

CHAPTER 1

INTRODUCTION

A. Problem Background

The civil armed conflict between Hamas and Fatah has been a recent and ongoing issue. The rise of this civil armed conflict was triggered by the emergences of the Hamas as the Sunni Islamist Movement that appeared as the political and military rival of Fatah in the late 1980s, during the first Palestinian Intifada.¹ It was, in its beginning, established as the impact of reduction of Fatah domination era to struggling Palestinian voice combating Israel invasion to land of Palestine. The Hamas has struggled for social welfare programs of West Bank and Gaza, gaining an increasingly large amount of Palestinian land. Very often, the Sunni Islamist Movement insurgent tried to realize their struggle and their political trough force and coercive approaches to the Palestinian Authority Government and Israel.

For most of the period since the 1967, the dominant force on the Palestinian political scene has been controlled by the secular nationalist Palestinian Liberation Organization and its main Fatah Faction. That dominance was recognized in the series of agreements negotiated between Israel and the PLO under the Oslo Process from 1993 onwards², which was

¹ Intifada is an Arabic word which literally means "shaking off", though it is usually translated into English as "rebellion" or "uprising"

² See more on the Background on the Oslo Accords and the peace process can be found in Section II of Library Research Paper 05/29, *The Middle East Peace Process: prospects after the Palestinian Presidential Elections*, downloaded from PDF http://www.libraryhouseofCommons.org/library_research_paper.cfm (accessed at 10th March 2009)

intended to lead to the formation of an independent Palestinian state in the West Bank and Gaza within five years.

In return for recognizing the state of Israel, Fatah was effectively awarded a monopoly on power and armed force, allowing it to exclude its political rivals from the fledging institutions of government in the newly formed Palestinian Authority (PA). The Palestinian Authority is an institution of government that recognize by the International society after Oslo Accord final peace agreement conducted. Fatah, then, control the Palestinian Authority's new police and security forces. By the control of this two elements, Fatah leadership want to keep the important means of dispensing patronage to disaffected elements, with membership providing one of the few reliable sources of employment in the Palestinian territories.

On the other hand, the struggle of Hamas, known as Harakat al-Muqāwama al-Islāmiyya or "Islamic Resistance Movement" is a part of Palestinian independence history too. The first evolution of Hamas was established by Sheikh Ahmed Yassin in 1987, aimed to become a socio-religious organization was transformed from Islam Brother Hood in Egypt.³ This Islamist movement struggled for offering religious, social services and missionary activity (da'wah).

³Available at <http://www.wikipedia.org/hamas-fatah conflict.cfm> (accessed at February 10th, 2009)

However, the high tension of expansion from Israel to occupy the Palestinian land was somehow reacted by this movement as a combating action to struggle against colonialism. Then, the disappointment of this movement was also peaked by the cooperation of Fatah-Israel peace agreement under the Oslo accord. According to Hamas, the final peace agreement under Oslo Accord is manifested the collaboration of Fatah with the occupation.

Then, in April 1994, the Hamas military wing, known as Izz Al-din Al-qassam Brigades was encouraging the Hamas to develop the wing of militant actions. And, Hamas leader announced the transforming mission of Hamas from socio-religious movement to socio-political which included paramilitary force after the outbreak of the Second Palestinian Intifada. During the course of the Second Palestinian Intifada, it carried out numerous attacks on Israeli soldiers and settlers, despite the extensive penetration of Palestinian society by Israeli intelligence with its network of informers. This Intifada influenced the Israel and United State of America to declare Hamas as a terrorist organization.

During the Yasser Arafat era, the relationship between Hamas and Fatah was seemed to be in one line objection, to struggle against the Colonialisms. Even though Hamas and Fatah used different means, the strategy proved effective. However, the establishment of Palestinian Authority under The International donors was facing a differential ideology. Then, Palestinian Authority was became a minority of political elites

authority not a Palestinian power. It was proven by the increasing rate of Corruption in the body of Government in Yasser Arafat Era. The status quo condition was different with the Idealistic of People demand. Then, the Corrupted Palestinian Government was paramount the unsatisfied of people to government of Palestinian Authority. On the other hand, people of Palestine found the new alternative movement that really represented their interest to against the intruder Israel under their land, Hamas.

The death of Palestinian President Yasser Arafat in November 2004 was followed by a lull in the violence and fresh presidential election in January 2005. The new president and chairman of the PLO, Mahmoud Abbas⁴, who won 62% of the vote, sought to capitalize by securing a period of calm from Hamas and other militant groups, halting attacks inside Israel proper. On other hand, Hamas is preparing their party to join with the legislative election after the presidential election of Palestine was held closely.

