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# The Impact of Military Orders on the Palestinians' Right to Water Access

A content analysis of IDF's Military Orders regarding water in  
light of IHL and ICCPR Article 26

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# Abstract

The aim of this thesis is to explore what impacts the IDF's Military Orders regarding water have on Palestinians in the West Bank, taking international humanitarian law (IHL) and International Convention on Civil and Political Rights (ICCPR) into consideration. Thus, to discover whether or not Israel's actions are compatible with IHL and treats everyone equal before the law, as stated in ICCPR Article 26, both quantitative and qualitative content analysis is applied to the Military Orders in question. The theory of the thesis has origins in Hannah Arendt's theory "right to have a right" and is further developed through Edward Said's "Orientalism" and the concept of Rule of Law. This gives an exhaustive understanding of how essential it is to have an authority with enough power to influence the fulfillment of human rights. Thereby, two main conclusions are made: Firstly, the language of the Military Orders ignores the Palestinians' right to water access and mainly focuses on ascribing the IDF military commander all-encompassing power. The way the language is put in the Military Orders confirms earlier scholars' studies that there is a great asymmetrical power discourse in this conflict. Additionally, this asymmetrical power discourse often results in violation of the Palestinians' right to water access. Secondly, the meaning of citizenship in a state with enough power to influence becomes visible since the violation of Palestinians' right to water access is a consequence of the limited power of the Palestinian Authority.

*Keywords:* Israel, Palestine, West Bank, IDF, Military Orders, ICCPR, IHL, occupation, water.

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# Abbreviations

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICJ – International Court of Justice

IDF – Israeli Defence Forces

IHL– International Humanitarian Law

IPL– International Public Law

UN– United Nation

OPT –Occupied Palestinian Territories

# 1 Introduction

In Palestine there is a water law from 2002 stating that every person has the right to water.<sup>1</sup> Nevertheless, Palestinians in the West Bank have not been able to enjoy their right to water as stated in the Palestinian law. In fact, they have been mistreated in comparison to the Jewish settlers in the West Bank, not least due to the fact that water resources in the West Bank have been under Israeli control since the occupation of the land in 1967. The water scarcity in the region and the limitation of the Palestinians' right to water access has rather affected Palestinians irrigation of their fields, and hence the agricultural production than the access to drinking water.

One example of how Palestinians are limited in their access to water and are mistreated in comparison to the Jewish settlers is a representative anecdote from El Auja City, where Jewish settlers were permitted to dig a well near a Palestinian spring, which was used by farmers to water their fields. This well in combination with low rainfall consequently caused the spring to dry out and subsequently the plants in thousands of Palestinians field withered and died. Israel justifies their water control by arguing that limited quantities exist and therefore strict control is needed.<sup>2</sup> Furthermore, they blame alleged Palestinian mismanagement of the water system for an insufficient supply.<sup>3</sup>

To rule the West Bank including the water recourses, Israel put the Israeli Defense Forces (IDF) in charge of governing the territory. "The IDF's mission is to defend the existence, territorial integrity and sovereignty of the state of Israel and also to protect the inhabitants of Israel and to combat all forms of terrorism that threaten the daily life."<sup>4</sup> IDF have the authority to give Military Orders. The Military Orders are law-like instruments, but have not been legitimized by any democratic control or preceding par-

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<sup>1</sup> H. Elver, "Palestinian/Israeli Water Conflict and Implementation of International Water Law Principles", in *Hastings International and Comparative Law Review*, no. 3, 2004, pp. 421-448, p. 431.

<sup>2</sup> R. Shehadeh & J. Kuttab, *The West Bank And the Rule Of Law*, Al-Haq Organisation, 1980. pp. 126, p. 62.

<sup>3</sup> Hilal, 2004, pp. 421-448, p. 428.

<sup>4</sup> IDFblog, IDF Code of Ethics, web blog, Available at: <https://www.idfblog.com/about-the-idf/idf-code-of-ethics/> (Accessed 8 January, 2017).

liamentary approval. To simplify, Palestinians in the West Bank are governed by the Military Orders, which they do not have the right to vote on; nor do they have any other democratic means to influence the Military Orders' nature, as they have e.g. no Israeli citizenship and can accordingly not vote in Israeli elections.

It is argued that the system of having Military Orders given by the IDF military commander is inherited by the British Mandate.<sup>5</sup> Between the British Mandate ending 1948 and the Israeli occupation 1967 the Hashemite Kingdom of Jordan ruled the West Bank. Jordan mostly continued using the British laws and legislation concerning water, adding only a few new commands regarding water resources conservation.<sup>6</sup>

This thesis explores how the water resources and water issues in the West Bank are governed today by the IDF and how this affects the Palestinians' right to water access. Therefore, it is key to scrutinize the IDF's Military Orders regarding the water in the West Bank. Consequently, by analyzing what is stated in these Military Orders it will be possible to understand if and how the IDF is able to limit the Palestinians' access to water, despite possibly contrary provisions in international humanitarian law (IHL) and International Covenant on Civil and Political Rights (ICCPR).

## 1.1 Purpose and the Research Question

The aim of this thesis is to explore the IDF's Military Orders regarding water in the West Bank and to understand what impacts they have for Palestinians in the West Bank, with due consideration of IHL, more specifically the Fourth Geneva Convention and The Hague Regulations and ICCPR Article 26,<sup>7</sup> assessing the Military Orders' legitimacy from a human rights perspective.

Throughout this thesis, I reveal whether or not the IDF Military Orders become an effective substitute for the law, and how they affect the Palestinians' right to water access and for how long these Military Orders are supposed to be in force. This bears im-

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<sup>5</sup> A. Gamal, "Natural Resources under Occupation: The Status of Palestinian Water under International Law", *Pace International Law Review*, 10.2, 1998, pp. 411-574, p. 451.

<sup>6</sup> A. Marie & S. Khayat, and M. Dajani. "*Water quality legislation in Palestine over the past century.*" *Environmental Sciences Europe* 24, no. 4, 2012, pp. 1-13, p. 4-5.

<sup>7</sup> N. K. Bitar, "Israel's Obligations Concerning Natural Resources According to the International Law.", *Palestine-Israel Journal Of Politics, Economics & Culture* 19/20, no. 4/1 (December 2014), pp. 15-18, p. 16.

portance because the right to water access for Palestinians does not only supply the need of drinking and other domestic uses but also supplies the agricultural sector, being essential for food security. Furthermore, Palestinians have endured occupation for the last 40 years. In fact, since 1967, Israel has been holding up the “state of emergency” as a central element of its occupation of the West Bank. This implies that efforts towards a self-governing West Bank have been limited intentionally. In this context, the water issue is an excellent example of how the Palestinian self-determination is impaired and replaced by a biased power scheme.

Although many studies on the water conflict between Israel and Palestine have been conducted, none has analyzed the Military Orders’ impact on the water. This, however, has left an empirical and theoretical gap in the scholarship occupying itself with the topic – a gap, which I intend to fill. The discourse used in the evaluated documents is a product of the power imbalance between Israel and Palestine, and at the same time solidifies this asymmetry, having practical implications on how water is governed in the West Bank. Combining Arendt’s “right to have a right” with Said’s “Orientalism” and the Rule of Law, further opens new analytical pathways for human rights scholars occupying themselves with this and other conflicts.

To sum up, this thesis seeks to answer the following question:

What impact do the IDF Military Orders regarding water have for Palestinians in the West Bank, taking IHL and ICCPR Article 26 into due consideration?

## 2 Background

### 2.1 Historical

The Israeli occupation of the West Bank started after the 1967 war, also referred to as Six-Day War. Generally, the time after the Six-Day War is identified as a hegemonic era.<sup>8</sup> Already that year Israel declared all water resources in the Occupied Palestinian Territories (OPT) to be under their control, which remains to be the case until today.<sup>9</sup> The control over all the water resources was completed in 1982.<sup>10</sup>

Currently, all water management for the OPT is administered by "Mekorot ", the Israel National Water Company,<sup>11</sup> also being a direct product of the IDF's Military Orders.<sup>12</sup> Mekorot being in charge and not a Palestinian authority is consequently limiting the Palestinians' right to water access and thereby also the implementation of the Palestinian law that understands water as a human right.<sup>13</sup> Today, up to 80-95% of all water is used by Israeli settlers who only make up around 10% of the population of OPT.<sup>14</sup> This is ten times more than what the Palestinians population in OPT uses.<sup>15</sup>

### 2.2 Hydropolitics

Since the Six-Day War, Israel took the power of overall water resources by acquiring two of the three Jordan River tributaries. The Six-Day War is a milestone in this thesis because it is the time when the hydro-political map and the power asymmetry of the

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<sup>8</sup> Marie, A, et al. 2012, pp. 1-13. p. 10.

<sup>9</sup> Ibid, p. 6.

<sup>10</sup> Hilal, 2004, pp. 421-448, p. 431-432.

<sup>11</sup> Ibid, p. 432.

<sup>12</sup> . D. Dillman. "Water Rights in the Occupied Territories.", *Journal of Palestine Studies*, 1989. pp. 46-71. p. 54.

<sup>13</sup> Gamal, 1998, pp 411-574, p. 7-8.

<sup>14</sup> Bitar, 2014, pp. 15-18, p. 15.

<sup>15</sup> Hilal, 2004, pp. 421-448, p. 227.



Middle East changed dramatically. The two water resources of Jordan River Israel took control of, make up one-third of Israel's fresh water supply.<sup>16</sup> Despite Israel's occupation of Palestinian and other Arab territories, subsidizing the country with additional water resources, it still struggles with water scarcity<sup>17</sup>. In fact, Israel's need for water has increased since 1948 in conjunction with a growth in population and agriculture production. The water scarcity situation has resulted in Israel and Jewish settlers in OPT receiving a disproportionate share of water compared to the Palestinian residents.<sup>18</sup>

## 2.3 Water Distribution

The Israeli-Palestinian water conflict will be better understood acknowledging the water distribution and water consumption between Israel and Palestine. Water is by no means a new issue in the broader Arab-Israeli conflict. Already in 1919, Chaim Weizmann, who later became Israel's first president, raised the issue of water resources in a letter to the British Prime Minister, David Lloyd George: "[T]he boundaries [of the Jewish Home] cannot be drawn exclusively on historic [biblical] lines [...] [o]ur claims to the north are imperatively demanded by the requirements of modern economic life." He continued with highlighting how the economic future of Israel is dependent upon its water supply for irrigation. The borders proposed by Weizmann covered not only all of present-day Israel and the occupied territories of Gaza, the West Bank, and the Golan Heights, but also significant portions of Lebanon, Syria, and Jordan. The Paris Peace Conference rejected these demands, but the intention of obtaining water in the region remained, illustrating the importance water bore to Israel's founders already.<sup>19</sup>

In 1947, the United Nations (UN) orchestrated the partition of Palestine into two states, one Jewish and the other Palestinian. At the time, the Jews constituted 30 percent of the population and owned less than 7 percent of the land, while Palestinians stood for 70 percent of the population and owned over 45 percent of the land. Nevertheless, the UN partition plan of Palestine favored Israel and it was given 55 percent of Palestine, while Palestinians received 45 percent of the land. It is unclear if the UN Partition Plan

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<sup>16</sup> Hilal, 2004, pp. 421-448, p. 426.

