes the natural environment isolated from military operations.

Also, the parties to the armed conflict must act on the principle of precaution, as Article (47) of the same agreement stipulates that the parties to the conflict must do their best in managing military operations in order to avoid the population and civilian objects, and they must make every effort to verify that the targets are set. Attacking them are not civilian objects or covered by special protection. This article stipulates that each party must take the necessary precautions during its military operations at sea or in the air, in accordance with its rights and duties under the rules of international law applicable in armed conflicts, in order to avoid Causing losses in civilian lives and civilian property.

It appears to the researcher from the previous paragraphs that they obligated the parties to the conflict to take the necessary precautions to avoid causing damage to the natural environment, and at the same time it should not be understood from the previous paragraphs that direct attacks against the environment may be launched, This is what the same aforementioned article stipulates, saying, "None of the provisions of this article may be interpreted as implying that an attack may be launched against the civilian population, civilians, or civilian objects."

5. The San Remo Manual Applicable to Armed Conflicts at Sea 1994:

The San Remo Guide is the result of a series of meetings held by the San Remo Institute with a number of international institutions, including the International Committee of the Red Cross and a number of countries(Salah El-Din Amer ,1993:22), in order to develop a law that regulates maritime warfare. With regard to the marine protection provided by this agreement, Article (11) of it stipulates No hostilities may be launched in marine areas that contain a rare or ephemeral environment, or that contain habitats for species or other forms of marine life that are extinct or threatened with extinction, As for Article (39) of the Convention, it followed what was stated by the Geneva Protocol of 1977 and considered the marine environment to be of a civilian nature, and the parties to the conflict must

ensure that the marine environment is not damaged during military operations in the absence of a military necessity that requires it, as stated in Article (44) of the Convention. The agreement stipulates that the parties to the conflict must, when using means and methods of warfare, ensure that they are commensurate with the purpose of the violence of the attack and that they do not result in arbitrary damage and destruction of the natural environment that is not justified by military necessity, while Article (46) stipulates that the parties to the conflict refrain from launching any attack that may cause losses or Excessive incidental damages, and incidental damages here mean those damages that afflict civilians or other protected persons, including damages to the natural environment.

6. **Meetings of international humanitarian law experts in the field of protecting the marine environment during armed conflicts:** Several meetings of international humanitarian law experts were held at the invitation of the International Committee of the Red Cross in 1992 and 1993, and these meetings resulted in several guidelines for protecting the environment during armed conflicts, but in this study we will address the most important principles for protecting the marine environment during armed conflicts, which are as follows :
 - a. Any destruction of the marine environment is considered a serious violation of the rules of international humanitarian law unless such destruction is justified by military necessity (Hatz, Peter Gasser,1992:112).
 - b. It is forbidden to destroy and target civilian targets, including the marine environment, unless such destruction is justified by military necessity(The Hague Fourth Preamble,1907).
 - c. It is forbidden to plant naval mines indiscriminately, and it is forbidden to place remotely detonated marine mines that do not deactivate themselves.
 - d. States must ensure respect for obligations under international humanitarian law applicable during armed conflicts, including obligations to protect the environment during armed conflicts (the Fourth Geneva Convention,1994:10, Protocol to the Fourth Geneva Convention,1977:1).
 - e. The parties to the conflict are obligated to take the necessary measures to stop any violation that contributes to harming the environment.

7. **International resolutions:** Many international resolutions were issued by the United Nations, which confirm the right of the Palestinian people to sovereignty over their lands and resources. In 2011, Resolution No. (66/225) was issued, which affirms the permanent sovereignty of the

Palestinian people over their lands occupied by Israel in 1967, The resolution called on Israel to stop exploiting, harming or causing loss of natural resources, and affirmed the right of the Palestinian people to recover their property due to Israel's violation of their rights (United Nations General Assembly, 2011:"225/66").

The General Assembly affirmed the sovereignty of the Palestinian people over their lands and natural resources in its Resolution No. (A/77/450) issued in 2022, as the resolution expresses grave concern about Israel's exploitation of Palestinian natural resources and the widespread destruction of the natural environment and electricity and water supplies, especially in Gaza Strip during its military campaign in 2014 (United Nations General Assembly, 2022,"A/77/450":P.5).

The Security Council reaffirmed this in its Resolution No. 2334, in which it called on states to distinguish between the territory of the State of Israel and the occupied Palestinian territories, The Security Council resolution confirms that the Gaza Strip is still within the territories occupied by Israel, and that Israel's obligations towards the marine environment of the Gaza Strip as an occupying power were mentioned in the aforementioned agreements, especially the Fourth Geneva Convention of 1949 and its protocols and the Fourth Hague Convention of 1907.

From the foregoing, it seems to us that international humanitarian law initially includes many rules that indirectly provide for the protection of the environment during armed conflicts under the name of "civilian objects". Later, Additional Protocol I to the Geneva Conventions of 1977 expressly states the need to protect the environment. nature during armed conflicts, and obliges the occupying country to abide by the principles of international humanitarian law such as the principle of distinction, and the San Remo Guide is considered the first nucleus that expressly states the need to protect the marine environment during armed conflicts,

Consequently, The United Nations resolutions affirmed the sovereignty of the Palestinian people and their right to sovereignty over all Palestinian resources and wealth, Despite the aforementioned provisions and rules that provide some protection for the marine environment during conflicts, we see a deficiency in the international protection of the marine environment during armed conflicts, Especially in light of modern armed conflicts, as international humanitarian law did not include a special agreement that provides effective protection for the marine environment during armed conflicts.