On January 25, 2006, elections were held for the Palestinian Legislative Council (PLC), the legislature of the Palestinian National Authority (PNA). Notwithstanding the 2005 ‘municipal elections and the January’, 9, 2005 presidential election, this was the first election to the PLC since 1996; subsequent elections had been repeatedly postponed due to the ongoing Israeli-Palestinian conflict. Palestinian voters in the Gaza Strip and

⁴ Mr Abbas won 62.3 per cent of the vote. His nearest rival, the human rights activist Mustafa Barghouti, won just under 20 per cent. Turnout was around 63 per cent. Mr Abbas said subsequently he would not stand for re-election when his four-year term is complete in 2009.

the West Bank including East Jerusalem were eligible to participate in the election. The legislative election itself was provided and monitored by International Watch such as United State of America, the European Union, the Arab states and Israel. And also the Palestinian Legislative Election claimed as one of the democratic election that has been held in the Palestinian. The result of the Palestinian Legislative Election was unexpected; Hamas which was known as an Islamic Palestinian socio-political party won the seat of legislative 74 seats to the ruling Fatah 45, providing Hamas with the majority of the 132 available seats ⁵and the ability to form a majority government on their own.

As Hamas officials had predicted in late 2005, the post-election phase was to prove turbulent, as Fatah, for so long the party of government, struggled to reconcile itself to losing power. Talks with Fatah and other faction on forming a coalition government failed and on 27 March 2006 Prime Minister Ismael Haniya presented his government program to the Palestinian parliament, along with a cabinet list that contained Hamas representatives.

The election left the Palestinian Authority split between the Fatah-controlled Presidency, under Mahmoud Abbas, and the new Hamas-led Government. In international level, the split power of Palestinian political control was create unbeneficial consequences. Palestinian Authority split

⁵ Data available at <http://www.memri.org/The Mecca Agreement – A Strategic PLO-Hamas Alliance for Establishing a Palestinian State Without Hamas Recognizing Israel.cfm> (data accessed at 10th March 2009)

was automatically responded by The United State of America, European Union and Israel to cut their diplomatic and financial ties with the Palestinian government. The Quartets partners was saying the contact would resume only if Hamas agreed to recognize Israel, abide by existing agreements between the Palestinian Authority and Israel and renounce violence, such Intifada.

Responding the Western Government policies, Hamas Government answered by kept on their principle, to non-recognized existence of Israel, and took a step forward to seeking the financial support from the Arab countries and other sources to compensate for the expected sharp decline in financial assistance from Western Governments. On other hand, The US administration funded and armed Abbas's Presidential Guard and Gaza based Fatah warlord, Mohammed Dahlan.⁶ Therefore, the defeated Fatah party maintains control of most of the Palestinian security apparatus.

After the formation of the Hamas cabinet on 20 March 2006, tensions between Fatah and Hamas militants raised progressively in the Gaza strip. The first armed clashes between the two movements erupted in Gaza City on 22 April 2006.⁷ Clashes broke out between hundreds of student from al-Azhar University and the Islamic University, which are located close to each other in the west of Gaza city. The Clashes followed statements by the Head of Political Bureau of Hamas, Khaled Mash'al in

⁶ Available at <http://www.wikipedia.org/hamas-fatah conflict.cfm> (accessed at February 10th, 2009)

⁷ Available at <http://www.pchr.org/black pages in the absences of justice.cfm> (accessed at February 10th, 2009)

Damascus 2 days earlier, in which he accused Palestinian parties of making efforts to undermine the Hamas-led government.

The two sides threw stones and empty bottles at each other. Some students even used home-made grenades. The Palestinian police intervened and used tear gas to disperse the students. The clashes continued until evening and the two sides were reinforced by supporters from outside the University. During the clashes, 33 students were wounded, six of them were injured by shrapnel from home made grenades, and 4 suffered from tear gas inhalation used by the police to disperse the students.⁸

On May 2006, relation had deteriorated rapidly, as Hamas moved to establish its own rival security force, having failed to exert its authority over the Fatah-dominated Palestinian Authority security institutions. The deployment of a new 3000 member executive force during May under the control of the Hamas-led interior Minister in Gaza was condemned by President Abbas as illegal and anti-constitutional. He issued a presidential decree nullifying the move, insisting that control of security forces should remain united under the presidency.

