
THE LEGAL STATUS OF THE WEST BANK AND GAZA

*Prepared for, and under the guidance of
the Committee on the Exercise of the Inalienable
Rights of the Palestinian People*



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INTRODUCTION

This study deals with two parcels of territory that form an integral part of Palestine and which were occupied by Israel in 1967.

The Gaza Strip is an area of roughly 600 square miles with 400,000 inhabitants. The West Bank has an extension of 2,270 square miles and is very rich in agricultural resources. Its population amounts to 700,000 inhabitants.

The Gaza Strip was administered in 1967 by Egypt and the West Bank was then united with Jordan, following the adoption of the Act of Unity in 1950. When war broke out between Israel and the Arab States, both territories were occupied by the Israeli army. Now, several years later and notwithstanding numerous United Nations General Assembly resolutions demanding the

"withdrawal from all territories occupied", Israel, disregarding these resolutions, remains in occupation of these territories.

I. HISTORICAL BACKGROUND

After the defeat of the Ottomans on 30 October 1918 towards the end of the First World War, Palestine, which for 400 years had been part of the Ottoman empire, came under British control.

In 1919, it was agreed that Palestine would become part of the new League of Nations Mandate system, and in 1920, the United Kingdom was named Mandatory Power of the Palestinian Mandate.

A paper published by the Royal Institute of International Affairs ^{1/} describes Palestine as follows:

"The country is bounded on the west by the Mediterranean and on the east by the river Jordan, these two being divided by a range of hills running from north to south for practically the entire length of Palestine. Geographically it falls naturally into four main divisions:

"(i) The Hill Country of Galilee (in the north) and of Samaria and Judea [West Bank].

"(ii) The Five Plains:

(a) The Maritime Plain between the coast and the hills;

(b) The Acre plain between Acre and the Hills;

(c) The Vale of Eschaelon (south-east of Haifa);

(d) The Huleh Plain (extreme north east);

(e) The Plain of the Jordan.

"(iii) The Beersheba area (the south-west);

" (iv) The arid desert areas in the south-east."

Under the terms of article 25 of the Mandate, Transjordan was included in the Mandated territory of Palestine, but by virtue of a saving clause in the Article and with the approval of the League of Nations, it was administered separately from September 1922 and became independent as the Kingdom of Transjordan in March 1946. The British Mandate lasted until 1947 when the United Kingdom voluntarily surrendered its authority to the United Nations.

Article 22 of the Covenant of the League of Nations outlined the mandate system. The territories subjected to mandates were divided into three categories (A, B and C) in accordance with the particular stage of readiness to exist as an independent nation. Palestine was considered an "A" Mandate territory and was in no manner excluded from the provisions of the Covenant. ^{2/}

In 1947 the General Assembly voted in favour of the Palestine Partition Plan as recommended by the United Nations Special Committee in Palestine. Resolution 181 (II) states in part:

"Independent Arab and Jewish states and the Special International Régime for the City of Jerusalem ... shall come into existence in Palestine ...

The Arabs rejected the partition on the grounds that it violated the provisions of the United Nations Charter which gives a people the right to decide its own destiny. Partition was effective by 1 August 1948 after the evacuation of the British armed forces on 14 May 1948.

In 1949 Armistice Agreements between Israel and Egypt, Lebanon, Transjordan and Syria that followed the 1948 war meant territorial changes in Palestine. Israel secured control of all the territory allotted them in the Partition Plan and gained substantial additional portions in the West Bank area. The Gaza Strip was held by Egypt and the West Bank was united with Transjordan with no prejudice to the final settlement of its just cause within the framework of national aspirations.

II. PALESTINIAN SOVEREIGNTY

The question of sovereignty over Palestine is examined by international lawyers from different points of view.

Going back historically to the period of the Palestinian mandate the main views are the following:

- (a) Sovereignty was transferred to the Mandatory Power subject to the provisions of the Mandate;
- (b) It was entrusted to the League of Nations;
- (c) It remained suspended during the Mandate subjected to future settlement;
- (d) It remained in the inhabitants of the mandated territories.

In connexion with the first opinion, in 1917 the British army occupied Palestine following virtual Turkish abandonment of the area. Turkey did not legally surrender its sovereignty until 1923 when the Treaty of Lausanne was signed. Such detachment was primarily de facto and was a consequence of the British military occupation of Palestine and became de jure in 1923. The British military occupation did not bestow sovereignty to the United Kingdom, furthermore the military occupation did not affect any claim to sovereignty of the inhabitants.

"Apart from the fact that under international law the military occupation of enemy territories does not give the occupier a territorial title, it was clear that the avowed objective of the allied Powers during the First World War was not the acquisition of territory in the Middle East. This is evident from the various pledges and formal assurances given to the Arabs by Great Britain and its allies between 1915 and 1918 regarding the future of the Arab territories ... It should be remarked that the reference to the British pledges and assurances given to the Arabs during the First World War does not signify that such pledges and assurances have made a foundation for the Arabs claim to Palestine. The title of the Palestinian Arabs to Palestine does not, and cannot depend upon the pledges and assurances of a third Power which, moreover, possessed neither sovereignty nor dominion nor any right whatsoever over the country". 3/

The second view, maintaining that the League of Nations retained the sovereignty over these territories, lacks validity, for the Council of the League of Nations never claimed sovereignty for itself, nor conveyed any to the United Nations when its existence terminated. It was suggested that the League had "ultimate responsibility". Various provisions of the Covenant of the League of Nations conferred on the League of Nations the responsibility of exercising constant supervision and control over the Mandatory Power. But "ultimate responsibility" cannot be regarded as synonymous with retention of title. 4/

The third opinion does not defeat the objective of the Council of the League of Nations, which was self-government for the area. If this proposition is to be accepted it can be assumed that it was subsequently transferred to the United Nations.

The fourth argument, asserting that sovereignty may have rested with the native inhabitants of the territories, is based on the fact that the primary objective of the mandate system was to prepare the territories for self-government and on the Council's recognition of this area as an "A" mandate (prepared for provisional recognition). The legal effect under international law of Article 22 of the Covenant of the League of Nations was to make of this territory a State in which was vested legal sovereignty over Palestine.

Professor Henry Cattan maintains:

"All the various views which have been expressed on the point - except that which considers sovereignty to reside in the inhabitants of the mandated territory - have now been abandoned or discredited. None of the views that sought to rest sovereignty elsewhere than in the inhabitants of the mandated territory appears to rest on an acceptable legal or logical basis." 5/

In his view the legal status of Palestine during the British mandate was as follows: 6/

"... during the currency of the mandate the people of Palestine enjoyed an independent international status and possessed sovereignty over their land; Palestine possessed its own identity, which was distinct from that of the mandatory Power; its administration was theoretically its own though, in fact, it was in the hands of the mandatory; the Government of Palestine, as representative of the people of Palestine, concluded agreements with the mandatory Power and became party, through the instrumentality of the mandatory, to a number of international treaties and conventions; however, the full exercise of sovereignty by the people of Palestine was restricted in certain respects by the powers of administration entrusted to the mandatory Power by the League of Nations; upon the termination of the mandate the mandatory's powers of administration

came to an end and, as a result, the restrictions upon exercise of full sovereignty by the people of Palestine ceased, so that by virtue of this right as well as by virtue of their right of self-determination they became entitled to govern themselves and to determine their future in accordance with normal democratic principles and procedures. The first and fundamental rule in any democracy is the rule of the majority. This rule, however, was not respected by the General Assembly of the United Nations which recommended in 1947, in circumstances and under political pressures already mentioned, the partition of the country between Arab and Jewish States. The events which followed and the emergence of Israel have prevented the Palestinian people from exercising their right of sovereignty over their own land."