<sup>17</sup> Ibid, p. 425.

<sup>18</sup> Dillman, 1989. pp. 46-71, p. 47.

<sup>19</sup> Ibid, p. 48.

of Palestine took water resources into account, however, some scholars argue that the borders in regard to the access to water resources were drawn in favor of the Jewish state.<sup>20</sup>

Recent statistics by the Israeli government state an average of 35 cubic meters per capita for Palestinians in the West Bank and about 321 cubic meters for Israelis, both in Israel and for settlers in the West Bank.<sup>21</sup>

## 2.4 Legal framework

To place the content of the IDF's Military Orders within an international legal framework, I am taking into consideration IHL and ICCPR. These instruments contain the most essential principles for the aim of this thesis, such as the legality of any particular occupation and its regulations as well as the equal protection for everyone, no matter his or her background, such as ethnicity.

In reference to IHL there are both The Hague Regulations and the Fourth Geneva Convention to take into account when discussing the Palestinian- Israeli water conflict. Israel is a member of both these instrument,<sup>22</sup> but has different views whether or not they are applicable in OPT, which I discuss further in the section "Placing the Thesis in the Research Spectrum". Nonetheless, the UN General Assembly and Security Council have noted that IHL should be in effect in OPT since it is an occupied territory.<sup>23</sup> This means that Israel is, in accordance with IHL regarding natural resources, obliged to respect and protect and not to exploit the water as a political tool.<sup>24</sup>

The most relevant Articles of The Hague Regulations regarding this conflict are 43, 46, 53 and 55.<sup>25</sup> Article 43 declares that the occupant should take all measures to

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<sup>20</sup> Dillman, 1989. pp. 46-71, p. 49.

<sup>21</sup> Hilal, 2004, pp. 421-448, p. 426.

<sup>22</sup> Ratification status by country or by treaty, Ratification Status of Israel, ICCPR, Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN) (Accessed 8 January, 2017).

<sup>23</sup> A. Abu-Eid, "Water as a Human Right: The Palestinian Occupied Territories as an Example", *International Journal Of Water Resources Development* 23, no. 2, 2007, pp. 285-301, p. 294.

<sup>24</sup> Bitar, 2014, pp. 15-18, p 17.

<sup>25</sup> *Ibid*, p.16.

ensure public order and respect the laws in the country.<sup>26</sup> Article 46 states that the private property cannot be confiscated and must be respected by the occupier.<sup>27</sup> In Article 53 it is laid down that movable property belonging may be used for military operations, but needs to be restored and compensated when peace is made.<sup>28</sup> Article 55 declares that the occupying power should be observed only as administrator of public buildings, real estate, forests, and agricultural estates situated in the occupied country. It must administer them in accordance with the rules of usufruct.<sup>29</sup>

The most relevant Articles of the Fourth Geneva Convention are Articles 49 and 53.<sup>30</sup> Article 49 prohibits the deportation, transfers, or evacuations of the inhabitants of an occupied country.<sup>31</sup> Article 53 notices that any destruction by the occupying power is prohibited, except where such destruction is rendered absolutely necessary by military operations.<sup>32</sup>

This selection of Articles from The Hague Regulations and Forth Geneva Convention, chosen with due diligence, will function as a yardstick in regards to the IDF's Military Orders adherence to international humanitarian law. For a complete legal framework, that fulfills this thesis' aim, I will also employ ICCPR. The focus of this thesis is on Article 26, which states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>33</sup>

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<sup>26</sup> International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, Article 43, Available at: <http://www.refworld.org/docid/4374cae64.html> (Accessed 8 January, 2017).

<sup>27</sup> Ibid, Article 46.

<sup>28</sup> Ibid, Article 53.

<sup>29</sup> Ibid, Article 55.

<sup>30</sup> Bitar, 2014, pp. 15-18, p. 16.

<sup>31</sup> International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, Article 49. Available at: <http://www.refworld.org/docid/3ae6b36d2.html> (Accessed 8 January, 2017).

<sup>32</sup> Ibid, Article 53.

<sup>33</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 26. Available at: <http://www.refworld.org/docid/3ae6b3aa0.html> (Accessed 8 January, 2017).

This means that the undertaking parties ensure the equal right of men and women and the enjoyment of all civil and political rights and freedoms.<sup>34</sup> In the context of the Palestinian-Israeli water conflict this Article should ensure the equal treatment of Palestinians and Israelis in the West Bank, no matter their religion or citizenship.<sup>35</sup>

Basically, the principals of non-discrimination and equal protection are included in most of the human rights instruments, and various conventions and treaty mechanisms have been established on that ground. What makes ICCPR different, is that it forbids the general discriminatory application of domestic laws based on distinctions provided within the law itself.<sup>36</sup> This fact is remarkable, not because the Military Orders by the IDF imply an unequal treatment of Palestinians, but because they *only* apply to the Palestinians in OPT and not to the Jewish settlers. The upcoming section will present the Military Orders regarding water and their content in more detail.

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<sup>34</sup> Ibid, Article 3.

<sup>35</sup> S. Anja. 2010, pp 1-37, p. 3-4.

<sup>36</sup> Ibid, p. 5-6.

### 3 Military Orders

The thesis' primary material consists of the Military Orders regarding water in the West Bank, of which there are four. Further, there is one regarding Gaza.<sup>37</sup> Since, however, there is a colossal difference between Gaza and the West Bank in the way they are governed, this thesis only analyzes the Military Orders occupying themselves with the West Bank, which are Military Order no. 92, 158, 291, 457.<sup>38</sup>

What needs to be highlighted here, is that the source of the Military Orders is the *Palestine Yearbook of International Law* and not a source from the IDF. While searching for the Military Orders it turned out to be a challenge to find those concerning water. According to a source from 1980, the access of Military Orders has been limited ever since, because the collected volumes have been for a long time out of print, and no copies are available.<sup>39</sup> This seems to be the case even today, as far as I am concerned, since the public availability of these Military Orders is still low – an evaluation confirmed by the Israel Law Resource Center.<sup>40</sup> In the discussion of Military Orders, there is a possibility that variables other than the Military Orders affect the IDF's actions. However, I am positive that the literature review strengthens my case for the analytical utility of the material analyzed, given its central function for the governance of OPT.

Furthermore, I am aware of the fact that other Military Orders also affect water, such as those on agriculture and energy, which could be relevant and are worth being analyzed. Here, the Water-Energy-Agriculture Nexus is a strong concept to understand the interrelation between water, energy and agriculture.<sup>41</sup> This means that when water resources, for instance, are being used primarily for domestic uses, it will have an effect

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<sup>37</sup> "Introductory Note." *Palestine Yearbook of International Law*, vol. 5, 1989, pp. 346- 347.

<sup>38</sup> Gamal, 1998, pp 411-574. p. 484.

<sup>39</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p 43-44.

<sup>40</sup> David A. Kirshbaum, Israel Law Resource Center, Israel Military Oppression and Exploitation of Palestinians Society in Gaza and the West Bank: How It Works, 2007, Available at: <http://www.israelawresourcecenter.org/israelmilitaryorders/essays/israelimilitaryordersessay.htm> (Accessed 8 January, 2017).

<sup>41</sup> S. Shilpi & M. Lyla, "Not Another Nexus? Critical Thinking on the New Security Convergence in Energy, Food, Climate and Water.", STEPS Centre, University of Sussex, Brighton, 2014, pp. 1-12

on the food production since there is less water for agriculture development. The same could apply to hydroelectric infrastructure, as e.g. dams. However, for the sake of analytical stringency, I am narrowing my focus on the aforementioned four Military Orders, being aware of the effects that other orders might have on the water issues.

Military Order No.92 is referred to as "The Order Concerning Powers for the Purpose of the Water Provisions". It came into force on August 22 1967. This order gives whomever the military commander of the IDF chooses to be the Officer in Charge the absolute authority over any water-related issues in the West Bank. All the provisions, including laws, regulations, orders, decrees, proclamations, and directives concerning water that were in force in the West Bank can be declared invalid and replaced by new ones.<sup>42</sup>

Military Order No. 158 is referred to as "The Order Amending the Control of Water Law", which ordained that Water Establishments require a permit and are under the full direct command of the Officer in Charge. Water Establishment refers to "any construction or building intended for the production of surface water or ground water, including drilling or the diversion of water from any water sources whatsoever". Every installation or resource built without a permit will be confiscated. This law came into force on November 19 1967.<sup>43</sup>

Military order No. 291 is referred to as " The Order Concerning the settlement of Titles and the Regulation of Water". It came into force on January 1 1969. This order declares all land and water-related arrangements before 1967 as invalid.<sup>44</sup>

Military order No. 457 is referred to as "The Order Concerning the Regulation of Natural Resources Affairs". It came into force on March 1 1972. This order established a Competent Authority and vested it with the power to decide upon land and water allocations. The Competent Authority also had to estimate damages from activities of the Authority.<sup>45</sup>

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<sup>42</sup> "Israel Defence Forces - Order No. 92.", 5 Pal. Y.B. Int'l L, 1989, pp. 348-358.

<sup>43</sup> "Israel Defence Forces - Order No. 158.", 5 Pal. Y.B. Int'l L. 1989, pp. 351-354

<sup>44</sup> "Israel Defence Forces - Order No. 291.", 5 Pal. Y.B. Int'l L. 1989, pp. 355-356.

<sup>45</sup> "Israel Defence Forces - Order No. 457 ", 5 Pal. Y.B. Int'l L. 1989, pp. 357-358.

## 4 Placing the Thesis in the Research Spectrum

This chapter reviews the Israel-Palestine water conflict in relation to human rights. To do so, the following literature review presents the corresponding scholarship in three steps, beginning with the section about the understanding of water as a right and whether or not it is applicable in OPT. Secondly, a discussion of power discourse will be introduced, in order to illustrate the underlying mechanism that allows the dominant power to frame the political agenda and its outcomes. Understanding the asymmetrical power discourse helps to grasp the impact of the IDF's power, and why there has not been reached a sustainably successful agreement between Israel and Palestine yet. Thirdly, an overview of the IDF's Military Orders in light of IHL and ICCPR will be discussed, aiming to focus on some of the IDF's actions.