The impact of deployment of Hamas military force was responded by Fatah paramilitary by enhancing the military rally on Gaza. Then, the clash of new Hamas military force with Fatah paramilitary called Al-Aqsa Martyr Brigades erupted in the Southern Gaza. This tragedy killed 3

⁸ Ibid,

Palestinian and wounded 10 Palestinian. The clash was continued until the Mid-May of 2006.

The Clashes between Hamas military force with Fatah paramilitary was peaked on December 2006 to January 2007 when the fighting broke out in the West bank after Palestinian security forces fired on a Hamas rally in Ramallah. From this tragedy, at least 54 Palestinian died and 20 people were wounded in the clashes which came shortly after Hamas accused Fatah of attempting to assassinate the Prime Minister Ismail Haniya.⁹ But Fatah denied the claim from Hamas statement. A ceasefire was agreed six days late, although fighting continued on an almost daily basis and both sides were reported to be increasing their military presence in Gaza.

The clash was prompting warning of the potential for civil war in Palestinian territories. Therefore, under a heavy diplomatic pressure from Saudi Arabia, Egypt and OIC in February 2007, Palestinian rivals met in the Islamic holy city of Mecca, Saudi Arabia and reached a consensus ensuring a ceasefire.

Since the first round of conflict, it was responded by Islamic Community as the step backward of Palestinian struggling process under the occupation of Israel. A lot of Muslim's were disappointed with the conflict between Hamas and Fatah that will lead to self-inflicted damage toward Palestinian people.

⁹ Data conflict below available at <http://www.english-Al-jazeera.net.org/palestine focus/hamas-fatah conflict.cfm> (accessed at March 9th, 2009)

Arab states and OIC become active and dynamic to see the conflict in Palestine. It is shown by the statement of The Secretary General of OIC, Mr. Ekmeleddin İhsanoğlu;

“The Organization of the Islamic Conference (OIC) is advancing an initiative to bring closer views of Palestinian leaders from Hamas and Fatah.”¹⁰

Then, the statement was followed up by the action of Saudi Arabia as the broker of the appointment between Hamas and Fatah was held in the Holy city of Mecca. The agreement between Fatah and Hamas was signed in the city of Mecca on February 8, 2007 after eight days of talks, agreeing to stop the military clashes in Gaza and to form a government of national unity. Representatives from the Fatah side included the President of the Palestinian Authority Mahmoud Abbas and parliament member Mohammed Dahlan and Hamas was represented by The Palestinian Prime Minister Ismail Haniya and Khaled Mashal. The Agreement was known as the Mecca Agreement.

The main urgent solvency is stress on two major issued trough internal conflict. The First is to banning the shedding of Palestinian blood that caused the Fatah Hamas friction, and to form a Palestinian National Unity Government¹¹ according to a detailed agreement ratified by both sides and to start on an urgent basis to take the constitutional measures to form this government. Palestinian Unity Government in the context of

¹⁰ Available at <http://www.irna.ir/en/news/view/.htm> (accessed at February 10th 2009)

¹¹ Data available at http://www.conflictforum.org/mecca_agreement.cfm (accessed at February 10th 2009)

Mecca Agreement is a form of reconciliation vision and common denominator that would gather all political share power in governmental structural system between the Factions that involved in the conflict as the final resolution to bridge the common interest of each political faction less than one Umbrella of Palestinian Unity Government.¹² And, externally the Mecca Agreement agreed to recognize the Israel by Palestinian Unity Government Then, the agreement lies on a solution by the third party Mediation; Saudi Arabia Kingdom and Organization of Islamic Conferences.

However, the points appeared in each item of Mecca Agreement on final peace agreement do not significantly contribute to the change. The condition even worsened. Mecca Agreement as the institution which was internationally acknowledged fail in bringing the peace back. The conflict is not deescalating. The conflict was swichted onto human right violations crafted by both parties.

The condition in post-negotiation process should be remarked by significant number on cease-fire, achieving better national stability of security and better national stability in inside the palestinian political circumstances, and the acknowledgment of International Society, especially the quartets as the International actors that concern with the peace agreement between Palestine-Israel. But, the condition seems different.