The Palestinians have not lost their sovereignty over Palestine merely because the neighbouring Arab States did not accept the Partition Plan. They have been deprived of its exercise, as it was the case of the Poles between 1795 and 1919 when their country was partitioned and annexed by other States, or the Ethiopians when their country was occupied by Italy in 1936.

In 1948 following the United Nations partition resolution, the Arab Higher Committee on behalf of the Arab inhabitants of Palestine requested the International Court of Justice to adjudicate the issue of legal title to Palestine. Israel refused to submit the case to the court's jurisdiction.

Incidents such as that of the massacre of Arabs in the village of Dar Yassin, which had taken place in April 1948, had spurred an exodus of refugees. Neighbouring Arab States sent troops into Palestine, stating they were acting "... for the sole purpose of restoring peace and security and establishing law and order in Palestine."

Jordan assumed responsibility for the West Bank, according to the terms of the act of unity until such time as the "Palestinian problem" might be solved.

According to a reply received from the Government of the United Arab Republic contained in the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories:

"The entry of the Arab armies into Palestine for the purpose of her protection was as a temporary measure in no way intended to lead to the occupation or partition of Palestine." Z/

In April 1950 a general election was held to choose a new Jordanian Parliament with equal representation from the East and West Banks. Both houses of the Parliament meeting in Amman on 24 April 1950 adopted a resolution formally uniting the Hashemite Kingdom of the Jordan and those areas of Arab Palestine where the Arab legion had entered during the war with Israel and which had remained under Jordanian control since the armistice between Israel and Jordan. The resolution provides:

"Firstly:

"Support for the complete unity between the East and West Banks of the Jordan and for their union in one state, which is the Hashemite Kingdom of Jordan, at the head of which is His Hashemite Majesty August King Abd-Allah Bin Al-Husayn, and that is on the basis of the representative and constitutional government and of equality in right and obligations among all of the compatriots.

"Secondly:

"Emphasis on the preservation of the complete Arab rights in Palestine and on the defence of those rights with all the legitimate means, with full justice and with no prejudice to the final settlement of its just cause within the framework of the national aspirations, Arab cooperation and international justice."

In this connexion, King Hussein of Jordan expressed the following at the General Assembly in 1979:

"In 1950, Jordan entered into a voluntary union with the West Bank in order to protect the people and the land as well out of a conviction that Jordan shared with the West Bank a common destiny and a brotherly obligation.

"On 24 April 1950, the joint Jordanian Parliament, in taking its historic decision on unity, did not neglect to record Jordan's unwavering stand towards the historic rights of the Palestinians and the support of Arab Palestinian rights in any future settlement in accordance with national aspirations and international justice. Thus when we speak today of the right of self-determination for the Palestinian people we do so because it is something we have always believed in and have always attempted to bring about within the framework of a just and comprehensive settlement. 8/

He further affirmed:

"Israel must withdraw from the territories it occupied in June 1967, must respect the right of the displaced Palestinians to return to their homeland and must stop its denial of the Palestinian's right to self-determination including the right of their people to establish an independent state if they wished so. We in Jordan, together with the other Arab countries, stand behind the Palestinians in demanding this right."

III. ISRAELI OCCUPATION

During the 1967 war Israel seized the remainder of Palestine. Israel's occupation meant that 1,100,000 Palestinians in the West Bank and Gaza were brought under Israeli domination.

In accordance with the doctrine of international law, the principle of "inadmissibility of the acquisition of territory by war" goes beyond the rule "no fruits of aggression".^{9/} The application does not depend on determining who was the aggressor in 1967, which is a difficult question to answer. There is no doubt that whether or not Israel was the aggressor, its occupation of territory was achieved by the use of armed force.

This principle was internationally accepted as a rule of American international law by most of the members of the Pan American Conference of 1890, reaffirmed in the Buenos Aires Declaration of 1936, the Lima Declaration of 1938 and the Bogota Charter of the Organization of American States of 1948. It was assumed in President Wilson's Fourteen points and generally applied in the peace settlements of the First World War. It was assumed as well by the League of Nations as a necessary implication of its Covenant's guarantee of the territorial integrity of all Members and particularly by the United States in the Stimson Doctrine refusing to recognize any Japanese acquisitions by its invasion and occupation of Manchuria. It was considered an implication of the Kellogg-Briand Pact of 1928. The League of Nations accepted the Stimson Doctrine as a necessary implication of Article 10 of the Covenant of the League of Nations. The United States insisted on this principle in the Atlantic Charter of 1941 before its entry into the second World War.

The principle of "inadmissibility of the acquisition of territory by war is considered an implication of the obligation in Article 2, paragraph 4 of the Charter of the United Nations. It provides:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

The General Assembly on the occasion of the twenty-fifth anniversary of the United Nations adopted the Declaration on Principles of International Law Governing Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations in resolution 2526 (XXV).

It proclaims the following principles:

"The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political, independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

"...

"Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

"Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character.

"States have a duty to refrain from acts or reprisal involving the use of force.

"...

"Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

"The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat

or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

"(a) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

"(b) The powers of the Security Council under the Charter.

"The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

The principle of equal rights and self-determination of peoples;

"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

"Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

"(a) To promote friendly relations and co-operation among States; and

"(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and hearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

"Every State has the duty to refrain from any forcible action which deprives people referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter."

The circumstances inducing acceptance of the cease-fire lines in 1967 were similar to those in 1949. They were justified as temporary measures necessary to end the hostilities but they could not, in any case, be regarded as conferring any rights to the territory occupied by Israel. The principle was strictly adhered to in the hostilities of 1956. On that occasion the United Kingdom, France and Israel under pressure of the General Assembly of the United Nations were induced to withdraw to their positions before the hostilities.

Security Council resolution 242 of 22 November 1967 stated three fundamental principles:

The first is the inadmissibility of the acquisition of territory by war. This principle required that Israel gain no territorial advantage by its occupation. Security Council resolution 242 calls for the:

"(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict."

The second principle stated in the preamble of resolution 242 of 22 November 1967 is "the need to work for a just and lasting peace in which every State in the area can live in security". This is the expression of Article I of the Charter of the United Nations and supported by the principles stated in Article 2 of that instrument requiring Members to settle all international disputes by peaceful means, to refrain from the use or threat of force in international relations and to assist the United Nations in maintaining these principles, and not to intervene in matters essentially within the domestic jurisdiction of any State.