### 4.1 The Right to Water Access in the Context of the Conflict

International Public Law (IPL) is applicable in times of peace and International Humanitarian Law (IHL) is applicable in times of war or occupation.<sup>46</sup> This section will first present IPL and subsequently IHL. The right to water is always subject to discussions in terms of what should be included in that right and what in turn should be excluded. This derives mostly from the fact that the right to water is not explicitly constituted in the different legal instrument of IPL, but rather included within other rights. In the International Covenant on Civil and Political Rights (ICCPR) for instance the water is included within the right to life, as some experts consider water to be an essential need for a basic life.<sup>47</sup>

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<sup>46</sup> Abu-Eid, 2007, pp. 285-301, p. 286. & Gamal, 1998, pp 411-574, p. 461- 462.

<sup>47</sup> Abu-Eid, 2007, pp. 285-301, p. 289.

In the International Covenant on Economic, Social and Cultural Rights (ICESCR), however, the right is anchored more notably, as the UN Committee adopted a general comment on it in 2002.<sup>48</sup> The UN Committee, belonging to the ICESCR, is responsible for defining the content and obligations attached to the right to water in accordance with Articles 11 and 12. They have suggested that the right to water should be considered a human right but limited to drinking water,<sup>49</sup> and that the right to drinking water should refer to all persons, without any form of discrimination.<sup>50</sup> Here it becomes important to define *the state*, to determine against whom the state has the obligation to accommodate this. Is it only their citizens or is it all the people within its territory? This is a question that is discussed later in this thesis, but first it shall be highlighted that there is a distinction between different human rights instruments and their applicability.

When we speak of the human right to water, we need to distinguish between two types of human rights. The first one is Civil and Political Rights; and the second is Economic, Social and Cultural Rights. These two types of rights need different conditions to be implemented. Civil and Political Rights do not require an extensive budget to be implemented, while Economic, Social, and Cultural Rights do need substantial financial backing,<sup>51</sup> making a state's economy an important factor for the ability of implementing human rights; including the right to water. This knowledge is vital to grasp in order to understand what is required for the implementation of human rights. Israel has ratified both ICCPR and ICESCR, but it is a matter of disagreement if these instruments apply to OPT.<sup>52</sup> The Israeli government argues that ICESCR is not applicable to OPT because the Palestinians are not citizens of the State of Israel and therefore they have no obligation to fulfill its provisions in regard to Palestinians. Unlike ICESCR, ICCPR explicitly states the equality before the law (Article 26), no matter the subject's citizenship, obliging the Israeli state to treat the Palestinians equally compared to the Israeli citizens and settlers in OPT.<sup>53</sup>

When it comes to the implementation of IHL, it gives the occupant the right to

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<sup>48</sup> Abu-Eid, 2007, pp. 285-301, p. 290. & K. Simone & H. Qazzaz, "Water as a Human Right: The Understanding of Water in the Arab Countries of the Middle East.", *International Journal Of Water Resources Development* 21, no. 2, 2005, pp. 253-271, p. 255.

<sup>49</sup> Simone & Qazzaz, 2005, pp. 253-271, p. 255.

<sup>50</sup> *Ibid*, p. 253.

<sup>51</sup> A.K. Biswas. "Water as a human right in the MENA region: Challenges and opportunities", *International Journal Of Water Resources Development* 23, no. 2, 2007, pp. 209-225, p. 219.

<sup>52</sup> Gamal, 1998, pp 411-574, p. 497.

<sup>53</sup> *Ibid*, p. 499.



administrate the territory, with regard to protecting its own forces. At the same time, the IHL imposes restrictions of the occupant's power and obliges it to ensure several rights for the occupied population.<sup>54</sup> However, whether IHL is applicable to OPT or not, is subject to discussions even between the Israeli government and the Israeli Supreme Court. The Israeli government argues that the long duration of the Israeli occupation undermines the applicability of provisions of humanitarian law, which had been drafted under the assumption of a relatively short period of occupation.<sup>55</sup> The Israeli Supreme Court, on the other hand, confirms the status of Israel as an occupant of OPT and therefore the conduct of the IDF in OPT shall be subject to The Hague Regulations. The IDF has changed the laws and administrated the territories in a way that make the territories' economy subordinated to the Israel's interests.<sup>56</sup>

Regarding the implementation of the Fourth Geneva Convention, the Israeli government and the Israeli Supreme Court agree that it is not applicable to OPT. They argue that the Convention is only applicable to the occupations of the territories of other signing parties, and since the West Bank had no party with a valid legal title at the time, the Fourth Geneva Convention does not apply.<sup>57</sup> Ironically, the Israeli Supreme Court uses the convention to justify actions of the Military Government.<sup>58</sup> Many have argued for the convention's applicability in OPT;<sup>59</sup> as e.g. the UN General Assembly and Security Council have noted that OPT are occupied territories and that IHL should be in effect there. It includes The Hague Resolution of 1907 and the Fourth Geneva Convention of 1949. Lately in 2004, the International Court of Justice (ICJ) confirmed the UN General Assembly's and Security Council's opinion.<sup>60</sup> This will form the background to evaluate if the Israeli Military Orders violate IHL and IPL or not.

## 4.2 The Impact of Power Asymmetry on the Conflict Nature

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<sup>54</sup> Abu-Eid, 2007, pp. 285-301, p. 295. & R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 8.

<sup>55</sup> Gamal, 1998, pp 411-574, p. 464-465. & R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 10 -11.

<sup>56</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 8.

<sup>57</sup> Gamal, 1998, pp 411-574, p. 463. & law by rule 10 -11

<sup>58</sup> Gamal, 1998, pp 411-574, p. 464-465. & R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 11.

<sup>59</sup> Gamal, 1998, pp 411-574, p. 464-465.

<sup>60</sup> Abu-Eid, 2007, pp. 285-301, p. 294.

To understand this selective application of international law in OPT regarding water; it is essential to discuss the asymmetrical power discourse, as it is decisive for who has the power to set their own agenda.

As mentioned above, after the Six-Day War Israel took control of most of the water resources in the area.<sup>61</sup> Abu-Eid raises the point that Israel and specifically the water company Mekerot have – with the purpose of controlling the land and water in OPT – an intention to transfer tens of thousands of Israeli civilians to the West Bank, putting pressure on the Palestinian population to leave the area.<sup>62</sup> As Abu-Eid concludes, there is a very apparent power asymmetry between the Israeli Government and the Palestine National Authority.

This power asymmetry has been studied by a variety of scholars, while Mark Zeitoun being the most prominent one among them. His work is crucial for this thesis because it explains the imbalance of power between Israel and Palestinians, which is important in order to grasp why certain laws are being implemented and fulfilled while others are not. Zeitoun claims that power is the primary determining factor in the conflict.<sup>63</sup> In the Palestine-Israel conflict, the terminology “cooperation” is often used, which Zeitoun considers to be misleading. Hence, Zeitoun raises the question, which actor determines the discourse, which in turn affects the outcome or in this case the fulfillment of the right to water access. He concludes that the group or institution that has the most impact on policymaking is able to set the agenda. In other words: Those who have the power can influence the discourse and outcomes.<sup>64</sup>

He uses the Oslo-agreement as evidence of a forced partnership that is an outcome of asymmetric power relations.<sup>65</sup> Signed in 1995, the Oslo agreement is one of the very few treaties between Israel and Palestine that have been ratified, but it included five issues to be resolved at a later stage; water being one of them.<sup>66</sup> Although the Palestinians' concern regarding the water issue was recognized, the agreements discourse was

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<sup>61</sup> Zeitoun, Mark, *Power and water in the Middle East: the hidden politics of the Palestinian-Israeli water conflict*, New paperback ed., Tauris, London [u.a.], 2012, pp. 214, p. 77.

<sup>62</sup> Abu-Eid., 2007, pp. 285-301, p. 297.

<sup>63</sup> Zeitoun, 2012, pp. 214, p. 2.

<sup>64</sup> *Ibid*, p. 41-43.

<sup>65</sup> *Ibid*, p. 3.

<sup>66</sup> Allan, Tony, *The Middle East water question: hydrogeopolitics and the global economy*, I.B. Tauris, London, 2002, pp. 382, p. 218.

formulated more as a need of water rather than right to water for Palestinians.<sup>67</sup> The right to water is in the agreement either avoided or replaced with "rightful allocations".<sup>68</sup>

There are a few others that have been critical of the Oslo process, as e.g. Noam Chomsky and Edward Said. They questioned if the agreement's process of implementation was ever operative and whether it constituted the enormous breakthrough that it was often presented as.<sup>69</sup> The Oslo agreement is the most lauded "cooperation" to date, but is still very inefficient. As Chomsky called it: "The outcome of cooperation between an elephant and a fly is not difficult to predict".<sup>70</sup>

Another example is the Joint Water Committee (JWC), which was also established as a follow-up to the Oslo Interim Agreement. The JWC consists of Palestinian and Israeli experts whose role is to cooperatively manage the West Banks water and wastewater systems and resources development. Important to disclose here, is that any project in the West Bank requires prior approval from the JWC and the higher authority of the Israeli Civil Administration, which is a military body. Hence, Israel has a veto power inclined to hinder and constrain the Palestinians proposals for improvement of water infrastructure projects and even well construction and rehabilitation.<sup>71</sup> Consequently, the right to water, as stated in the Palestinian law, has been granted only very limitedly.<sup>72</sup>

### 4.3 Military Orders Regarding Water With Consideration of IHL and ICCPR

This leads us to the IDF and their production of law-like rules, which the IDF calls Military Orders. By the Military Orders regarding water, Israel has gained control of all water resources and issues concerning water, such as water exploration, production, distribution, recycling, and treatment. The Palestinians are excluded from participation in the

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<sup>67</sup> Zeitoun, 2012, pp. 214, p. 77-78.

<sup>68</sup> Zeitoun, 2012, pp 214, p. 78.

<sup>69</sup> J. Selby, "Dressing up Domination as 'Cooperation': The Case of Israeli-Palestinian Water Relations.", *Review of International Studies*, 2003. pp, 121-138, pp. 122.

<sup>70</sup> Zeitoun, 2012, pp 214, p. 7.

<sup>71</sup> Marie, A, et al. 2012, pp. 1-13, p. 7. & Abu-Eid, 2007, pp. 285-301, p. 286.

<sup>72</sup> Marie, A, et al. 2012, pp. 1-13, p. 7-8.

management process of the water. As a result, the Palestinians' right to water access has been violated by the IDF, which is according to the obligation set in ICESCR responsible for ensuring this. This argument is put forward by Abouali who states, following the ICESCR's provisions, that Palestinians should control their natural resources.<sup>73</sup> Israel, however, claims that water pipelines and wells in the Palestinian territories are frequent targets of terrorist attacks and that Palestinians often "steal" water from other communities in OPT. Consequently, Israel justifies its control of water sources and inequitable distribution of water, by focusing on the security issues for its citizens in OPT, with other words the settlers.<sup>74</sup> This is an interesting view on the situation, taking into account that this is an outcome of political asymmetrical power and that according to the IHL Israel is only allowed to protect their army and not the settlers within OPT.