¹² See at The Palestinian Unity Government platform published on March 18, the Palestinian Authority's official news agency released an English translation of the speech, data is available at [http://www.thewashingtoninstitue.org/the Washington Institutes for the Near East policy/the program of Palestinian Unity Government.cfm](http://www.thewashingtoninstitue.org/the%20Washington%20Institutes%20for%20the%20Near%20East%20policy/the%20program%20of%20Palestinian%20Unity%20Government.cfm) (accessed at March 9th 2009)

During the era of Yasser Arafat, and early Mahmoud Abbas Palestinian Authority Presidency serious civil-war conflict remained a low frequency. But, since the Palestinian Authority split into two power, then political assassination and civil armed conflict have been rocketing from March 2006 to June 2007 and economic embargo from outside become the answer from International Quartets.

Ironically, the purpose of Palestine people should be measured by the outsider's that decide the real peace of Palestine can be achieved or not. The effectively and comprehensive follow up of Mecca Agreement is depend on the Quartets political behaviors of USA, Israel, EU and Russia as one of the Economic supply to PA. There are two major issued that become the International reaction (Quartets) trough the result of Mecca Accord, which are, firstly, Israel and USA press the President of Palestine to acknowledged the existence of Israel when the Palestinian-Unity Government run their government programs, and shifted the policy of Palestinian-Unity intern, especially the security, and economic control from prime minister authority to become the president authority.

Secondly, if the objection of Quartets will not reach, with in Hamas still keep lead the Unity-Government then, Economic Embargo and Boycott all economic sector of Palestine from outside is the final reaction of USA, Israel and EU. Those international impact also give a recent conflict flourished as massive killing. As what Palestinian report on Human Right has reported on March 2006, as the first internal conflict between Hamas

and Fatah to January 2007, the result of casualties, touch the level of 54 Palestinian died.¹³ This result of casualties has been reduce in several months during Mecca Agreement signed by both sides.

However, the escalation of conflict after the Mecca Agreement raised from early May 2007 to late June, it had shown the trend of increasing number of casualties. The first round of conflict post Mecca Agreement was intensively increasing after the formation of National Unity Government got onto a deadlock. On the Mid-May 2007, clashes erupted between the two sides at the residence of Maher Miqdad, the Fatah Spokeman in the north Gaza city. Two member of the Fatah group were killed in those clashes. Then, the situation further was deteriorated after a leader of the Al-Qassam Brigades, Ibrahim Suleiman Maniya was killed by a gunshot to the chest of Ibrahim in a day later in north Gaza city too.

Those two incidents increased the tension of conflict among Fatah and Hamas. From the report of Palestinian Center for Human Right until the end of May 2007, the result of fighting killed 47 Palestinian and hundred of Palestinian wounded are almost civilian and militans.¹⁴ Then, the peaked of the escalation was happened in June 2007, As what Palestinian on Human Right has reported, on that as much 161 killing and 550 wounded covered civilian, member of National Security Force, Nurse, Journalist, Human right workers. But mostly the victim was member of both Hamas-Fatah

¹³ See the report on bloody fighting in the Gaza strip from 7 to 14 june 2007, pg. 18 Available at [http://www.pchr.org/black pages in the absences of justice.cfm](http://www.pchr.org/black%20pages%20in%20the%20absences%20of%20justice.cfm) (accessed at February 10th, 2009)

¹⁴ Ibid, pg.19

during the period of split Palestinian Authority of Presidency Fatah and Government-led Hamas took the power in March 2007 until June 2007.¹⁵ (see Table 1 page 11)

Moreover, the pattern of political killing and mutual kidnapping has been gradually intensifying after the Mecca Agreement held. It was reported that a series of important name killing targeting including the Prime Minister Ismail Haniya and President of Palestinian Authority Mahmoud Abbas continued to be confronted by each side. Several important person name were announced such as Mohammed Al-Rifaty the Imam of Great Mosque who is Pro-Hamas that was killed by dozen of Al-Aqsa martyr brigades.

According to the reported of Palestinian Human Right, the pattern of mass infrastructered destruction also incerased intesively and objection of this civil armed conflict extended to robbery the Governmental and Non-Governmental Institution in Palestine, including robbery, destruction, and seizure. There are several main objection of each group to be determinated, such as destruction of head quarter of preventive security services, head quarter of National Security force, and several INGOs, NGOs and Media Institution offices in Gaza, Jabalya and Ramalah , such as Seizure the *Head Quarter of Palestinian General federation for Trade Union*, Seizure the *Office of Youth forum and culture*, and Stormin and damaging *Watanona*

¹⁵ Ibid, pg 95

Media center and Al-Horriya radio station. Those action escalate the infrastuttered damage in the split Palestinian Authority period.