The third principle of resolution 242 asserts that "all Member States, in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2, paragraph 2 of the Charter". Paragraph 2 makes it clear that those "principles" constitute positive "obligations" which the Members must "fulfill in good faith". According to Article 2, paragraph 4 of the Charter it is an obligation of all Members to "refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations". Thus individual or collective self-defence against armed attack (Article 51A) and assistance to the United Nations in collective security action (Article 2 (5)) are the only permissible uses of force in international relations.

Resolution ES-7/2, adopted by the General Assembly in the seventh emergency special session of 29 July 1980, goes beyond any

restricted

interpretation concerning the term "territories". It clearly reaffirms:

"2. ... that a comprehensive, just and lasting peace in the Middle East cannot be established, in accordance with the Charter of the United Nations and the relevant United Nations resolutions, without the withdrawal of Israel from all the occupied Palestinian and other Arab territories, including Jerusalem, and without the achievement of a just solution of the problem of Palestine on the basis of the attainment of the inalienable rights of the Palestinian people in Palestine;

" ...

"6. Reaffirms the fundamental principle of the inadmissibility of the acquisition of territory by force;

"7. Calls upon Israel to withdraw completely and unconditionally from all the Palestinian and other Arab territories occupied since July 1967, including Jerusalem, with all property and services intact, and urges that such withdrawal from all the occupied territories should start before 15 November 1980;"

In addition, the General Assembly further passed a number of resolutions in connexion with this principle reaffirming the inadmissibility of acquisition of territory by force: 2628 (XXV) of 4 November 1970, 2799 (XXVI) of 13 December 1971, 2949 (XXVII) of 8 December 1972.

According to the statement of the representative of Jordan to the Security Council on 8 June 1967, Israel unlawfully entered the West Bank during the 1967 war in violation of Article 2 (4) of the Charter of the United Nations. Alan Gerson, an expert on international law gives the following explanation of the events:

"Jordan does not deny initiation of hostilities along the Jordanian-Israeli frontier on 5 June 1967, but contends her recourse to force was permissible under Article 51's exception of 'collective self-defence if an armed attack occurs against a Member of the United Nations'. Israel's attack on Egyptian air fields ... is alleged to have constituted an 'armed attack' under Article 51 and thus justified an attack by Jordan - an ally of Egypt - against Israel as a collective self-defence measure.

"The legal question that therefore arises is whether Israel's action in firing 'the first shot' of the 1967 war against Jordan's ally, Egypt. ... was an act of aggression or justifiable self-defence. ... It has been suggested that the 'cumulative efforts' of Egyptian provocation - the closing of the straits of Tiran and passage through the Gulf of Aqaba, the withdrawal of the United Nations Emergency Force and the resulting immediate deployment of strong contingents of Egyptian forces along the frontier, the signing by Egypt of joint defence pacts with other States and subsequent mobilization on all frontiers and the sabre-rattling war fever generated in the streets of Cairo -- was to create a situation whereby Israel would by inaction risk sustaining an imminent and potentially overwhelming strike, and that, accordingly, the series of Egyptian actions must be deemed an 'armed attack'." [10/](#)

On 31 May 1972, General Weizmann of the Israeli Army explained:

"We had to attack because the enemy, intentionally or not, brought about a situation in which he tried to force upon us basic political decisions under the threat of military force. Perhaps the Egyptians would never have attacked. Perhaps we would have accepted the minority opinion not to go to war but to transport in the straits via a convoy under a Norwegian or Danish flag. Then we would have accepted second-class statehood; and if the Arabs had attacked first they would have caused us more losses and the victory would have taken longer". [11/](#)

Other generals interviewed at the same time did not appear to disagree with General Weizmann's assessment of the facts. General Rabin, then Commander-in-Chief of Israel's Armed Forces expressed a similar opinion.

Israel's legal view towards the 1967 occupation of the West Bank and Gaza is based on the premise that neither Jordan nor any other Arab State has any sovereign territorial rights to those territories. According to Israel's position there was no "legitimate sovereign" in the West Bank and Gaza previous to the 1967 war. The purported annexation by Jordan of the West Bank in 1950 was devoid of any legal effect therefore Jordan does not have revisionary rights to the territory. On the other hand, Israel claims sovereignty to any territory of the former Palestine Mandate founded on historical and religious links to the biblical land.

The sovereignty of the Palestinian people over Palestine has been recognized by numerous United Nations resolutions. The inalienable rights of the Palestinians have been reaffirmed as well. In this regard the main General Assembly resolutions are the following:

-Resolution 2535 (XXIV) of 10 December 1969 reaffirmed the inalienable rights of the Palestinians

-Resolution 2628 (XXV) of 4 November 1970 "recognizes that respect for the rights of the Palestinians is an indispensable element in the establishment of a just and lasting peace in the Middle East"

-Resolution 2672 (XXV) of 8 December 1970 "recognizes that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations"

-Resolution 2949 (XXVII) expresses the same doctrine

-Resolution 3089 (XXVIII) of 7 December 1973 "expresses once more its grave concern that the people of Palestine have been prevented by Israel from enjoying their inalienable rights and from exercising their right to self-determination"

-Resolution 3210 (XXIX) of 14 October 1974 "invites the Palestinian Liberation Organization, the representative of the Palestinian people, to participate in the deliberations of the General Assembly"

-Resolution 3236 (XXIX) of 22 November 1974 "reaffirms the inalienable rights of the Palestinian people in Palestine, including: the right to self-determination without external interference; the right to national independence and sovereignty"

-Resolution 3375 (XXX) of 10 November 1975 "requests the Security Council to consider and adopt the necessary resolutions and measures in order to enable the Palestinian people to exercise its inalienable national rights

"Calls for the invitation of the Palestine Liberation Organization, the representative of the Palestinian people, to participate in all efforts, deliberations and conferences on the Middle East which are held under the auspices of the United Nations, on an equal footing with other parties ..."

-Resolution 32/20 of 25 November 1977 expressed deep concern "that the Arab territories occupied since 1967 have continued, for more than ten years, to be under illegal Israeli occupation and that the Palestinian people, after three decades, are still deprived of the exercise of their inalienable rights" ...

"Condemns Israel's continued occupation of Arab territories, in violation of the Charter of the United Nations, the principles of international law and repeated resolutions of the United Nations".

-Resolution 33/29 of 7 December 1978 "declares that peace is indivisible and that a just and lasting settlement to the Middle East problem must be based on a comprehensive solution, under the auspices of the United Nations, which takes into account all aspects of the Arab-Israeli conflict, in particular the attainment by the Palestinian people of all its inalienable national rights and the Israeli withdrawal from all the occupied Palestinian and other Arab territories".

The General Assembly at its seventh emergency special session on the question of Palestine adopted resolution ES-7/2 that reaffirming:

"3. The inalienable right of the Palestinians to return to their homes and property in Palestine, from which they have been displaced and uprooted, and calls for their return

"4. Reaffirms also the inalienable rights in Palestine of the Palestinian people, including:

"(a) The right to self-determination without external interference, and to national independence and sovereignty

"(b) The right to establish its own independent sovereign State

"5. Reaffirms the right of the Palestine Liberation Organization, the representative of the Palestinian people, to participate on an equal footing in all efforts, deliberations and conferences on the question of Palestine and the situation in the Middle East within the framework of the United Nations;

"6. Reaffirms the fundamental principle of the inadmissibility of the acquisition of territory by force;

"7. Calls upon Israel to withdraw completely and unconditionally from all the Palestinian and other Arab territories occupied since June 1967, including Jerusalem, with all property and services intact, and urges that such withdrawal from all the occupied territories should start before 15 November 1980".