Therefore, the researcher recommends that greater efforts should be made by the components of the international community, especially the United Nations and the International Committee of the Red Cross, in order to conclude special agreements to protect the marine environment during armed conflicts, and coordination to find applicable international

mechanisms that provide effective protection for the marine environment during armed conflicts, In addition, Israel must be compelled to stop exploiting the resources of the Palestinian people and to implement all resolutions issued by the United Nations, through the application of the sanctions included in the Charter of the United Nations, especially those contained in Chapter VII of the Charter.

Israeli Violations of The Marine Environment of The Gaza Strip

Israel has practiced various types of bombing and destruction of the marine environment and its workers, since the Israeli occupation of the Gaza Strip in 1967 AD to the present day, it imposes its control over the marine environment of the Gaza Strip by force without respecting any international agreements or laws, and despite the conclusion of the Oslo Agreement in 1995 between the Organization Palestine Liberation and Israel, which stipulates that the Palestinian Authority may impose its sovereignty over a distance of 20 nautical miles from the sea of the Gaza Strip, and Palestinian fishermen enjoy full freedom to practice their work in that area, but Israel has been violating this agreement for several decades, and Israel has been working to Depriving the Palestinian people of exercising their right to maritime navigation and international trade across the sea of the Gaza Strip despite the presence of the Gaza port, which was subjected to Israeli bombardment several times. Below we will mention some examples of Israeli violations of the provisions of international humanitarian law related to the protection of the marine environment during armed conflicts:

1. in 2014, during the Israeli military campaign on the Gaza Strip, Israel targeted the seashore of the Gaza Strip, killing four children (france24, 2014).
2. In 2019: The number of Israeli violations of the provisions of international humanitarian law related to the protection of the marine environment in the Gaza Strip exceeded 351 violations, of which 347 violations were in compliance with shooting, shelling and pursuit of Palestinian fishermen, resulting in 16 fishermen injured, 11 fishing boats damaged, and confiscated 15 fishing boats were stolen, and 35 fishermen were arrested, Israel also worked to impose restrictions on the marine environment during this year, as it restricted the fishing area for several times, and the fishing area ranged between 3-12 nautical miles, and sometimes closed the sea completely to fishermen. This In addition to preventing the work of maritime navigation to and from the Gaza Strip (Palestinian Al-Rai News Agency, 2020).
3. In 2020: The number of Israeli violations of the provisions of international humanitarian law related to the protection of the marine environment in the Gaza Strip reached 309, of which 308 violations were shooting, shelling, and targeting of fishing boats and the marine environment, which resulted in 12 Palestinian injuries, and damage to 12 fishing boats. 4

fishing boats were confiscated and stolen, and 10 fishermen were arrested. During this year, Israel restricted the fishing area for several times, ranging from 3-12 nautical miles, and sometimes closed the sea to fishermen, in addition to Israel continuing to prevent maritime navigation and maritime trade activities to and from Gaza strip (Fact sheet, by Miftah, 2021:1) .

4. These violations by the Israeli occupation continued during the years 2021 and 2022 AD, as the number of violations by the Israeli occupation against the fishing sector in the sea of the Gaza Strip in 2022 AD reached 474 violations, which varied between targeting fishing boats with missiles, killing and arresting fishermen, and leading to restricting the fishing distance. Damage to fishing boats and their equipment, in addition to Israel's continued prevention of navigation and maritime trade to and from the Gaza Strip (Al-Mezan Center for Human Rights, 2023).
5. In 2021, an explosion occurred in one of the fishing boats, which resulted in the death of 3 Palestinian fishermen, in addition to the destruction of their boat. After investigations, it was found that Israel had placed suspicious explosive objects to be caught in the fishing nets of Palestinian fishermen (The Jordanian newspaper Al-Ghad, 2021).
6. For the pollution of the marine environment of the Gaza Strip, Israel has been practicing a sea, land and air blockade on the Gaza Strip for more than 15 years, and because of its practice of this blockade it prevents the entry of fuel needed to operate the power plant, which has a major role in operating the sewage treatment plants that It flows into the sea of the Gaza Strip, as a result of which the sea water of the Gaza Strip was greatly polluted, affecting the color and smell of the sea, as well as damaging the biodiversity in the marine environment, as well as affecting the health of vacationers due to diseases that spread as a result of this pollution (Miqdad Jamil Miqdad, and Yusef Salah al-Ashqar, 2022).
7. During its military campaign on the Gaza Strip, Israel deliberately targeted sewage treatment pumps, which exacerbated the problem of pollution of the marine environment from sewage, and environmental insecurity (Al Mezan Center for Human Rights, 2021).

From the foregoing, it appears to us the extent of the Israeli occupation's violations against the marine environment of the Gaza Strip, ignoring all the provisions of international law regulating the occupation's duties and obligations towards the occupied territory. For all of this, the representatives of the State of Palestine must submit a request to the United Nations to issue a resolution obliging Israel to stop its violations against the marine environment of the Gaza Strip and to obligate it to the provisions of international humanitarian law as an occupying power responsible for the occupied territories. the Palestinian Authority must also include the Israeli crimes against the marine environment of

the Gaza Strip in the file of Israeli crimes that will be referred to the International Criminal Court.

Conclusion

In this study, we dealt with the role of international humanitarian law in protecting the marine environment of the Gaza Strip during armed conflicts, as we dealt with the geographical nature of the sea of the Gaza Strip and the legal nature of the conflict over the sea of the Gaza Strip. Then we talked about the international role. Humanitarian law in the protection of the marine environment during armed conflicts, and after that we talked about some Israeli violations of the provisions of international humanitarian law related to the protection of the marine environment of the Gaza Strip during armed conflicts. At the end of the study, we found deficiencies in the provisions of international humanitarian law related to the protection of the marine environment during armed conflicts, and it appeared to us the extent of Israeli violations against the marine environment of the Gaza Strip, in a way that contradicts the obligations of the Israeli occupation towards the occupied territory.

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