Table 1
Casualties of Civil Armed Violence in Palestine
Annual Fatalities in Civil Armed Violence between Fatah-Hamas
2006-2007¹⁶

| March 2006 to June 2007 | Civilians | Security Force Personnel | Fatah & Hamas militants | Total |
|------------------------------------|------------------|-------------------------------------|----------------------------------------|--------------|
| April | - | - | 2 | 2 |
| May | - | - | 3 | 3 |
| June | 5 | - | 17 | 22 |
| July | - | - | - | - |
| August | - | - | - | - |
| September | - | - | - | - |
| October | 2 | - | 6 | 8 |
| November | - | - | - | - |
| December | 7 | 12 | 8 | 27 |
| January | 20 | 17 | 17 | 54 |
| February | 3 | - | - | 3 |
| March | 2 | - | - | 2 |
| April | - | - | - | - |
| May | 2 | 4 | 47 | 53 |
| June* | 40 | 81 | 40 | 161 |

* Data till 21 June 2007

¹⁶ The data of Table 1 was calculated from the data that available at [http://www.pchr.org/Palestine Center of Human Right/statistic of casualties of Palestinian people.cfm](http://www.pchr.org/Palestine%20Center%20of%20Human%20Right/statistic%20of%20casualties%20of%20Palestinian%20people.cfm) (accessed at March 9th, 2009)

In the level of National Stability of Security, the condition even worst this was sign by the result of casualties from Military Forces of Palestine that touch a level of hundred that in mid-2007 created instability condition. Moreover, the reduction role of Palestinian National Security service indicated by the separation bloc of pro-Hamas and bloc of pro-Fatah. The bloc separation was appeared after the Palestinian Authority fired hundred of 'mutinous' of security officers who refuse to participate in the recent fighting against Hamas in Gaza. The fired officers belonged to the Preventive Security Services, Military Intelligences, and force 17. They were suspected of sympathizing with Hamas.

This fragmentation of Security services in emerging each military wing of both factions was increased the level of quantity of each Paramilitary force. According to Jonathan Steele on Guardian Journal, Most ominously, the document of United State of America outlined a \$1.27 billion to military program that would add seven special battalions, totaling from 4,700 soldiers to 15,000 Mahmoud Abbas presidential guard and security forces after the National Unity Government failed to run.¹⁷ This program was also related with Fatah military wing deployment in several territories of Palestine to protect from Al-Qassam terrorist action. While, Hamas was imported totally 400,000 weapons for their weaponry stock

¹⁷ Cited from Jonathan Steele, 'Hamas acted on a very real fear of a US-sponsored coup', *Guardian*, 22 June 2007 published at Library of Commons, PDF downloaded from http://www.libraryhouseofcommons.org/library_research_paper.cfm (accessed at 10th March 2009)

from neighborhood state's such Syria, Egypt, and Iran¹⁸ to counter back the military preparation of Fatah-led government under Ahmad Dahlan, the minister of Internal Security of Palestine.

In the level of national political stability, the Palestinian President Mahmoud Abbas annouced the dissolution of the current National Unity Government and the declaration of a state of emergency on June 14 2007. By this announcement, Palestinian Prime Minister Ismail Haniya was dismissed and then Haniya was replaced by the former Finance Minister, Salam Fayad. and Abbas ruled Gaza and the West Bank by presidential decree. This political consequences had violated the Mecca agreement to recognized the National Unity Government of Palestine as one of the final conclusion of peace agreement. As the consequences, the escalation of conflict between Fatah and Hamas created the separation of government administration of Palestine into two bloc namely West Bank and Ramallah as the basis government administration of Fatah and district Gaza as the basis of Hamas.

B. Research Question

This paper puts forward the following question “Why did Mecca Agreement and its implementation fail in deescalating the civil armed conflict between Fatah and Hamas?”

¹⁸ Ibid,

C. Objective of the Research

The objectives of this research are as follows:

1. To explain the negotiation process between Hamas and Fatah in Mecca Agreement as the peace agreement.

2. To explain the process of post-Mecca Agreement negotiation upon the Palestinian Unity Government as one of the conflict resolution indicator in the civil war between Hamas and Fatah in Palestine.

3. To explain the failure of the post-Mecca Agreement in engagement with the legalization of DDR (Disarmament, Demobilization and Reintegration) issued between Hamas, Fatah and the Mediators.