General Assembly resolution 35/169 of 15 December 1980 states:

"6. Reaffirms also the inalienable rights in Palestine of the Palestinian people, including:

(a) The right to self-determination without external interference, and to national independence and sovereignty;

(b) The right to establish its own independent sovereign State;

"...

"8. Demands the complete and unconditional withdrawal by Israel from all the Palestinian and other Arab territories occupied since June 1967, including Jerusalem, in conformity with the fundamental principle of the inadmissibility of the acquisition of territory by force;"

Security Council resolution 465 of 1 March 1980 unanimously adopted determines:

"That all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;"

IV. THE EFFECTS OF THE 1967 WAR ON THE STATUS OF THE WEST BANK AND GAZA

The position taken by the United Nations, supported by most countries of the world on the status of the West Bank and Gaza, is to consider those areas as occupied territories.

Israel has a different view. As early as December 1967, the West Bank came to be designated by Israel as Judea and Samaria. This designation reflects Israel's alleged historical and religious claims towards the territory. Shortly after the 1967 war Israel's Parliament passed enabling legislation for extension of "the law, jurisdiction and administration of the State of Israel to any area of Eretz Israel (Palestine) designated by the Government by order". On February 1968 the Ministry of Interior of Israel promulgated a regulation by which the West Bank and the Gaza Strip would no longer be considered as enemy territories. Thus, Israel considers itself as administering Power rather than occupier of the territories.

The 1907 Hague Convention, No. IV, respecting the laws and customs of war on land, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949, 12/ provide the operative laws of armed conflicts. Israel is a party to the Fourth Geneva Convention. Its ratification entered into force on 6 January 1952. Article 42 of The Hague Regulations states that "a territory is considered occupied (for the purpose of application of the rules of belligerent occupation) when it is placed under the authority of the hostile army".

Article 43 provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure as far as possible, public order and safety, while respecting, unless absolutely prevented, the law enforced in the country,"

Article 47 of the fourth Geneva Convention states:

"Protected persons who are in occupied territories shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced as the result of the occupation of a territory, into the institutions or government of said territory, nor by any agreement concluded between the authorities of the occupied territories and the occupying power, nor by any annexation by the latter of the whole or part of the occupied territory".

Thus dispute arises when the occupant attempts legislative and institutional changes that go beyond the necessity of restoration of public order. It is inevitable that under the conditions of occupying Power, the civil rights of the inhabitants of the territories will to some extent, be restricted. Nevertheless, the military administration of the West Bank has gone far beyond making alterations necessitated by security considerations. The position of civil and political rights, including in particular property rights have been radically transformed. The Israeli representative to the United Nations declared in the General Assembly on 26 October 1977:

"Since Jordan never was a legitimate sovereign in Judea and Samaria, the provisions of the Fourth Geneva Convention - including those of its Article 49, which were intended to protect the rights of 'the legitimate sovereign' - do not apply in respect

to Jordan. Therefore, Israel is not affected by these provisions, and need not consider itself restricted by them. In other words, Israel cannot be considered an 'occupying Power' within the meaning of the Convention in any part of the former Palestine Mandate, including Judea and Samaria." 13/

The Israeli views were questioned by an authority on international law, Prof. W. T. Mallison, according to whom the main goal of the Fourth Geneva Convention is to prove a basic or minimum standard of human rights protections for individuals, not to solve claims of sovereignty.

The purpose of the Fourth Geneva Convention of 1949 was to avoid a repetition of the atrocities and massive deprivations of human rights which were inflicted upon civilian populations during the Second World War by the Nazis in Europe and Russia and by the Japanese militarists in Asia".

Various international bodies have supported the legal consideration of applicability of the Geneva Convention to the territories occupied by Israel, among them:

-The International Committee of the Red Cross (ICRC) which is of the opinion that the Fourth Geneva Convention is applicable in toto in the occupied territories. Such view was clearly expressed in its 1973 and 1975 reports.

-The International Commission of Jurists.

-The United Nations through its various bodies, in particular the General Assembly, the Commission on Human Rights and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.

Security Council resolution 465 of 1 March 1980 unanimously adopted affirms "once more that the Fourth Geneva Convention ... is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem."

The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories stated, in its first report of 5 October 1970:

"The situation existing in the territories occupied by Israel as a result of the hostilities in June 1967 is one of occupation of territories falling within the jurisdiction of three foreign states. This type of situation is governed by the Geneva Conventions of 1949, to which Israel is a party and which are applicable in the occupied areas.

"The provisions of the Fourth Geneva Convention concerning the role of the occupying Power exercises authority in the occupied territories. The proper law to be applied in the West Bank by Israel should, therefore, be the Jordanian Law existing at the time of occupation and the only changes permissible under the Fourth Geneva Convention are changes in such provisions of the penal law as constitute a threat to the security of Israel or an obstacle to the application of the Convention. 14/

" ...

"Furthermore, the Special Committee is of the opinion that any law, even though based on security considerations, is invalid if such law violates the provisions of the Geneva Conventions. This applies to any provision, whether it exists in the defence (Emergency) regulations, 1945, or in the Security instructions promulgated by the Israel Defence Forces in any occupied area, or in any other form of legislation or administrative decree concerning the occupied territories."

V. CHANGES IN THE GOVERNMENTAL SYSTEM IN THE OCCUPIED TERRITORIES

A. Legislative changes

According to Alan Gerson, during the period of the Jordanian administration, though the legislative authority was in the hands of the central Government in Amman, the municipal councils had a legislative role confined to ordinances of minor patterns. 15/

According to the reply received from the Government of the United Arab Republic on 29 July 1970 contained in the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, during the Egyptian administration in the Gaza Strip

"no law can be adopted without the consent of the Legislative Council. Any member of the Legislative or the Executive Council has the right to propose laws ... Laws are issued in the name of the Palestinian people.

" ...

""The Legislative Council of the Gaza Strip set up before the aggression of 5 June was composed of members who were freely elected from among qualified Palestinians and who were true representatives of the Palestinian people. The fact that the chairmanship of the Palestinian Legislative Council was assumed by a Palestinian citizen opened the door for the Palestinian personality to assert itself and to prove its existence in the Arab region. The Council showed beyond doubt that the Palestinian people living in the area had been trained in self-government and had developed its capacity to make laws compatible with the interests of the society." 16/

Shortly after the 1967 war, the Israeli military command in the West Bank published on 7 June Proclamation No. 2 Concerning the Assumption of Government by the Israeli Defence Forces. Section 3 states:

"Every governmental, legislative, appointive and administrative power in respect of the region or its inhabitants shall henceforth be vested in me (The West Bank Area Commander) alone, and shall only be exercised by me or by persons appointed by me for that purpose or acting on my behalf."