The impact of the Military Orders has been that the power earlier distributed on several instances in Jordanian Law is now given exclusively to the Officer in Charge, as prescribed in Order 291 "Power of the Officer Responsible for Settlement of Disputes over Land". This has resulted in a discriminatory treatment of Palestinians in the West bank in comparison with Jewish settlers. As an example, the Military Order No. 291 has ignored the previously existing Jordanian Law that forbade expropriation of private property unless fair compensation is paid and also gave the right to appeal a decision. This Military Order abolished the procedures for the settlement of the land disputes, which earlier required the involvement of the settlement court, affecting the land registry determination.<sup>75</sup>

Accordingly, Israel ensured that the titles to large areas of land remain disputed. Those who wish to prove their right to the land in the West Bank have to apply and carry the burden of proof. If the applicant fails to prove that he loses the land, it becomes the state's property. This is also applied to wells and shares, since the water is treated equally to land, according to the Military Order.<sup>76</sup> In addition, drilling of new wells has been allowed only five times since 1967. This has had an effect on the agriculture, since irrigation has to depend on rainwater only.<sup>77</sup> The current situation has resulted in Pales-

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<sup>73</sup> Gamal, 1998, pp 411-574, p. 573.

<sup>74</sup> J. Niehuss, "The Legal Implications of the Israeli-Palestinian Water Crisis." 5.1 Sustainable Dev. L. & Pol'y 13, 2005, pp. 13-18. p. 16-17.

<sup>75</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 28-29.

<sup>76</sup> Ibid, p. 62.

<sup>77</sup> Ibid, p. 65-66.

tinians leaving their work in the agricultural sector and instead work in Israel. This has had two implications for the Palestinians in the West Bank: Firstly, the West Bank has been more depending on the Israel when it comes to agricultural products.<sup>78</sup> Secondly, to work in Israel requires an identification card for Palestinians from the West Bank to be able to move freely between the state of Israel and OPT. The military government is in charge of providing those cards for Palestinians.<sup>79</sup>

The Israeli authorities deny charges that their policies impose discriminatory water practices on the Palestinians. The Israelis contend that the existing Palestinian water network has expanded under Israeli governance and that water consumption has increased by 20% since 1967. Israelis argue that the problem is an insufficient supply, which is mainly a result of Palestinian mismanagement of the water system. The Palestinian authorities have repelled those allegations and argue instead that although the consumption has increased, the population has grown faster, producing a net decrease in consumption per capita.<sup>80</sup>

Although the Palestinian water law from 2002 states that every person has the right to water, without any consideration of citizenship,<sup>81</sup> the Palestinians have not been able to enjoy those rights, such as development of the agricultural sector, as much as the Jewish settlers.<sup>82</sup> The effect of today's situation is that Israel violates the international law through its actions and policies.<sup>83</sup> In fact, Israel has worked to maintain a competitive advantage for Jews both in Israel and OPT.<sup>84</sup>

When we understand the Israeli position and argumentation, we can study the situation that is now prevailing in the West Bank.<sup>85</sup> During the occupation, Israel has reduced the jurisdiction of the local West Bank courts and abolished the Court of Cassation, which was the third level of appeal in the law system structure before the occupation.<sup>86</sup> Furthermore, it has reduced the instances where appeal can be submitted to the High Court of Justice in the West Bank and replaced it with its own High Court of Jus-

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<sup>78</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 65-66.

<sup>79</sup> Ibid, p. 74-75.

<sup>80</sup> Hilal, 2004, pp. 421-448. p, 428.

<sup>81</sup> Marie, A, et al. 2012, pp. 1-13, p. 7-8.

<sup>82</sup> Bitar, 2014, pp. 15-18, p 15-16.

<sup>83</sup> Dillman, 1989. pp. 46-71, p. 60.

<sup>84</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 11.

<sup>85</sup> Ibid, p. 11-12.

<sup>86</sup> Ibid, p. 18.

tice. This is an unusual case,<sup>87</sup> and long-time lawyers claim that under such conditions it is hard to help their clients to obtain justice and a fair trial.<sup>88</sup> The whole structure of the occupation and the production of Military Orders are not entirely in accordance with IHL. The system promotes unequal treatment of the people living in the West Bank, depending on their citizenship, which is a direct violation of the ICCPR Article 26.

By this literature review I have discussed the understanding of water as a right and whether or not they are applicable in OPT. Secondly, a discussion of power discourse was introduced, in order to illustrate the underlying mechanism that allows the dominant power to frame the political agenda and its outcomes. Thirdly, an overview of some of the IDF's Military Orders general impacts were discussed and how a selective employment of international law in regard to water rights happens in support of the occupant's own agenda.

Although Abouali's and others scholars' studies have covered the Military Orders they have not analyzed them specifically. By doing so, my thesis fills an analytical gap of the Israel-Palestine water conflict, employing a human rights approach and specifically IHL with equality criterions. In the following section, a theoretical framework will be presented that informs the view of how the Military Orders could be interpreted in the context of the current situation. More specifically, the framework builds on three perspectives which are Hannah Arendt's theory "right to have right", Edward Said's way of explaining discourse by orientalism and the concept of Rule of Law.

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<sup>87</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 26.

<sup>88</sup> Ibid, p. 41.

# 5 Theory and Methodology

## 5.1 Power and Citizenship

By developing Hannah Arendt's theory "right to have a right", with the help of Edward Said's "Orientalism" and the understanding of the concept Rule of Law, I introduce a novel perspective to understand the Military Orders' impact. Furthermore, I offer new ways of using Arendt's theory in the field of human rights. In other words, I supplement the concept of citizenship with the ramifications of historical effects and the respective judicial system in place. As mentioned earlier in the discussion of the existing literature, Palestinians in the West Bank living under occupation do not enjoy the same rights as Jewish settlers. In order to enjoy basic rights in OPT, one is required to be a holder of the Israeli citizenship. In contrast, Palestinians do not have the same rights, not even basic ones, such as access to water. Citizenship is a known factor in the context of the Arab-Israeli water conflict, but has not been supplemented with the variables above, and therefore not been understood in its full effect. Nor have the IDF's Military Orders regarding water been taken into due consideration, which however are key to the institutionalization of the biased treatment against Palestinians.

There is a significant effect of citizenship on the enjoyment of rights. Arendt put forward the concept of the "right to have a right". She is one of the first scholars that highlighted the hardship of stateless people by problematizing the term human rights. She makes it clear that there is a difference between human rights in theory and practice. Arendt is critical of the term human rights, arguing that they can only be seen as a theoretical framework. According to her, the purpose must be, to give all human beings a juridical status and political affiliation in order to make the concept of human rights work in practice.<sup>89</sup> In her eyes, human rights depend on state- and citizenship, meaning that human rights can be lost when individuals lose their government.<sup>90</sup> In the case of

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<sup>89</sup> A, Hannah, "The origins of totalitarianism", 1. ed., Harcourt, Brace, New York, 1951. Pp. 298, p. 298.

<sup>90</sup> Ibid, p. 291.

the Israeli-Palestinian water conflict, we can conclude – recalling the literature in the field – Palestinians do not enjoy equal treatment compared to the Jewish settlers, which derives in part from the fact that the Palestinian Authority does not enjoy full statehood nor do its nationals possess full citizenship, while their Israeli counterparts do. Therefore, the Palestinian population should be seen in light of Arendt’s claim that stateless people cannot rely on any institution to guarantee their rights. To develop her theory further, a discussion of the asymmetrical power discourse is introduced for a better understanding of the institutions and their duties.

The conflict between Arabs and Israelis has contributed to turning even the simplest perception of Arabs into a politicized matter.<sup>91</sup> The commonly produced discourse of today’s Middle East is a democratic Israel with great political power, while Arabs are pictured as evil, totalitarian and terroristic.<sup>92</sup> Edward Said creates the concept of “Orientalism” as the main discourse between West and East.<sup>93</sup> There are several definitions of Orientalism, the most prominent of them being Western domination that expresses itself through the restructuring and exercise of power over the Orient.<sup>94</sup> From the time when Palestine was under the control of the British Mandate a picture of ‘Arab’ was produced seen as an “advanced quasi-occidental society”<sup>95</sup>, helping Europe to strengthen its identity and gain power by putting itself in contrast to the Orient.<sup>96</sup>

I would like to recall the fact that the Israeli institutions cannot agree whether or not its existence in the West Bank is as an administrator or occupant, as discussed earlier in the literature review. The term administrator itself is remarkable, as it is used in the UN Charter chapter 11 and 12 to describe colonizers who during the imperialism were still viewed as administrators over colonized countries until they would reach a self-governing status.<sup>97</sup> This reveals that Israel is using the same term as colonizers once did. Using Edward Said’s concept to this analysis will illustrate the effects of the scheme Israel once inherited from the British mandate in Palestine on nowadays’ situation.

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<sup>91</sup> E. Said, *Orientalism*, Penguin, London, 2003, pp 396, p. 26.

<sup>92</sup> *Ibid*, p. 27.

<sup>93</sup> *Ibid*, p. 11.

<sup>94</sup> *Ibid*, p. 3.

<sup>95</sup> *Ibid*, p. 306.

<sup>96</sup> *Ibid*, p. 11.

<sup>97</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Chapter 11 and 12, Available at: <http://www.refworld.org/docid/3ae6b3930.html> (Accessed 8 January, 2017).



The asymmetrical power discourse between Israel and Palestine creates a dichotomy between *us* and *them*, or more precisely Arabs and Jews. Although the Jewish population originates from many different tribes from all over the world, there has developed a general understanding that Israel can be considered a Western country, as understood by Said. Therefore, the asymmetrical power discourse has a crucial role in the conflict and to what extent human rights are implemented here.

To include Arendt's theory, it is important to understand that no matter how well the governments implement human rights, human rights will be violated when a person becomes stateless. This means that if there is not an authority that can guarantee Palestinians a citizenship then they will not either be guaranteed any rights. States and governments will consciously or unconsciously violate a stateless person's rights.<sup>98</sup> Stateless individuals should have the right to have a right, allowing them to make a claim on their rights.<sup>99</sup> When there is an insufficient implementation of human rights, i.e. a state is not living up to the norms that have been agreed on in their framework, then it is a violation of the so called Rule of Law.<sup>100</sup>

The Rule of Law concept describes the absolute authority of legal principles in a constitutional state over arbitrary decisions by individuals, applying the law equally to everybody without any form of discrimination. In regards to human rights, this includes inter alia the due consideration of fairness and equal ideas. The Rule of Law is in this meaning associated with political ideals such as the separation of powers and the independence of the judiciary.<sup>101</sup> Since the IDF uses its power to advance the Jewish settlers rather than for an equal treatment of everybody in OPT, one can argue that the Rule of Law is not accomplished there but rather a situation where the 'Rule by Order' is in place. With the use of Rule by Order I mean that IDF's Military Orders are the ruling principles.