D. Theoretical Framework

Within this research, the writer is seeking to explain the reasons triggering the failure of implementation of Mecca peace agreement between Hamas and Fatah under mediation of Arab Saudi. By doing this research, the writer would trace and highlight the *Post-agreement Negotiation Theory* as the main theory to identify the process of post-negotiation after the Mecca Agreement was signed. Through this theory writer would assess the reasons why both Fatah and Hamas weren't actively do a comprehensive peace settlement inside the agreement and details in the next phase. Therefore, writer needs to identify the reasons of why the post-Mecca Agreement Negotiation is failed to deescalate the conflict.

Beside the theory of *Post-agreement Negotiation Theory*, writer would also trace and highlight two concepts that would comprehensively help in assessing and identifying the phase of peace settlement and peace reconstruction of civil armed conflict between Hamas and Fatah. The first concept is known as *Concept of DDR (Disarmament, Demobilization and Reintegration process)* and the second concept is known as *the Concept of Legalization*. By those concepts writer would bring several issues which have to exist comprehensively and immediately after peace agreement signed by disputants to assist the peace reconstruction.

1. Theory of Post-agreement Negotiation

Theory of post-agreement negotiation is an appropriate theory seeking for reasons and explanation why implementation of final peace agreement between Fatah and Hamas failed. Post-agreement negotiation process should be appeared during the sign of agreement includes a condition which mixed motives, the absence of a clear, mutual acceptable solution but a desire on the part of all signatories to create sort of solution.

According to Bertram I. Spector the meaning of this post-agreement negotiation is the dynamic and cooperative process, systems, procedures, and structures that are institutionalized to sustain dialogue on issue that cannot, by their very nature, be resolved by a single agreement.¹⁹

¹⁹ See Bertram I. Spector on Deconstructing the Negotiation of Regime Dynamic in Getting it Done; Post agreement negotiation and International Regime Edited by Bertram I Spector and William Zartman, 2003, pg.55.

Yet, the Post Agreement Negotiation functions to prolong and continue the dialogue to push forward the development of the agreement and its implementation. There are four characters that indicate the successful of post- agreement negotiation as opposed to the pre agreement negotiation;

- The focus which distinguish the Post Agreement Negotiation with Pre Agreement Negotiation is stress on “getting it done” as contrary to “getting it yes”. Getting it done is typically more concern with negotiation details rather than with negotiation over principle and norm.²⁰ Means that, whether the agreement is acceptable at the conceptual level is empirically tested to determine its feasibility in a practical level, such the difficult tasks including devising implementation process, procedures, rules and standards; building institutions and approaches to implement them; monitoring and enforcing the impact of these new approaches; By Getting it done, also stress on to seek for MAS (Mutual Acceptable Solution) by actors that involved in both national and international level.

- The Post Agreement Negotiation deals with continuities. This Post Agreement encompasses the sustained negotiation in which this negotiation does not only initiate the implementation of agreement that were struck in the earlier discussion but also deal with the intractable issues that cannot be settled by the parties.

²⁰ Ibid, pg.55

- Post Agreement Negotiation also consist of a major factor called multilevel or multi-theater complexity of the latter. It includes political willingness of domestic leaders in government, industry, and nongovernmental organization to comply with negotiated agreements reached at the international level is a major driving force in the post agreement phase.²¹

- The last prominent factors distinguish post agreement negotiation with pre agreement negotiation is evolution. The evolution addresses such a phase of transition including; from initiation of a regime agreement to its implementation; from uncertain expectation to establish relationships; from staunch national sovereignty position to international interdependence; from creation of new formulas to their transformation into details; from regime formation to regime operation.²²

Bertram I Spector traces the two types of Post Agreement Negotiation as such implementation negotiation and expansion negotiation.

²³ The first negotiation – implantation negotiation – which are consist of disputes settlement, handle misunderstanding, dealing with future adjustment to the agreement, and managing the-day-to-day governance of the agreement among the signatures as it follows the successful conclusion of the agreement. This implementation negotiation attempts for making sure that the negotiated outcome is well conducted. The expansion negotiation is

²¹ Ibid, pg.57

²² Ibid, pg. 58-60

²³ Ibid, pg. 60

to expand and extend the initiating agreement, deals with issues that are not addressed in sufficient detail, improve and flesh out the agreement, and make a partial accord more complete.²⁴

The regime formulation and its dynamic in a post agreement negotiation are leveled by domestic and international level. In domestic level, there are some spheres which embodied during the talks between the national government and its administrator. Those spheres are ratification negotiation²⁵ or domestic ratification rule-making negotiation²⁶, and finally negotiation concerning monitoring, reporting and enforcement roles.