Originally, these powers were exercised cautiously, with explanations for the justification or necessity for the order in question. As time went on, however orders which change the Jordanian law drastically so as to adapt it to Israeli policies, have become commonplace and issued without explanation.

According to the Hague Regulations and the Fourth Geneva Convention, the occupant may promulgate new legislation only for imperative reasons of public order, or military security (Article 43 of the Hague Regulations).

Article 64 of the Fourth Geneva Convention reiterates this. It states:

"The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective Administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offenses covered by said law."

Though article 64 refers only to "penal law", its interpretation implies civil legislation as well.

According to official commentary to the Fourth Geneva Convention

"the idea of continuity of the legal system applies to the whole of the law - civil law and penal law - in the occupied territory. The reason for the Diplomatic Conference making express reference only to respect for penal law was that it had not been sufficiently observed during past conflicts; there is no reason to infer 'a contrario' that the occupation authorities are not also bound to respect the civil law of the country, or even its constitution." 17/

Article 35 of Proclamation No. 3 of 7 June 1967 states that the military forces and their office must apply the terms of the Fourth Geneva Convention concerning the protection of civilians during times of war and concerning everything that affects legal proceedings, and that if there should be any contradiction between this Proclamation and the said Convention, the terms of the Convention must be followed. This Proclamation has been repealed by Military Order No. 144 of 22 October 1967.

On 10 December 1970 the Israeli representative to the Special Political Committee declared:

"Israel's policy in the occupied territories was clear. Although the Government of Israel was not regarded by the population there as its own Government, it felt bound by law, by humanitarian considerations and by enlightened self-interest to treat the population as its subjects and provide it with all the services and safeguard all the rights to which it was entitled. Whatever solution was found to the tragic conflict in the Middle East, and whatever final boundaries were established, Israel would always be the neighbour of the Arabs in Judea and Samaria, in Sinai and Gaza.

"The basic principle of Israel's policy in the territories had been a policy of normalization; to enable the population to carry on its life as far as possible as it had before June 1967. That policy was applied under the three main headings of non-presence, non-interference, and open bridges." 17-a/

In 1970 a governmental committee was proposed in order to study Jordanian laws with the purpose of replacing them by Israeli rules. This proposal was withdrawn for it conveyed the impression of annexation, which was a step that Israel was not politically ready to take. Amending Jordanian law would mean the same advantages for Israel without the problems annexation would

entail.

The Area Commander has assumed full legislative power through the issue of military orders. The total amount of military orders is 854. Each of them is the equivalent of a new law. Of these orders, those dealing with security matters are, in fact, few in number. All attempts to challenge the Area Commander's legislative powers have been unsuccessful. According to Raja Shehadeh, a West Bank lawyer, the advantages of this arrangement are:

- "there was no need to annex the territory, with all the consequences that would entail in terms both of external relations and of having one and a half million Arab citizens of the State;
- "it avoided giving to Arabs of the West Bank the legal rights of Israeli citizens; rights which are denied to them under the occupation;
- "whenever the question arose, the claim would still be made that it is Jordanian law that is being applied to the West Bank. The fact that this body of law has been altered beyond recognition is not mentioned or generally known.

"In this way the population were denied on the one hand the protection afforded by a strict application of the rules of international law governing militarily occupied territories, and on the other hand the legal rights which would result from Israeli citizenship." 18/

Raja Shehadeh goes on to state that Israeli military orders are not published in an official gazette and therefore are not made available to the public. They are not reported in the press or the radio, they are merely distributed among practicing lawyers. Non-lawyers are refused copies, no public library on the West Bank has a set of military orders and the courts are not provided with law libraries. As for Jordanian law, the civil code has become a rare item in the West Bank. The relevant Jordanian laws are out of print and difficult to find. If the order is for expropriating land, the people concerned are only notified orally. 19/

Even the request to supply the courts with a photocopier machine has not been taken into consideration. Some lawyers have applied for a permit to install one at their own expense, but so far the permission has not been granted by the authority in charge.

B. Executive changes

Under Jordanian administration the municipal councils in the West Bank were composed of elected representatives; the term of office for its members was four years. The number of members was not specified but was to be fixed by the Minister of Interior based on proportional representation.

On the local level the municipal councils were the highest indigenous political institutions. They played a substantive political role and due to the absence of a national Government, they assumed important responsibilities. Article 41 (a) of the Jordanian municipal law gave municipal government authority to act in 40 different areas.

During the Egyptian administration in the Gaza Strip:

"Article 24 of the Constitution provides that the Executive Council be composed of the General Governor and the members. ... According to Article 25, the Executive Council is empowered to draw up the necessary statutes for the enforcement of laws without introducing any amendment, delay or exemption in the application of the law. That is to say that the Constitution defined the powers of the Executive Council within the limits of the laws adopted by the Palestinian legislative power.

"Before the aggression, the Executive Council included a majority of Palestinians. It included ten members: seven Palestinians and three Egyptians. This means that the Palestinian people had received a high standard of training in the field of civil administration during the period of the Egyptian administration. This gave rise to many good qualifications among Palestinians in all fields. This stands in testimony of the achievements of the Egyptian administration in the region, giving the Palestinian personality a full chance to develop." 20/

The last municipal elections held on the West Bank under Jordanian rule took place in September 1963. According to Jordanian law, elections were scheduled to occur in September 1967. The Israeli Military Government suspended them for an unlimited period of time on the grounds that it would endanger public order, but finally, in November 1971 permitted them to be held in accordance with the Order Concerning Municipal Elections (Judea and Samaria). The Military Government emphasized that the candidates would have municipal duties and play the non-political role undertaken since occupation.

The elections took place in the West Bank in 1972. The participation was high compared to municipal elections held during the

Jordanian period. Again early in 1976 elections took place in towns and cities in the West Bank. For the first time women exercised the right to vote as well as men regardless of their property-owning status. Palestine Liberation Organization (PLO) candidates were elected by a great majority in the municipal councils and as mayors.

"As a result, a new type of leadership was swept into office on pro-PLO slates, which won overwhelmingly. Such new mayors ... represent a new class of sophisticated, educated, nationalistic Palestinians of the West Bank who, in spite of eleven years of occupation, are determined to find a solution to their problems based on the right of self-determination." 21/

Municipal government has been the base for a number of political leaders freely elected that they will play a national role in the future. Israel's decision to permit elections appears to be an example of democratic rule.

However, according to The New York Times dated 27 March 1981, a senior Israeli official said that municipal elections in the West Bank have now been indefinitely postponed, because the voting would endanger the Camp David Peace Agreement.

The means used to restrict the role exercised by the municipal councils and the mayors are considerable. The military government exercises a de facto control on the actions of the municipal government.

A bureaucratic layer placed above the municipal government, called the Supreme Planning Council was added by the Military Government. Its members are appointed by the Military Government itself and its primary goal is to implement the settlement policy in the occupied areas. It deals with planning, land use policies and annexation of lands. Furthermore, it has the power, by military decree, to nullify any municipal decision regarding planning, zoning and to forbid housing development in any area. 22/

The manner in which military orders are conveyed makes it extremely difficult for local officials to contest or question them. They often come from headquarters in the form of phone calls and are rarely confirmed in writing. If they are conveyed in written form, they are rarely signed by an individual, but bear the name "al-hukm al-'Askari" which means "the Military Rule". Though orders are written in both Arabic and Hebrew, municipal officials who do not speak Hebrew, have been informed that the Hebrew version is the official one and the Arabic is the official translation. Written orders are rarely stamped.