The idea of citizenship is essential in the perception of human rights in states. The citizenship is perhaps the broadest and most general quality of membership. To be a citizen is to be a member of a political community. Over the past two hundred years, citizenship and nation have become inextricably intertwined. Citizenship gives the right

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<sup>98</sup> Arendt, 1951, pp 298, p. 293.

<sup>99</sup> Ibid, p. 296.

<sup>100</sup> J. Waldron, "The Concept and the Rule of Law.", Georgia Law Review, Forthcoming; NYU School of Law, Public Law Research Paper No. 08-50, 2008, pp. 66, p. 6.

<sup>101</sup> Ibid, p. 7.

to claim a set of human rights. As Arendt demonstrates, it is hardly possible to have privileges attached to citizenship without establishing another group that ends up disadvantaged because of the exclusion from the membership. Citizenship is a key concept to describe the state as a political community. Therefore, it is necessary to see citizenship as a central term in the discussion of the state. Furthermore, through Edward Said's interpretation of asymmetrical discourse produced in language the meaning of citizenship becomes essential to highlight. The Understanding of the asymmetrical power discourse and its consequences helps to identify if at all Military Orders consciously or unconsciously violate Palestinians' right to water access. This is relevant for my thesis because Palestinians citizenship is ineffective since the Palestinian Authority does not perform under complete statehood. The discussion of the Rule of Law lets us conclude that a state, which includes the state's power and sovereignty, has a significant role in the implementation of human rights and if it does not fulfill that, it is probably violating human rights and holds an unlimited power.

## 5.2 Methodology

In this thesis, both quantitative and qualitative content analysis will be applied, meaning that I will be looking at both the coding units' number of appearances and the context the units appear in.<sup>102</sup> Krippendorff has categorized the application of content analysis for six different types of texts, one of them being institutional processes.<sup>103</sup> My material is produced by an institution and therefore fits into this category. Content analysis of institutions often focuses on communications,<sup>104</sup> such as legal explanations or legal conditions. This is essential for this study, since the material is supposed to function as a law-like instrument. Therefore, it will be fruitful to look at certain legal explanations and legal conditions, as an expression of power.<sup>105</sup>

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<sup>102</sup> F. Kohlbacher, "The Use of Qualitative Content Analysis in Case Study Research." *Forum: Qualitative Social Research* 7, no. 1, art. 21, 2006, pp. 1-30, p.10.

<sup>103</sup> K. Krippendorff, *Content analysis: an introduction to its methodology*, 3rd ed., SAGE, Thousand Oaks, Calif., 2013, pp. 441, p. 51-52

<sup>104</sup> *Ibid*, p. 73.

<sup>105</sup> *Ibid*, p. 74.

Through employing content analysis, I will be able to understand better the nature and purpose of the IDF's Military Orders and specifically the way the institution judges the legitimacy, the appropriateness of its actions, and the longstanding occupation of the West Bank. Accordingly, the content analysis is an appropriate tool to reveal the IDF's stance on water rights in OPT.<sup>106</sup> The aim is to reveal what impact the IDF's Military Orders have on the right to equal protection before the law stated in ICCPR Article 26 with consideration of the right to water access in OPT. Furthermore, it will be noteworthy to look at power relationships and established implicitly in the way of how communication takes place. Authoritative power, contractual agreements, and inequalities are all constituted primarily in how the language is used and secondarily in what is said.<sup>107</sup> One example of this is, as mentioned earlier in the discussion of the literature review, the language used in the Oslo agreement, where the right to water is either avoided or replaced with "rightful allocations".<sup>108</sup> This pattern can also be seen in the Military Orders regarding water.

To achieve the ambition of this study, I perform both a quantitative and qualitative content analysis of my material. Qualitative methods are used to produce new hypotheses and theories, while quantitative methods are used for testing hypotheses and evaluating theories.<sup>109</sup> Qualitative and quantitative methods should not be seen as rival camps but rather as complementary to each other.<sup>110</sup> The strength of qualitative content analysis is that it is strictly controlled methodologically and that the material is analyzed step-by-step.<sup>111</sup>

Additionally, to the qualitative and quantitative method, I will apply the methodology in two different analysis processes, focusing on different coding units. There are two reasons for why I will do two different analysis processes; the first reason is that although my material is not extensive, it is juridical, yet fruitful; the second reason is to get a better reliable result since the material will be analyzed from two different viewpoints. Moreover, the fact that both quantitative and qualitative content analyses are

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<sup>106</sup> Kohlbacher, 2006, pp. 1-30, p. 77.

<sup>107</sup> Krippendorff, 2013, pp. 441, p. 79.

<sup>108</sup> Zeitoun, 2012, pp 214, p. 78.

<sup>109</sup> Kohlbacher, 2006, pp. 1-30, p. 13.

<sup>110</sup> Ibid, p. 1-2.

<sup>111</sup> Krippendorff, 2013, pp. 441, p. 77-78.

used in the study increases its validity, as each finding will be assessed from several angles.<sup>112</sup>

I will in the first process of my analysis focus on the introduction of all four Military Orders, since they all start with defining terms that are used in the Military Orders, such as the West Bank, which is defined as “the Area”. In this process, I will focus on the terms’ characteristic and if they are employed in a euphemistic or concealing manner. Thus, step one in this analysis process one looks at what and how different terms in the beginning of each Military Order are presented. I will further count how many times they occur in all four Military Orders. The occurrence of each term will help to determine how relevant they are in the context.

In step two, I will try to identify which words are being more explained and which are tried to be veiled and replaced. My aim here is to contextualize those terms and highlight why they are shortened. Further, I will look at similarities and differences between those shortened terms and within all four Military Orders and apply the theory.

In process two of the analysis, I use a model, see figure 1.1 on page 25, called inductive model analysis. With support of the research question, I have identified four coding units I will in step one search for in the primary material: power, Palestinians, right(s) and water. I consider these to be small units but with rich and complex description reliability. Ultimately, the number of occurrences of each unit informs me where to look deeper in the qualitative analysis part, considering the context in which they appear and analyzing them through my theoretical lens.

In step two, I will construct a coding agenda and select quotes from the material that are demonstrative for an overarching discourse. Here, I will look for how the IDF use these units in their Military Orders, revealing their perception of the right to have access to water and Palestinians in OPT as well as how power plays a role in the design of their agenda. Further, I will look for the use of similar words and synonyms replacing these four units. In the end of this process, I will compare the result of the analysis of each Military Orders.

Eventually, I will connect my findings from process one and two and apply the theoretical framework for a deeper interpretation of the result.

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<sup>112</sup> Krippendorff, 2013, pp. 441, p 24-27.

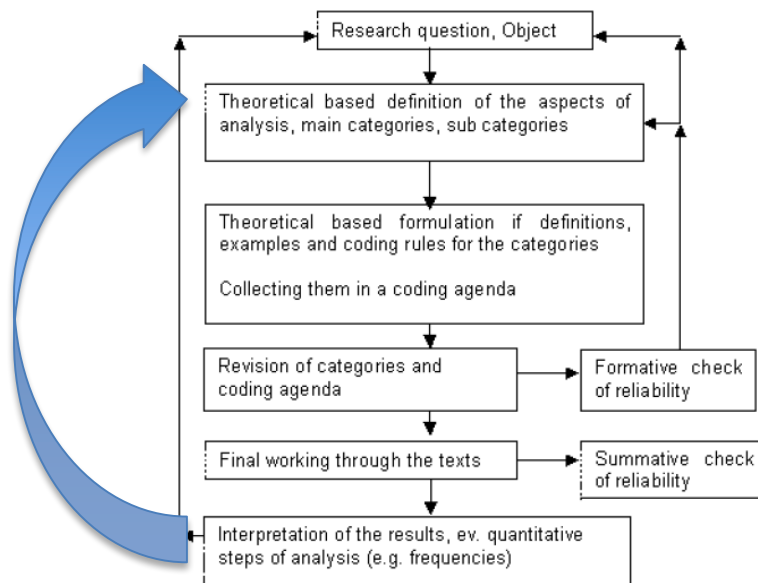


Figure 1.1 Inductive model analyses<sup>113</sup>

Eventually, I will connect my findings from process one and two and apply the theoretical framework for a deeper interpretation of the result.

### 5.2.1 Critic of the Methodology

The central flaw that is pointed to in regard to content analysis is that it focuses exclusively on written or spoken content. Hence, content analysis only examines what is expressed explicitly. Further, it often comes along with a biased view of the material, excluding other potential variables. This means that in the content analysis the researcher already has concluded what to study and what to synthesize from the material, which means that something else is being left out, despite its existence. There are also other validity problems associated with the method. One is that words can be ambiguous and vague, i.e., have different but not distinct meanings, such as rights. To avoid these obstacles, this thesis will utilize two separate coding agendas, examining the material from two different processes. Furthermore, the discussion of the literature has provided a good foundation of the understanding of water as a human right and equal rights, which means that the terms water, rights, and power are operationalized.

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<sup>113</sup> P. Mayring, "Qualitative Content Analysis." In Forum: Qualitative Social Research" Forum: Qualitative Social Research 1, no. 2, art, 20, 2000, pp. 105-114. p. 109.

# 6 Analysis and Result

## 6.1 Defined Terms in Military Orders

In this part of the analysis, I am looking for the defining terms the IDF use in the beginning of each Military Order. I will be both counting them and explore their characteristic, looking in particular at whether they are used in a euphemistic or concealing manner.

### 6.1.1 From Military Order no. 92

1. *The Prescribed Day*: stands for June 7 1967  
Number of appearances: 4 times.
2. *The Water Provisions*: stands for "all the provisions, including laws, regulations, orders, decrees, proclamations and directives...relative to water..." with other words this term includes all provisions related to water issues.  
Number of appearances: 9 times.
3. *The Area*: The West Bank  
Number of appearances: 3 times.
4. *The Officer in Charge*: whomever the IDF military commander might choose for the purpose of this Order.  
Number of appearances: 7 times.
5. *The Jordanian Government*: "The government of the Hashemite Kingdom of Jordan"  
Number of appearances: 1 time, only to define what they mean by *The Jordanian Government*.

### 6.1.2 From Military Order no. 158

1. *The Original Order*: Order Concerning Powers for the Purpose of the Water Provisions Order, so Military Order no.92.  
Number of appearances: 2 times.
2. *The law*: Control of Water Law, no. 31, 1953.  
Number of appearances: 6 times.
3. *Water Establishment*: Constructions and buildings intended for the production of surface water, including drilling or the diversion of water from any water source.  
Number of appearances: 12 times.
4. *The Officer in Charge*: Refers to what was specified in the Original Order, i.e. whomever the IDF military commander chooses for the purpose of this Order.  
Number of appearances: 24 times.
5. *Owners*: Those who are in connection with land and a water establishment include those who have the right of disposal thereof.  
Number of appearances: 1 time only to define what they mean by *Owner*.

