

Abstract

In this research I have examined the attitude of the Israeli Supreme Court regarding the application of the international law of belligerent occupation in the Palestinian Occupied territories, a law which is primarily embodied in the Hague Convention of 1907 concerning Respecting the Laws and Customs of War on Land; and is also to be found in the Fourth Geneva Convention of 1949 in association with the Protection of Civilian Persons in Time of War in 1949.

Soon after the Israeli Occupation of the Palestinian OT on June 1967, The Israeli Supreme Court started carrying out a "judicial Review" upon the actions of the Israeli army in the OT; this review dealt with numerous cases of Palestinians complaining about violations of their rights, caused by arbitrary actions of the occupation authorities.

Therefore, it's highly important to seek the truth regarding this judicial review and to examine whether it was serious and effective, or was it merely means of legitimizing illegal actions. An analytic review of the Supreme Court's Decisions, which holds these decisions in comparison to the interpretations of the conventions' articles as they were set by legal experts of international law, is the only way to reveal the truth. This is the analytic pattern I have used in this research.

I began by discussing the belligerent occupation law applicable in the OT. The second issue I discussed was whether the Israeli Supreme Court has any jurisdiction over said territories. Further on, I examined the Supreme Court's attitude towards the applicability of the international conventions by reviewing its decisions in various cases. Then I reviewed these decisions in specific fields, for example: altering the law in force in the OT or enacting new laws using military orders; the settlement issue, cases concerning Jerusalem, and deportation of Palestinians from the OT. The main purpose of reviewing these decisions was to determine whether the court applied the law in a right and proper way, or did it simply choose to widen the interpretation of the law, which allows ignoring the violations of the conventions brought before the court.

Main conclusions:

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- The Israeli Supreme Court has no jurisdiction over actions of the military government in the OT; they are in fact under the jurisdiction of the local OT courts.

- The court has agreed to apply the Hague Convention in the OT, however it refused to apply the rules of the Fourth Geneva Convention, unless it was given consent to apply said rules by the Israeli Government. This attitude results the absence of the Geneva Convention rules from the legal battle field and inevitably leads to the failure of most cases.

- When contradiction occurred between the International Law and the internal Israeli law, the Supreme Court ruled that the Israeli law trumps international law.

- The court used a wide approach of interpretation, and didn't follow accurately the clear and obvious meanings of the conventions articles, an approach that granted the military government wide authorities which weren't mentioned in the conventions. The court also adopted the theory of prolonged occupation as a basis to grant the military government additional authorities derived from that long period of occupation.

- The court has failed in carrying out its supervision role, it has also failed to enforce the rule of law and to apply the rules of international law; its decisions did not live up to expectations. Instead of achieving fruitful results, most of the petitions before the Supreme Court were denied, legitimizing the military government's actions by declaring them "legal" in the eyes of the court.

- The previously mentioned approach of the Israeli Supreme Court on its various levels, has led to further violations of the Palestinians' rights, with grave breaches of humanitarian international law; such breaches are regarded war crimes or crimes against humanity, therefore the court's attitude did not constitute a deterring barrier against committing said grave breaches as was expected.