West Bank mayors are forbidden by the Military Government from meeting with each other even socially and West Bank towns and cities are prohibited from establishing any co-operative regional programmes. Such regional co-operation is essential for economic development. The financial problems faced by the municipalities are common to most localities; under occupation the regions are restricted in their fiscal planning and budgets. They cannot levy any taxes without prior approval by the occupation authorities. They are restricted in receiving grants and financial aid from the Arab World. In case of approval they must expend it according to a plan accepted by the Military Government, which has direct control of the entire operation: the quantity of money to be collected, the source, the purpose, the bank in which the money is to be deposited, the projects for which it should be spent, the frequency of expenditures. If the approval needed for the withdrawal of the money is not given by the Military Government, the local officials are forced to turn to Military Government for emergency loans. 23/

According to Emile A. Nakhleh, Professor of Political Science at Mount St. Mary's School, Emmitsburg, Maryland:

"Most mayors and other town officials agree that the major problem is the control the Military Government exercises over every branch of municipal government. This control, which they perceive to depend primarily on the 'whim and temperament' of the Military Government, had led to a definite politicization of the entire municipal process. Municipal officials assert that military interference in their affairs has undermined their legal authority and has blurred the sources of law upon which municipal authority relies. The confusion resulting from the outdated Jordanian municipal law and its legal relation to military order has often led to serious confrontations between indigenous local officials and occupations officials. Whenever a legal question arises, military officials provide the 'correct' interpretation, which often does not serve the interests of local government. Municipal governments do not even have executive authority to punish those who do not comply with its ordinances. This authority is also exercised by the Military Government often for political reasons and invariably against the best interest of local political jurisdictions." 24/

In the Gaza Strip the municipality comes under the direct control of the Israeli Military Government. Though Gaza is the only municipal government in the Strip, no municipal elections have been held since occupation. It has been ruled directly by a military officer or by a mayor appointed by the Military Government.

The last municipal election in Gaza took place in 1946. From 1948 to 1967 this territory was under Egyptian administration and no elections were held. Egyptian authorities favoured an appointive system of local government and, early in 1967, the Egyptian administration appointed a mayor. Soon after the war he was replaced by an Israeli military officer. "His primary concern and main policy focused on strengthening the Israeli occupation in the area." 25/

Following popular demand the Israeli authorities called on an Arab mayor who would appoint an Arab city council. Emile Nakhleh writes:

"While they differ in the history and the magnitude of their problems, the West Bank and Gaza are similar in that they are inhabited by Palestinian Arabs under occupation. Municipal government in both areas is the highest form of political institution, yet it functions under the direct control and authority of the military government. Lip service is often paid by the military government to either the 1934 municipal law (in Gaza) or the 1955 Jordanian Law (in the West Bank) but in practice municipal governments in both regions derive their authority to govern from the military government as dictated by the orders and decrees of the regional commander. The ubiquity of government by fiat has rendered superfluous municipal authority by law." 26/

He adds:

"The municipalities are the highest level of indigenous political institutions in the occupied areas, and by virtue of leadership and structure they are prepared and expected to play a significant role in any transitional régime after the occupation ends." 27/

In May 1980 in the aftermath of a terrorist attack in the West Bank city of Hebron that left six Jews dead, the Government of Israel deported to Lebanon the Mayors of Hebron and Halhoul and the Sharia Judge of Hebron. The three Arabs had no direct connexion with the attack and were denied appeal procedures, available under prevailing law, by the Israeli authorities. Furthermore, the Fourth Geneva Convention prohibits deporting of individuals,

As a result of this action the Security Council on 8 May 1980 adopted resolution 468, which reads:

"The Security Council,

"Recalling the Geneva Convention of 1949,

"Deeply concerned at the expulsion by the Israeli military occupation authorities of the Mayors of Hebron and Halhoul and of the Sharia Judge of Hebron,

"Calls upon the Government of Israel as occupying Power to rescind these illegal measures and to facilitate the immediate return of the expelled Palestinian leaders so that they can resume the functions for which they were elected and appointed,

"Requests the Secretary-General to report upon the implementation of this resolution."

On 20 May 1980, due to the refusal of the Israeli authorities to allow the mayors of Hebron and Halhoul and the Sharia Judge of Hebron to return, the Security Council adopted resolution 469, which states:

"Having considered the report by the Secretary-General under Security Council resolution 468 (1980) of 13 May 1980 (S/13938),

"Recalling the Fourth Geneva Convention of 1949 and in particular article 1 which reads 'The High Contracting Parties to undertake to respect and to ensure respect for the present Convention in all circumstances', and article 49, which reads 'Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive';

"1. Strongly deplores the failure of the Government of Israel to implement Security Council resolution 468 (1980) of 8 May 1980;

"2. Calls again upon the Government of Israel, as occupying Power, to rescind the illegal measures taken by the Israeli military occupation authorities in expelling the mayors of Hebron and Halhoul and the Sharia Judge of Hebron, and to facilitate the immediate return of the expelled Palestinian leaders, so that they can resume their functions for which they were elected and appointed;

"3. Commends the Secretary-General for his efforts and requests him to continue his efforts in order to ensure the immediate implementation of this resolution and to report to the Security Council on the result of his efforts at the earliest possible date."

In June 1980 the mayors of Nablus, Ramallah and Al Bireh were the target of an assassination attempt. As a result of this action two of them were badly injured.

The Security Council on 5 June 1980 adopted resolution 471, which reads:

"Recalling once again the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), and in particular article 27 which, inter alia reads:

"Protected persons are entitled, in all circumstances to respect for their persons ... They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof.

"Reaffirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) to the Arab territories occupied by Israel since 1967, including Jerusalem,

"Recalling also its resolutions 468 (1980) and 469 (1980) of 8 and 20 May 1980,

"Reaffirming its resolution 465 (1980), by which the Council determined 'that all measures taken by Israel to change to physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East' and strongly deplored the 'continuation and persistence of Israel in pursuing those policies and practices',

"Shocked by the assassination attempts on the lives of the mayors of Nablus, Ramallah and Al Bireh,

"Deeply concerned that the Jewish settlers in the occupied Arab territories are allowed to carry arms thus enabling them to perpetrate crimes against the civilian Arab population,

"1. Condemns the assassination attempts on the lives of the mayors of Nablus, Ramallah and Al Bireh and calls for the immediate apprehension and prosecution of the perpetrators of these crimes;

"2. Expresses deep concern that Israel, as occupying Power, has failed to provide adequate protection to the civilian population in the occupied territories in conformity with the provisions of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949);

"3. Calls upon the Government of Israel to provide the victims with adequate compensation for the damages suffered as a result of these crimes;

"4. Calls again upon the Government of Israel to respect and to comply with the provisions of the Fourth Geneva Convention of 1949, as well as with the relevant resolutions of the Security Council;

"5. Calls once again upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories;

"6. Reaffirms the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem;

"7. Requests the Secretary-General to report on the implementation of the present resolution."