### 6.1.3 From Military Order no. 291

1. *The settlement law*: The settlement of Titles and Regulations of Water Law No. 40, 1952, and every proclamation regulation, directive or order issued on the strength of or pursuant to it.  
Number of appearances: 4 times.
2. *The settlement order*: "The Settlement Court", "The Regulation Schedule", and "The Director" - as specified in the Settlement Law.  
Number of appearances: 6 times.
3. *The Officer in Charge*: whomever the IDF military commander might choose for the purpose of this Order.  
Number of appearances: 3 times.

### 6.1.4 From Military Order no. 457

1. *The law*: Regulation of Natural Resources Affairs Law, no. 37 of 1966.  
Number of appearances: 2 times.

2. *The competent authority*: The competent authority appointed by IDF military commander.

Number of appearances: 4 times.

## 6.2 Qualitative Analysis of the Defined Terms

In this step, I identify, with help of qualitative analysis, which terms are explained in detail and which are tried to be veiled and replaced. Furthermore, I will compare similarities and differences between those shortened terms and apply the theory.

In Military Order no. 92, the first identified term is *The Prescribed Day*, used four times referring to the time the Military Order got into force. Secondly, all the legal water issues are covered by the term *Water Provision*. Although the term is common in the discussion of water, it is remarkable in this case that those two words cover everything that has to do with law regarding water in the West Bank. Therefore, the use of *Water Provision* to describe all the legal water issues might give an insignificant and poor impression of its content. It appears a total of nine times in the Military Order describing how *The Officer in Charge* has the authority to rule it.

Thirdly, I observed that the name West Bank is shortened to *The Area*. By not calling the West Bank by its real name but as *the Area* gives the impression that it could be any area, diverting the attention away from the West Bank. In contrast, *The Jordanian Government* is not shortened or replaced with only the Government, which would have been equivalent to the way the Military Order refers to the West Bank. Another interesting observation is that the term *The Jordanian Government* is stated but not used in Military Order 92 or any other Military Orders regarding water. Lastly, in this Military Order there is the expression *The Officer in Charge*, referring to the power of the IDF military commander to select whomever he finds suitable to be in charge. This specifies how it is one person who has the supreme authority in the West Bank.

Military Order no. 158 is an appendix to Military Order no. 92, based on the Jordanian Law no. 31, 1953,<sup>114</sup> ignoring that the Law no. 31, 1953 was repealed by The

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<sup>114</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 113.



Jordanian Law no 51, 1959.<sup>115</sup> In the Military Order no. 158, Military Order no. 92 is identified as *The Original Order*. The Jordanian Law no. 31, 1953 is referred to as *The law*, which is interesting given that it could refer to any law and cause confusion.

Furthermore, in this Military Order *Water Establishment* is used twelve times in the context of referring to constructions and buildings proposed for production of any water source. It could be confused with what was mentioned in Military Order no. 92 about *Water Provision*. Both terms include, for instance “digging wells”, but refer to it in different ways. *Water Establishment* covers the meaning of “digging wells” as in the real practical purpose of building and construction, while the *Water Provision* refers to it in a legal way. Thus, both ways of referring to digging wells complement each other and provide *The Officer in Charge* with an all-encompassing authority.

Similarly, to Military Order no. 92, the term *The Officer in Charge* is used to refer to the authority of the IDF military commander to select anyone to be in power, without being questioned. Moreover, the word *Owners* is used and it includes those who dispose the land and water. The *Owners* refers to Palestinians that have the right to disposal, which here refers to property that has been transferred to another person's possession, typically by deed or will.<sup>116</sup> In light of the literature discussed above, I understand that it refers not only to property as land but also to *Water Establishment*, such as the production of water.

In Military Order no. 291 there are two new definitions next to *The Officer in Charge*, which has the same definition in the other Military Orders. The second definition is *The Settlement Law* and it refers the Jordanian Law No. 40/1952. This law regulates the settlement and registration of land and water rights in the Jordanian Land registry, including the West Bank, as well as provisions on the registration process. Furthermore, the definition includes any proclamation, regulation, directives and notification or order issued regarding this matter. The definition is incomprehensible, since it does not provide the reader with knowledge of the Jordanian law.

The second definition in this Military Order is the *Settlement Order*; it includes different institutions, such as the settlement court, the regulation schedule and the director. This Military Order is based on specified definitions in the Jordanian Law that are

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<sup>115</sup> Gamal, 1998, pp 411-574, p. 485.

<sup>116</sup> Search for: [Disposition], Available at: <http://legal-dictionary.thefreedictionary.com/> (Accessed 8 January, 2017)

not mentioned, which makes it incomprehensible but headmost unclear. On the whole, with help of the literature review one can conclude that this order was made to control and limit the land registration of Palestinians.<sup>117</sup>

Military Order no. 457 contains two terms that are defined. The first term is *The Law*, and it refers to the Jordanian law “Natural Resources Affairs Law, no. 37 of 1966”. This can be confused with *The Law* definition earlier in Military Order no. 158 that referred to the Control of Water Law, no. 31, 1953. The fact that the Military Orders assign different Jordanian laws the same term “The law” is confusing and unclear. The second term is *the Competent Authority*, which is an authority that is elected by the IDF military commander. This term is similar to the term *The Officer in Charge*, since it stands for the same contents. It gives the IDF military commander the authority and indivisible power to select this *Competent Authority* for the West Bank. In difference to the term *The Officer in Charge*, this term uses the word *Competent*, which at least is describing that whomever is selected by the IDF military commander should be competent.

### 6.2.1 Result of Process One

In sum, the defined terms are sometimes difficult to follow and understand, since they are not well explained, such as *The Law* and other terms are confusing since they are defined in the beginning of the Military Order but never used, such as *The Jordanian Government*. Furthermore, the majority of these terms show and confirm how much influence rests with the IDF military commander, given that he can arbitrarily select anyone he finds suitable to allocate his power to.

The results from both the quantitative and qualitative analysis confirm the authority of the IDF military commander – and on a broader scale the IDF as a whole – as the military commander is able to select whomever he wants to be in charge without being questioned. When applying the theory to this result, it becomes reasonable that this is a symptom of that the Rule of Law concept is not functioning, and has rather been replaced by the Rule by Order. Furthermore, the fact that the Military Orders regarding water ascribes the power to one person, the IDF military commander, is an indication of

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<sup>117</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 62.

an asymmetric power discourse.<sup>118</sup> The result from this analysis process will either be confirmed by the analysis in process two or appear as infrequent.

### 6.3 Counting Coding Units

In this step, I will count the number of appearances of the four following previously identified coding units in the primary material: power, Palestinians, right(s) and water.

This table shows how many times each term has appeared in which Military Order.

<b>Military Order</b>	<b>Order no. 92</b>	<b>Order no.158</b>	<b>Order no.291</b>	<b>Order no.457</b>	<b>Result-totally</b>
<b>Power</b>	<b>10 times</b>	<b>3 times</b>	<b>4 times</b>	<b>0 times</b>	<b>17 times</b>
<b>Right(s)</b>	<b>0 times</b>	<b>2 times</b>	<b>0 times</b>	<b>1 time</b>	<b>3 time</b>
<b>Palestinians</b>	<b>0 times</b>	<b>0 times</b>	<b>0 times</b>	<b>0 times</b>	<b>0 times</b>
<b>Water</b>	<b>23 times</b>	<b>24 times</b>	<b>5 times</b>	<b>2 times</b>	<b>54 times</b>

As we can conclude from this quantitative content analysis of terms, Water and Power are getting most attention. In contrast, we can see that the term Right(s) and Palestinians were not given any, or very little attention. Thus, in accordance with my coding agenda, I will look further at how the power is described and if it is put totally in the IDF's hand or if it is delegated to the Palestinian authority, too.

### 6.4 Military Orders Focus on Power

In this step, the results from the coding agenda will be presented through representative quotes which include the most common coding units' power and water and similar words and synonyms to the coding unit right(s) and Palestinians. Thereby, I illustrate how they are being used and defined within a context and meanwhile apply my theoretical perspective to it.

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<sup>118</sup> Zeitoun, 2012, pp. 214, p. 41-43.

### 6.4.1 Military Order no. 92

Military Order no. 92 is also called “Order Concerning Powers for the Purpose of the Water Provisions.” This Military Order describes who has the authority to take decisions concerning water provisions. It highlights two out of four coding units, as we can see from the result in the quantitative analysis, in step one. The two coding units in focus are power and water. The two other coding units, right(s) and Palestinians are not mentioned explicitly but are implied in Permits Licensees which replaces rights and occupant standing for Palestinians.

On the publication of the Order appointing him the Officer in Charge shall be entrusted with all the powers conferred by the Water Provisions on any person or the occupant of any post.<sup>119</sup>

This quote states that the Officer in Charge has all the power presented in the definition of the term *Water Provisions*. This means that the Officer in Charge can take any decision regarding water provision in the West Bank, since he has all the power. This power can be used upon any person or occupant of any post. Which means that the Officer in Charge has the authority both over the Israeli- and Palestinians citizens’ access to water.

The Officer in Charge may act by virtue of his appointment, as above, and he may confer on others his jurisdiction and powers, either permanently or temporarily and with or without conditions, in all cases as he deems fit.<sup>120</sup>

The focus here is on the coding unit power. Although the word itself only appears once, it is mentioned in other ways, as e.g. “by virtue”, “he may confer”, “his jurisdiction”. All these synonyms describe the authority of the Officer in Charge. The Officer in Charge, as it was mentioned in process one of the analysis, is whomever the IDF military commander selects. This quote is a great example of how power rests with an undemocratic institution. The power described here is indispensable.

Any of the above-mentioned appointments or powers that exists by virtue of the

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<sup>119</sup> Order No. 92, 1989, pp. 348, 350, p. 349.

<sup>120</sup> Order No. 92, 1989, pp. 348, 350, p. 349.

Water Provisions is hereby annulled unless revalidated by the Officer in Charge on the strength of the powers set out in this Order.<sup>121</sup>

This quote abolishes any earlier existing authority regarding all issues concerning water in the West Bank. This means that authority that existed before the occupation is annulled, unless they got revalidation by the Officer in Charge. This means that the only existing power in the West Bank is the IDF military commander, everyone else stands under his control, including the Palestinian authorities. Therefore, any real power or influence on water distribution or use is de facto taken from the hands of the Palestinian authority.

#### 6.4.2 Military Order no. 158

Military Order No. 158 also called “Order Amending the Control of Water Law.” This Military Order is based on the Jordanian Law no. 31, 1953, although The Jordanian Law no. 51, 1959, replaced it.<sup>122</sup> This Military Order also supplements Military Order no. 92. Therefore, this Military Order can be perceived as complex to understand. However, this Military Order confirms the control of the Officer in Charge over the operation of any new water installations, giving him the power to approve or disapprove any development of the water resources. According to Abouali, this Military Order expanded the power that existed in the repealed Jordanian law, now covering the control of what they call *Water Establishment*. This includes inter alia, as mentioned earlier, constructions and buildings intended for the production of surface water, including drilling or the diversion of water from any water source.<sup>123</sup>

Any person who was the owner of a Water Establishment on 19-11-1967 is obliged to submit an application to obtain an Establishment Permit before 29-3-1968, and on his submission of such application he shall have the right of disposal of and to operate a Water Establishment as long as the Officer in Charge has given no order to the contrary.<sup>124</sup>

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<sup>121</sup> Order No. 92, 1989, pp. 348, 350, p. 350.