In the International atmosphere, the post agreement negotiation is processed through some steps; regime formation negotiation involves the implementation and institutionalization of the agreed-upon rules and procedures. Then, regime governance negotiation is the next stage including the information concerning participant action is collected; compliance is monitored, verified, and enforced, and finally is resolved.

2. The Concept of DDR in Peace Making Process

The process of disarmament, demobilization and reintegration (DDR) of former combatants is playing a significant role in the transition time from war to peace condition. The process of DDR has been an integral

²⁴ Ibid, pg. 61

²⁵ Ratification negotiation or domestic negotiation remains each domestic government is required to achieve the internationally negotiated agreement as it is a state level. These negotiation involve participation and cooperation by various stakeholder, including government minister and agencies, political parties, business, NGOs, and the public (Bertrand I Spector, 2003.pg.65)

²⁶ Rule-making negotiation is also a state or domestic level by which laws and regulations are enacted to obey the demand and the clausal of the regime.

part of peacekeeping operation and post-conflict reconstruction activities. The success or fails of DDR programs in such arms conflict area would paramount the affect of success or fails of the long-term of peace-building process.

In the civil armed conflict between Fatah and Hamas, the existence of DDR trough the peace negotiation process of post Mecca Agreement is one of the most requirement that need to be made up in form of legalization. This process (DDR) is an ultimate issued that could control the prolonged armed conflict in internal Palestinian conflict.

According to Nicolle Ball and Luc Van De Goor, the definition of DDR is the process of demilitarizing official and unofficial armed groups by controlling and reducing the procession and use of arms, disbanding non-state armed groups, and reducing the size of state security services, and assisting former combatants to reintegrate into civilian life.²⁷ The main purposes of the legalization of DDR into such of peace agreement negotiation are conducting in five basic condition of peace environment, which are:

1. To contribute to security and stability by facilitating reintegration and providing the enabling environment for rehabilitation and recovery to begin;

²⁷ See Ball Nicole and Luc Van de Goor, *Disarmament, Demobilization and Reintegration Mapping Issues, Dilemmas and Guiding Principles, Netherlands Institutes of International r elation, 2006. .p.g2*

2. To restore trust through confidence-building among conflicting factions and with the general population;
3. To help prevent or mitigate future violent conflict;
4. To contribute to national reconciliation; and
5. To free up human and financial resources, and social capital, for reconstruction and development

DDR, alone, however cannot be expected to prevent further conflict and restore stability. It must be accompanied by economic, political and social reform. Therefore DDR must be conceptualized, designed, planned and implemented within a wider recovery and development framework. There are several requirements of DDR in the post-peace agreement process in terms of successful and comprehensive peace making process, firstly, disarmament, demobilization and reintegration programs form part of a natural continuum in the peace process and require a comprehensive, integrated and coordinative approach in their planning and implementation. When disarmament terminates, demobilization begins and where demobilization ends, reintegration commences. Therefore, Disarmament and Demobilization should take place in the earliest stages of the peace process and Reintegration programs should be ready for implementation when discharged former combatants arrive at their intended settlement areas.

Secondly, in the short-term, the failure to disarm and demobilize former combatants effectively may contribute to an immediate relapse into

war. Therefore, DDR processes need to be included in the peace agreement process, it is desirable to achieve as much agreement on these points as possible. Where DDR occurs in the set of details agreement will impact toward the outset of the peace implementation process

The last is the International, National and Local commitment toward the peace process, successful of DDR process require the support of the international actors, National and Local leaders in developing mediation mechanism.

3. The Concept of Legalization

In every issued of establishment of international regime, such as peace agreements, the process and conduct of legalization is made become the most fundamental process of that institutions. Then, legalization as a particular form of institutionalization characterize based on the concept of legalization is dimension by their comprehensive components; *obligation, precision and delegation*.²⁸

According to Robert O. Keohane, *obligation* means that states or other actors are bound by a rule or commitment.²⁹ Specifically, it means that they are legally bound by a rule or commitment in the sense that their behavior there under is subject scrutiny under the general rules, procedures, and discourses of the international law. In term of legalization, the fundamental international legal principle of *pacta sunt servanda* means that

²⁸ Keohane, Robert O, *Power & Governance in a Partially Globalized World*, Routledge Press, London 2002. p.g.132

²⁹ Ibid, p.g.132

the rules and the commitments contained in legalized international agreements are regarded as obligatory, subject to various defenses or exceptions, and not to be disregarded as preferences change.