On 19 December 1980 the Security Council unanimously adopted the following resolution:

"Recalling its resolutions 468 (1980) and 469 (1980),

"Taking note of General Assembly resolution 35/122 F,

"Expressing its grave concern at the expulsion by Israel of the Mayor of Hebron and the Mayor of Halhoul,

"1. Reaffirms the applicability of the Fourth Geneva Convention of 1949 to all the Arab territories occupied by Israel in 1967;

"2. Calls upon Israel, the occupying Power, to adhere to the provisions of the Convention;

"3. Declares it imperative that the Mayor of Hebron and the Mayor of Halhoul be enabled to return to their homes and resume their responsibilities;

"4. Requests the Secretary-General to report on the implementation of this resolution as soon as possible."

C. Changes in the Judiciary

Soon after the Israeli occupation, the Israeli Military Command published Proclamation No. 2 concerning the assumption of government by the Israeli Defence Forces. Section 2 states:

"All laws which were in force in the area on 7 June 1967, shall continue to be in force as far as they do not contradict this or any other proclamation or order made by me (The West Bank Area Commander) or conflict with the changes arising by virtue of the occupation of the Israeli Defence Forces of the area."

Judicial systems have generally been permitted to function during belligerent occupation. Article 23 of the Hague Regulations and article 64 of the Fourth Geneva Convention make specific references to the judicial system of occupied territory.

Article 23 provides:

"... it is specially forbidden ... to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals or the hostile party".

Article 64 states:

"... subject to the latter consideration (security of the occupant forces] and the necessity for answering the effective administration of justice, and tribunals of the occupied territory shall continue to function in respect to all offences covered by said laws".

Nevertheless article 54 of the Fourth Geneva Convention permits removal of judges and officials from their posts at the occupying Power's discretion. Oppenheim explains the apparent contradiction in the sense that "the suspension of judges must be limited to instances of insubordination, express or indirect and that in other cases they must be permitted to serve with their independence unimpaired."

"...

"As a general rule, local courts are to be permitted to continue to exercise the jurisdiction conferred upon them by the laws that antedate occupation. There are two important exceptions. The first is that courts or tribunals which have been instructed to apply inhumane or discriminatory laws may be abolished. This is a corollary of Article 27 of the Fourth Geneva Convention whereby an occupant is granted the right to abrogate institutions and law which further discriminatory measures incompatible with humanitarian requirements. Secondly, the jurisdiction of courts in occupied territory over soldiers of the occupying Power and over inhabitants of the occupied region involved in security offenses may be abrogated. Breaches by soldiers will be tried by a courts-martial of the occupying Power. Breaches by inhabitants may be tried by 'properly constituted, non-political military courts, on condition that the said courts sit in the occupied country' (Article 66 of the Fourth Geneva Convention)." 28/

An important change introduced by the Israeli authorities was the creation of the Objection Committee under Military Order No. 172, dated 22 November 1967. According to Raja Shehadeh, the purpose of this Committee is to usurp powers which, according to Jordanian Law, should be in the hands of the courts. This tribunal is composed entirely of reserve military officers. It has exclusive jurisdiction to hear objections against decisions made regarding a large list of subjects such as: expropriation of land, payment of taxes, pension, rights, etc. 29/

The members of the Objection Committee are appointed by the Area Commander. The first appointments included Arab residents, with a jurist background. These members were soon replaced by Israelis, few of whom have any legal training. Since the Objection Committee has no fixed secretariat or meeting place, it is difficult to submit any objections to it. Often the hearing of the objection is delayed until enough cases make it worthwhile for it to convene since some of its members work in various parts of the country. In one case objection remained pending for over one and a half years.

The Objection Committee is not bound by the rules of evidence or procedure and it decides on its own on procedure.

The decisions of this Committee become final for there is no appeal available. West Bank lawyers have complained of its lack of objectivity.

"Litigants and lawyers find it frustrating to submit objections to decisions, which are often based on the policies of the occupier, to a Committee appointed by the same authority which has laid down the policy. The outcome is rarely favorable and the success rate of litigants submitting their objections to this Committee is very low. This results in a very small number of cases being submitted despite the wide jurisdiction of the Committee ... Because the proceedings of this Committee are not published, it is not possible to review past precedent or to make references to earlier decisions, which makes the task of the lawyer more difficult and less predictable, especially since the Committee is not bound by precedents, rules of evidence or procedure". 30/

Military Order No. 310 introduced the following alterations to the Jordanian Law No. 2 on the independence of the judiciary:

- The powers vested in the Minister of Justice have been transferred to "the person responsible" defined as "whoever the Military Commander of the West Bank area appoints for the purposes of the order".
- The Judicial Council has been replaced by a committee appointed by the Area Commander. It is known that this committee is composed of military personnel, though its composition has never been announced.
- The disciplinary powers previously vested in the Judicial Council are to be transferred to a special court which shall be appointed by the Commander of the Area. Similarly the constitution of this court has not been made.

Article 102 of the Jordanian Constitution guarantees the right of all citizens to bring cases in the regular courts, civil or criminal, against the Government or any of its departments. This right has been denied by Military Order No. 164, issued 3 November 1967. It forbids the courts of the West Bank to hear any case or issue any order or decision against any of the following:

- the State of Israel and its branches and employees;
- the Israel Defence Forces and its members;
- the authorities which have been appointed by the Area Commander or those delegated by him to work in the area;
- persons employed by such authorities;
- whoever works in the service of the Israeli army or is empowered by it.

The Area Commander is empowered to issue a permit allowing the courts to hear any specific case.

The scope of this order was widened by a later amendment requiring a similar permit for cases involving property owned or possessed by any of the categories mentioned above. The order also restricts the right of the courts to summon any person employed by any of the above-mentioned categories to give evidence, submit documents, answer to interrogations orally or in writing without first obtaining the approval of the Area Commander. The effect of this order has been a drastic reduction of cases heard by the courts. It takes between four months and one year to obtain the permission required. Cases which may commence without a permit are delayed if a government employee is required to give evidence or submit documents. The consequence of this law is that a large segment of the population is immune to legal action. It is a basic principle of the rule of law that the executive and its servants should, like other bodies and individuals, be subject to the normal processes of the law. 31/

Another change which has affected the access to Court of the population of the West Bank has been the disproportionate increase in fees. Notarial fees for every signature before the notary imposed - fee of 50 files (14 \$ cents). A recent amendment has revised it to 1.6 dinars. For every signature on a power of attorney the fee was one dinar. After the amendment it is 10 dinars (3.5\$). 32/

On the other hand the number of officials has not been increased and their salaries have not been raised. There has been no improvement in services.