<sup>122</sup> Order No. 158, 1989, pp. 351-354, p. 351.

<sup>123</sup> Gamal, 1998, pp 411-574, p. 485.

<sup>124</sup> Order No. 158, 1989, pp. 351-354, p. 352

In this quote “any person” refers most likely to Palestinians, but the IDF choose to leave this unclear. This quote implies that the owners of a Water Establishment before 1967, which means prior to the occupation, have to submit an application to the Officer in Charge to have the right to continue enjoying what is their property. In this quote, for the first time, the coding unit “right” is used in the Military Order. Here, the right does not refer to the general meaning of having a right, such as human rights, but rather having the permission to using a water establishment as long it is approved by the Officer in Charge. Disposal refers to property that has been transferred to another person's possession, typically by deed or will, which in this case means that the Water Establishment is no longer belonging to the owner but rather that it belongs to the IDF and that the Officer in Charge has the right to decide whether or not “any person”, i.e. Palestinians, can utilize it.

The Officer in Charge may refrain from granting an Establishment Permit without giving reasons.<sup>125</sup>

This quote is an excellent example of how the IDF assign themselves the complete power, while limiting the agency of Palestinians. In fact, it exemplifies how the Officer in Charge does not even have to explain, or let alone justify, his decisions.

The Officer in Charge may at any time cancel an Establishment Permit, change it, impose conditions on it or change all the conditions set out in it...<sup>126</sup>

This quote signifies that the Officer in Charge holds the power to inhibit equal protection before the law.

There shall be no appeal against the decisions of the Officer in Charge taken on the strength of this Article.<sup>127</sup>

By this quote the right to appeal against decisions by the Officer in Charge is repealed

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<sup>125</sup> Order No. 158, 1989, pp. 351-354, p. 352.

<sup>126</sup> Ibid, p. 352.

<sup>127</sup> Ibid, p. 353.

for the Palestinians. This quote, together with quote 2 and 3, strongly confirm that the system of having Military Orders ruling the West Bank bears certain characteristics of despotism. Although this Military Order mentions the word power only three times, it very much underlines the powers of the Officer in Charge by mentioning it several times. As the quantitative analysis part shows, “the Officer in Charge” was mentioned 24 times in this Military Order.

### 6.4.3 Military Order No. 291

Military Order No. 291 also called “Order Concerning the Settlement of Titles and the Regulation of Water”. This Military Order aims to reduce the power stated in the Settlement of Titles and Regulations of Water Law, No. 40, 1952. By this Military Order “the former procedures for the settlement of land disputes by settlement court under which title to land was conclusively determined and recorded in the land registry, were abolished. At the time when the occupation took place, only about a third of the area of the West Bank had been registered and its titles settled.”<sup>128</sup>

The effectiveness of any Settlement Order or any measure taken on the strength of the Settlement Order is suspended and all directives in the Settlement Law prohibiting the conclusion of a transaction in lands after the issue of the Settlement Order, curtails the period of such transaction, prevents, imposes conditions on or suspends any measure whatsoever with regard to land or water affairs after the issue of the Settlement Order, whether or not such measure was taken in a court, is repealed.<sup>129</sup>

In this quote, any institution that is mentioned within the definition of the *Settlement Order*, such as the settlement court, is suspended. Furthermore, it prohibits the *directives* given in the Jordanian law prohibiting the conclusion of a transaction of lands. It repeals all measures that were taken regarding land and water, no matter if the decision has been taken through court or not. This is the most essential quote in this Military Order, since it effectively changes or abolishes the former methods for the settlements of land disputes by the settlement court. This Military Order is in force, ignoring the

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<sup>128</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 61.

<sup>129</sup> Order No. 291, 1989, pp. 355-356, p. 355.

fact that it is a violation of the IHL, as it prohibits the occupier to change the domestic law without a necessary need to protect its military.

As regards a measure that was being considered by the Settlement Court on the eve of the Prescribed Day, the same court shall be empowered to consider it from the start or from the stage reached, as indicated, as it would have been empowered to do so but for the issue of the Settlement Order.<sup>130</sup>

In this Military Order the coding unit power is mentioned three times and empowered is mentioned two times. This quote states that the Settlement Court that has been issuing measures shall continue doing so, since it *shall be empowered* to do so, but with consideration to this Military Order. It is another example of how the concept Rule of Law is not implemented but rather Rule by Order is.

#### 6.4.4 Military Order No. 457

Military Order No. 457 is also called “Order Concerning the Regulation of Natural Resources Affairs.” By this Order a *Competent Authority* was selected by the IDF military and given the power to decide the value of land and water allocations. It replaced the Jordanian Natural Resources Authority.<sup>131</sup> It did so, because the IDF military deemed it “essential for the conduct of the regular administration of the Area and with the intention of ensuring the regular provision of water”<sup>132</sup>

The Competent Authority shall estimate the value of lands or water allocations or both, or any damage arising from the activities of the Authority.<sup>133</sup>

This quote describes the power of the Competent Authority. Similar to the Officer in Charge, the IDF military commander as well appoints this authority. The competent authority has the power to value the land and water allocations, instead of the former

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<sup>130</sup> Order No. 291,1989, pp. 355-356, p. 355.

<sup>131</sup> Gamal, 1998, pp 411-574, p. 485.

<sup>132</sup> Order No. 457, 1989, pp. 357-358, p. 357.

<sup>133</sup> Ibid, p. 357.



Natural Resources Authority. They also value the costs of any damages arising from the activities of the authority.

The Competent Authority shall decide the principles governing the performance of its tasks.<sup>134</sup>

This quote states that the competent authority has the power to set its own principles of governing and fulfilling its own task. It is interesting that they can set their own 'rules' of governance, giving them a free ride for any entailing actions. This is a clear indication of a Rule by Order.

Any person who considers his rights to have been impaired as a result of the decision of the Competent Authority may object to such decision, within thirty days of his receipt of the Order, before the Objections Committee as specified in the Order Concerning Objections Committees (West Bank) (no.172) 1967.<sup>135</sup>

In this Military Order the coding unit right(s) appears several times in comparison with the other Military Orders. This quote is a good example of how the term right appears in the context. In the quote, "any person" is referring to Palestinians, who consider that their right has been violated by the Competent Authority can raise an objection to the Objections Committee. The Objections Committee is formed by the IDF. This means that both the Competent Authority and Objections Committee have their foundation in the IDF. Furthermore, since the Objections Committee is formed by the IDF it has no rules of procedure and therefore might give biased recommendations to the IDF military commander, who either way has final say.<sup>136</sup>

The decision of the Objections Committee shall be final.<sup>137</sup>

By this quote the right to complain to a high court is abolished, making the possibility of a fair trial – one that is not under the auspices of the IDF – non-existent.

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<sup>134</sup> Order No. 457, 1989, pp. 357-358, p. 357.

<sup>135</sup> Ibid, p. 357.

<sup>136</sup> Gamal, 1998, pp 411-574, p. 485.

<sup>137</sup> Order No. 457, 1989, pp. 357-358, p. 358.

#### 6.4.5 Result of Process Two

All in all, the analysis of Military Order no. 92 demonstrates first and foremost how the power is only ascribed to the IDF military commander. The Palestinians are completely ignored in this Military Order, besides in regard to *the occupant of any post*. The unit Right(s) is not mentioned at all, but words as granting of permits and licenses are mentioned in the definition of the term *Water Provisions*. This means that nobody has the right to do any projects concerning water without the Officer in Charge's permission. The discourse in these three quotes together, indicate a totally asymmetric power scheme. This result illustrates that Palestinians cannot enjoy their rights in the West Bank as they are entitled to as the inhabitants of the land. They do not even have the control over their water access but have to rely on the officers in charge, selected in turn by the IDF military commander. As mentioned earlier, the Palestinian Authority has no effective power and this Military Orders confirm that regarding water in the West Bank.

Further, the analysis of Military Order No. 158 indicated that the IDF have either forgotten or more likely ignored the fact that it is a violation to change or abolish laws in the occupied territories if not absolutely necessary to protect its own military. To base this Military Order on a superseded law is also a violation, since the occupant power has no right to change the current law of the occupied territory.

Military Order no. 291 verifies this impression, as it illustrates how the IDF aim to abolish and change parts of the former Jordanian law into their favor. In fact, the adjustments put all matters regarding the registry and use of both land and water in their hands.

Through Military Order No. 457 it becomes obvious that different authorities such as: the authority that values the land and water allocation sets its own tasks, the authority that takes decision, and the authority Palestinians can appeal a decision at, all have their foundation in the IDF. Therefore, I conclude that the right to equal protection before the law is not fulfilled and neither is the concept rule of law.

To sum up, I will compare my results from step one and two of this analysis process. In step one, I found that the emphasis of the Military Orders regarding water were more on the unit's power and water then the units Palestinians and right(s). Since I was expecting the Military Orders to focus on water, I was more interested in the fact that the power was the second most common coding unit. By constructing a coding agenda, I further looked at how the unit power is used within the context. In step two of the

analysis, I showed some of the most representative quotes of the coding agenda. I mostly focused on analyzing the appearance of the unit power and its synonyms. Consequently, I established that the Military Orders aim to ascribe the IDF military commander the power and how can also appoint others to be in charge. Moreover, all Military Orders only state the date they become effective but not when they expire. In general, the languages used in the Military Orders avoids mentioning Palestinian and the term 'right', as in the definition of occupant's right(s).

The knowledge established in the section "Background" and in the discussion of the literature makes it possible to conclude that the purpose of these Military Orders is to ascribe the power regarding all water issues to the IDF military commander. Israel has more power as an occupying or administrating power than the Palestinians authority, confirming other scholars' observations. With other words, these Military Orders ascribe the complete power to the IDF and close to none to the Palestinians authorities.

The outcome of this power asymmetry is that Israel violates Palestinians right stated in IHL. Furthermore, The asymmetrical power discourse in the Military Orders also confirm that Israel maintains a competitive advantage for itself.<sup>138</sup>

## 6.5 Results of both process one and two

In this section, a comparing conclusion of both process one and two will be presented. I will apply this thesis' theoretical framework for a deeper interpretation of the results. The results from process one and two are similar, although the result from process two is more extensive. As a result of process two, I could confirm that there is an asymmetrical power discourse, what was already indicated through employing process one. In fact, this discourse is in favor of Israel in the current Palestinian-Israeli water conflict. This being said, the results of these two different analysis processes on Military Orders regarding water are in line with what was mentioned in the discussion of the literature review regarding the limited power of the Palestinian authorities in the West Bank.<sup>139</sup> With help of my theory, I will highlight those impacts, starting with describing the consequences of the asymmetrical power discourse and the language use in the Military

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<sup>138</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 11.