Secondly is *precision*, which has means that a precise rule specifies clearly and rules unambiguously what is expected of a state or other actor in particular circumstances who are require as an authorize or proscribe. In other words, precision narrows the scope for reasonable interpretation. In term of legalization, precision is an important characteristic. It is essential to a rationalist view of law as a coordinating device.

The last dimension of Legalization is *delegation*, which has meaning that the third parties have been granted authority to implemented, interpreted, and applies the rules ; to resolve disputes and possibly to make further rules. The characteristic forms of legal delegation are third-party dispute settlement mechanisms authorized to interpret rules and apply them to particular facts under established doctrines of international law.

In the central future concept of Legalization, there is an existence of variability of each three dimension of legalization in the International institution, norms and regime. The variability of International institution, norms and regime would leads to a continuum ranging from the weakest to strongest form. According to Robert O. Koehane, form of International legalization could be measure based on table bellow; (See Table 2 page 26).

The form of International legalization indicator from row I until row VIII is calculated as the variability of International Legalization. Row I on the table corresponds to situation near ideal type of full legalization. In addition, the WTO administers a remarkable detailed set of legally binding international agreements; it also operates a dispute settlement mechanism, including an appellate tribunal with significant authority to interpret and apply those agreements. Row II-III represent situation in which the character of law remains quite hard. As we move further down on the row IV-V in the table. The difficulties of dichotomizing and ordering our three dimensions become more apparent. Therefore, the middle row levels suggest a wide range of “soft” or intermediate form of legalization.

Rows VI and VII include situations where rules are not legally obligatory but where states either accept precise normative formulation or delegate authority for implementing broad principles. And the last, in the row VIII is entailing the very low levels of legalization include “balance of power” and “sphere of influence”. The level is not legal institution in any real sense.

Table 2
Form of International Legalization³⁰

| Hard law | Obligation | Precision | Delegation | Examples of Issues/ Benchmark |
|-----------------|-------------------|------------------|-------------------|------------------------------------------------------------------------------------|
| I | High | High | High | EC, WTO-TRIPs; European human right convention; International Criminal Court |
| II | High | Low | High | EEC Antitrust, Art 85-6; WTO-National Treatment |
| III | High | High | Low | US-Soviet arms control treaties; Montreal Protocol |
| IV | Low | Moderate | Moderate | UN Committee on Sustainable Development |
| V | Moderate | Low | Low | Vienna Ozone Convention; European Framework Conventional on National Minorities |
| VI | Low | Low | Moderate | UN specialized agencies; World Bank; OSCE High Commissioner on National Minorities |
| VII | Low | Moderate | Low | Helsinki Final Act; Nonbinding Forest; Principle; technical standards |
| VIII | Low | Low | Low | Group of 7; sphere of influence; balance of power |

³⁰ Koehane.O Robert, *Power & Governance in a Partially Globalized World*, Routledge Press, London 2002. p.g.136

E. Hypothesis

Whether Hamas and Fatah decide to not comply with the Mecca agreements that has been sign in February 2007. I argue that there are some considerations behind both Palestinian Parties to not response as well toward the Mecca Agreement, namely:

1. Mecca Agreement was not success because the process of peace in post-agreement negotiation was not comprehensively uphold the legalization of Disarmament, Demobilization and Reintegration Issued which leads Fatah and Hamas non-obligatory mandates to established peace.

F. Research Method

This is a library research. Thus data will be got from books, encyclopedia, magazines, newspapers and journals. In addition, the internet media will be valuable resources used in order to obtain data, reports, surveys, because updated information related to the topic is only available through the internet media. From these sources, I try to elaborate the research.

G. **Writing System**

The outline of this thesis is as described as followed:

CHAPTER I will discuss about the problem background, research purpose, research question, theoretical framework, hypothesis, research model, and writing system.

CHAPTER II will discuss the dynamic of the civil armed conflict between Hamas and Fatah. Starting from the emergence of the Hamas movement in Palestine, the failed-led-government of PA under Fatah monopoly, the momentum triggered of the civil armed conflict, and the condition of pre-negotiation process in dealing with its conflict are represented trough this chapter

CHAPTER III will give explanation about the dynamic of Mecca Agreements until the ineffectiveness of the Implementation of Mecca Agreement.

CHAPTER IV will discuss the determinant factors of the failure of Mecca Agreement and its implementations. Trough this chapter, writer will highlight the determinant factors of why the agreement is fails to resolve by the disputants.

CHAPTER V is the closing part of this thesis that contains conclusion and suggestion.