<sup>139</sup> Marie, A, et al. 2012, pp. 1-13, p. 7. & Abu-Eid,, 2007, pp. 285-301, p. 286.

Orders. Next, I will try to find indication of how these Military Orders might affect the Palestinians by looking at parallels between IHL, ICCPR Article 26 and the Military Orders. Furthermore, I will try to identify the impacts of the Military Orders by focusing on Hannah Arendt's theory.

By the analyzed Military Orders, it is implied that Israel is an occupying power, using the former Jordanian law to base their Military Order on.<sup>140</sup> As shown in the result of process two, sometimes the Military Orders abolish former law, giving the IDF more extensive power over the water resources and water issues.<sup>141</sup> I mentioned earlier that Israel cannot decide whether or not they are controlling the West Bank as occupants or administrator. The Israeli government points out that they are administrators and the Israeli Supreme Court believes that they are occupants.<sup>142</sup> However, in view of the fact that this occupation system is inherited by the British Mandate and that the UN General Assembly, the UN Security Council and the ICJ consider Israel to be occupiers,<sup>143</sup> I conclude them to be one, too.

Through scrutinizing the contextual meaning of the Military Orders, one realizes that the purpose of them is to justify the IDF's control in the West Bank. Based on Edward Said's theory, I argue that these Military Orders resemble the means of former imperialistic powers. The fact that the Israeli government chooses to use the term "administering" describing their existence in the West Bank confirms my argument. In fact, this term has been used in the UN Charter chapter 11 and 12, where it was referring to the imperialistic powers who would keep administering lands until they would reach a self-governing status. The term administrator appears only once in the Military Order No. 457 used by the IDF military commander himself, while the term occupant appears once within the Articles of Military Order No. 92. This is an interesting observation, since occupation is meant to last only for a limited period of time and so does the term administration, as understood in the UN Charter. When comparing these two terms to decide what Israel's control over the West Bank constitutes, Israel is portrayed as both an occupier and administrator, who does not have any plans to give the occupied the control of the water issues in the West Bank any time soon.

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<sup>140</sup> Gamal, 1998, pp 411-574, p. 451.

<sup>141</sup> Order No. 291, 1989, pp. 355-356.

<sup>142</sup> Gamal, 1998, pp 411-574, p. 464-465. & R. Shehadeh & J. Kuttub, 1980. pp. 126, p. 10

<sup>143</sup> Abu-Eid., 2007, pp. 285-301, p 294.

Said also writes about how Israelis and Arabs are described in the discourse of the Palestinian-Israeli conflict that describes Israel as a democratic country with a lot of power. I agree with evaluation that Israel holds a disproportionate amount of power, but when considering the concept of the Rule of Law, I also would state that Israel is not being completely democratic in the way it rules the West Bank. In fact, the analysis revealed that the IDF military commander's power is all-encompassing and unquestionable. This is not in line with the concept of Rule of Law but rather the Rule by Order. Therefore, I question whether Israel is being democratic when these Military Orders are executed in the West Bank, taking into account that Palestinians are not able to affect those Military Orders. I do not mean that Israel is not a democratic state but rather that Israel's democratic principles are not applied to Palestinians in the West Bank. There is a different treatment of Palestinians and Jewish Settlers in the West Bank, as shown inter alia by the fact that the Jewish settlers receive ten times more water than Palestinians.

These Military Orders have effects on the Palestinians in the West Bank. The most important effect is that the Palestinians authority is not having enough power to guarantee its population any human rights. As Hanna Arendt's implies in her theory, a functioning state is essential for the fulfillment of human rights. This might be the most prominent reason to why IHL and other human rights instruments like ICCPR are not being fulfilled in the West Bank. Since the Palestinian Authority is not given any power through the Military Orders it is close to impossible to have the provisions of IHL and other rights, such as ICCPR Article 26, being fulfilled in the West Bank.

The little attention the Military Orders pay to these legal instruments, makes the IDF miss the yardstick I established earlier and therefore constitutes violates human rights. For example, changing the existing laws in the country, as e.g. the Jordanian Law in Military Order no. 158, violates The Hague Regulations Article 43. Another example is the fact that Israelis are able to dig wells close to Palestinians water sources, as it was mentioned in the introduction, is a violation of Fourth Geneva Convention Article 53. Most importantly, these violations are immediate impacts of the fact that the IDF assigns itself much more power than the Palestinians authority in the West Bank through its Military Orders, as my analysis has shown. In regards to ICCPR Article 26, there is a difference in the way the language is used to differentiate between of *any person* and *occupants*. Additionally, on a broader scale it is given that the concept of Military Orders is aimed at Palestinians in OPT. Therefore, there is a violation of Palestinians right

to be considered equal before the Law compared to e.g. Jewish Settlers. The Palestinian inhabitants of West Bank can therefore not enjoy the right laid down in Article 26. In fact, only the supreme court of Israel admits that The Hague Regulations should be applied but none of the other abovementioned instruments.<sup>144</sup>

By having a clear picture of the analysis' result, I can conclude that the whole idea of the IDF's Military Orders is to control the West Bank and Palestinians. The system is made to treat Palestinians in the West Bank differently compared to their Israeli counterparts. The Palestinian Authority's jurisdiction is not taken into account at all by the Military Orders regarding water. Hence, the Palestinians in the West Bank are left without any authority that could guarantee them their rights, nor the right to water access nor the one to equal protection before the law. On the other hand, while Palestinians do not have any means to effectively accomplish their interests, Israel holds the power of a full-fledged state and can guarantee their citizens the rights laid down in the mentioned legal provisions. Palestinians become equal to stateless and the ramifications of that are in line with Arendt's theory. Hannah Arendt postulates that there is a difference between human rights in theory and practice, which is confirmed by looking at the Palestinian-Israeli water conflict and analyzing the IDF's Military Orders.<sup>145</sup>

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<sup>144</sup> R. Shehadeh & J. Kuttab, 1980. pp. 126, p. 8.

<sup>145</sup> Arendt, 1951, pp 298, p. 298.

## 7 Concluding Discussion

The aim of this thesis was to explore the IDF's Military Orders regarding water in the West Bank and to understand what impacts they have for Palestinians in the West Bank, with consideration of IHL and ICCPR Article 26. Further, I intended to evaluate whether or not Israel fulfills the occupation regulations and treated everyone in accordance with ICCPR 26, which establishes the principle of equality before the law. By using content analysis, I analyzed the Military Orders and applied Hannah Arendt's theory "right to have a right", enhanced with the help of Edward Said's "Orientalism" and the concept of Rule of Law. The analysis's conclusion is that the IDF consolidate their control over the water resources in the West Bank through their Military Orders. Not only do the IDF ascribe the military commander an all-encompassing power regarding water in the West Bank but also ignore the Palestinians' right to water access, if compared to the Jewish settlers.

Central to the study of Human Rights are deliberations about if and how states observe the manifold human rights. The concept is relatively new and therefore sometimes hardly tangible. Different states interpret human rights instruments differently. In the case of the Palestinian-Israeli water conflict, IHL and ICCPR Article 26 are being violated by these Military Orders. Already in the discussion of the literature review it was concluded that there is an asymmetrical power discourse in the conflict, and that in consequence Palestinians are discriminated. Through the analysis I have been able to confirm that, but furthermore I have been able to illustrate how states selectively employ the provisions that make up human rights depending on their needs. This is best exemplified in this context by Israel's interpretation of IHL.

Everything remains a matter of interpretation in the case of human rights. As Hannah Arendt once noted the concept of "right to have a right" needs to be developed. What kind of citizenship you carry should not play a role in regard to the fulfilment of human rights, and this applied even more so to having access to water, as the resource is fundamental to life and the development of such.

This research confirms other scholars' observations that there is a discrimination of Palestinians. With my approach, I explained how Israel uses the existing legal in-

struments to further its own development and inhibit the Palestinian, as it only understands The Hague regulations to be applicable to OPT. The Fourth Geneva Convention, however, is ignored and so are ICCPR and ICESCR, for reasons I presented in the discussion of the literature review.

By analyzing the Military Orders, I have been able to illustrate how the IDF ascribes itself all the power and how they are rather ruling by Rule by Order than Rule of Law. I have been able to illustrate that Palestinians are not in a position where they can affect the Military Orders. Therefore, once again I state that Military Orders are not democratic but rather despotic; taking the power from some and giving it to someone else. This has been the case since Israel started to occupy the West Bank in 1967. The occupation of the West Bank and the “state of emergency” was supposed to last for a limited time but has been going on by now for over 40 years.

The right to water has been stressed in different international treaties but never mentioned explicitly. In the Palestine-Israel water conflict there are many factors that have been playing a role for the fulfillment of different instruments, for instance that Palestine is not perceived as a state like Israel. Consequentially, Israel has more power to influence than the quasi-state Palestine. This means that to be a citizen of Israel guarantees more rights than belonging to the Palestinian population. With other words, the absence of a well-functioning state plays a role for the Palestinian population in regard to the enjoyment of human rights and access to water.

The current situation of the world order intensifies the limitation of Palestinians right to water access, since Israel has a superior position in the negotiations. Israel has more power and its mandate makes it more possible for them to establish the discourse they want, as in the case of Oslo Agreement. For the implementation of human rights, it requires both a motivation and a budget. The state must possess both, in order for the right to water access to be fulfilled. Although Palestine has within its constitution guaranteed the right to water for everyone within its territory, Palestine is not in a position where it can implement this right, since they miss both resources and the political mandate. Therefore, the only way the implementation of the right to water in the West Bank can be achieved in the future is a framework of cooperation between Palestine and Israel that sees both as truly equal.

My study lays the groundwork for further research on the Palestine-Israel water conflict and the way it is studied as well as Human Rights scholarship on the right to water access specifically and the understanding of human rights more generally. First of



all, it shall be interesting to apply this research scheme to the Gaza Strip, as it is currently de facto governed by the Palestinian Hamas, and compare the obtained results with the ones synthesized here. Further, the coding agenda employed by me may lay the foundation for scholarship evaluating other water conflicts. Also, other scholars might use other research methods, as e.g. in-field interviews, to either confirm or enhance my findings. Theoretically, I developed a framework that integrates Hannah Arendt's postulations with writings on discourse and the concept of the Rule of Law. Thereby, I established the citizenship in connection with the constitutive impact of asymmetric power discourse to be critical for the fulfillment of the right to water access. In this context, it shall be fruitful to evaluate how the Israeli constitution understands the right to water for Israeli citizens and also compare the results with this thesis. More generally, my framework opens a new perspective on human rights and will allow other scholars to develop it further, maybe by considering factors other than citizenship, as e.g. race and religion.

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