Raja Shehadeh claims that the two most frequent obstructions of process in the West Bank courts are the following:

- "The withdrawal by the Israeli military officer in charge of the judiciary of cases in progress before the courts. West Bank lawyers cite instances when they went to attend a court session, and were told that the court must be adjourned because the file of the case had been withdrawn from the court by the officer in charge of the Judiciary. This is usually done when the interests of an Israeli citizen are either directly or indirectly in jeopardy.
- "The delay by the Area Commander in granting permits to local government employees to testify when their testimony is needed. Sometimes the delay extends for over one year, during which time the case cannot proceed". 33/

The low standard of the courts in the West Bank is one of the concerns of the lawyers who have been on strike since 1967. Under

such difficult conditions a lawyer cannot give the appropriate help or get a fair trial. Lawyers practicing complained that obstructions to their work exist at every level.

According to 1979 statistical data from Israeli sources, 2,090 new appeals were entered in 1978. 1,512 of these and cases pending from previous years were decided and 1,030 remained pending at the end of the year.

The West Bank lawyers have complained to the officer of the Israeli army in charge of the Judiciary about the prevailing conditions. In February 1976 a petition was sent to him asking for a committee to investigate the conditions and make recommendations. No response was made to this petition.

Before 1967 all lawyers in the West Bank were members of the Jordanian Bar Association. After the occupation the West Bank lawyers considered illegal the following actions:

- the annexation of Jerusalem;
- the removal of the Court of Appeal from Jerusalem;
- the non-compliance with the Geneva Convention.

The West Bank lawyers' approach was that the fact of appearing before the newly organized courts would give legitimacy to the new situation. In consequence, a large number of lawyers have been on strike since 1967 and refuse to appear before the courts with the exception of religious tribunals. The decision to strike was taken with the general belief that the occupation was a temporary state. The military authorities, however, passed military order No. 145 which made it permissible to Israeli lawyers to practice in West Bank courts. Though it was promulgated as a temporary measure the order has not been repealed.

The appearance of the Israeli lawyers in the West Bank was considered illegal under Jordanian Law which restricts court appearances to lawyers who are Jordanian nationals and members of the Jordanian Bar Association.

In consequence, from the beginning of the occupation West Bank residents found no lawyer to defend them. Gradually some lawyers began to take up cases before the military and civil courts. Nevertheless, the official strike of the lawyers has entered its fourteenth year.

Raja Shehadeh has summarized the consequences of the action as follows:

- "It has allowed the officer in charge of the Judiciary to assume all the powers that were previously in the hands of the Bar Association.
- "It has allowed the standard of the Judiciary to fall and the conditions of the courts to reach a low ebb, because there was no organized-body to resist this deterioration.
- "It has caused the society to suffer by depriving it of a well-organized legal profession.
- "It has deprived the society of the learned legal commentary and research which the lawyers could otherwise make on the administrative changes and amendments to Jordanian Law, which are being legislated by the military government. The consequences of this has been that 850 orders amending the Jordanian Law have been promulgated without the voice of the practicing legal profession being heard." ^{34/}

The main structural changes introduced in the courts after the occupation are:

- Abolition of the Court of Cassation: The abolition of this court is of great importance for it has affected the whole West Bank system of the Administration of Justice in various areas such as: the appointment of judges, disciplining judges and employees in the judicial department, the role of the court as arbitrator of cases, its role as interpreter of any law of general importance requested by government departments. The abolition also meant placing a heavier burden on the Court of Appeal which now has to act as a High Court of Justice. All those burdens affect the efficiency of the Court of Appeal.
- Transfer of Court of Appeal from Jerusalem: Soon after the occupation the military commander of the Israeli Army announced in military proclamation No. 39 the abolition of the Court of Appeal of Jerusalem. It was transferred to Ramallah. The first report of the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories ^{35/} indicated that this transfer "seriously hampered the functioning of the court system" as it "provoked a reaction on the part of the judiciary that brought activities of the Court of Appeals to a standstill". In consequence the Special Committee recommended that the General Assembly request the Government of Israel to "restore the judicial

system in the occupied territories to the status which it enjoyed before the occupation and in particular to return the Court of Appeals to its seat in Jerusalem".

The transfer represented a symbolic incorporation of East Jerusalem and it was in consequence one of the reasons for the lawyers' strike.

- Military Courts: The West Bank Military Courts were established by Proclamation No. 3, later replaced by Proclamation No. 378. Though Military Courts are defined as those composed of either a President (an officer in the Israeli army) and two other offices, or a simple judge, in practice almost all cases are now heard by a single judge. Convictions and sentences passed by a three member court require the authentication of the Area Commander who can vary, annul and accept them. In the case of a single judge, court convictions and sentences do not require similar authentication but the Area Commander has the power to vary the sentence. No appeal exists from the decisions passed by either court.

The absence of the right of appeal violates a fundamental principle of the rule of law and also opposes the provisions of the Fourth Geneva Conventions. Article 3 (1) (d) in connexion with internal armed conflicts, prohibits "the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affecting all the judicial guarantees which are recognized as indispensable by civilized peoples". The official commentary to this article made by Professor Pictet was: "All civilized nations surround the administration of justice with safeguards aimed at eliminating the possibility of judicial errors. The convention has rightly proclaimed that it is essential to this even in time of war".

The military courts in the West Bank have jurisdiction to hear any cases relating to acts committed before or after the Israeli Defence Forces entered the area. The trial by a military court of the offences committed before the occupation is contrary to the Fourth Geneva Conventions.

After the occupation Israel reactivated the Defence Emergency Regulations of 1945 which were repealed during the Jordanian administration. In 1950 the regulations were never used in the West Bank. They were established by the British mandatory power over Palestine as a regressive measure against acts of terrorism, including those of Zionist organizations.

People accused before military courts have difficulty in meeting their lawyers. According to article 11 of Order 29, the Commander might allow or refuse the prisoner to meet his lawyer. The policy relating to sentencing policy has gradually become more severe in the last few years. The sentence is imprisonment and a fine. The fines have increased in the past few years: one year's imprisonment involves a maximum of 150,000 Israeli shekels (\$US 3,000 approx.). When the period of imprisonment exceeds five years the fine is 750,000 shekels (\$US 15,000 approx.). A minor offence such as participating in a meeting which can be construed as political in nature is punishable for a period of up to 10 years imprisonment. Since there is no appeal the judge's authority is absolute. Arab prisoners have charged that convictions frequently are based on confessions through coercion. ^{36/}

VI. CHANGES IN JORDANIAN LAW MADE BY ISRAEL

The following restrictions on basic rights are only some examples of the alterations introduced by Israel through military orders:

(1) Labour law

Among the various amendments to Jordanian labour law the most significant is Military Order No. 825. This amendment makes it illegal for any person to be elected to the administrative committee of a trade union unless he is working in the relevant trade or occupation or has been employed by the union. It also declares ineligible for nomination;

- any person who has been found guilty of committing a crime whose sentence exceeds five full years' imprisonment;
- any person who has been convicted of a security offence by a court having jurisdiction in the area or in Israel.

(2) Freedom of movement

Military Order No. 3 gives the military commander power to declare "closed areas" and in consequence forbids movement into or out of such areas without a permit. This rule has been used to declare the whole of the West Bank a closed area.

A permit is needed to leave the West Bank and it is given or denied at the sole discretion of the military governor. According to Raja Shehadeh,

"the reasons for denying a permit sometimes appear arbitrary, but there is quite often a specific political motive behind it. The occasion for granting the permit is often used as an opportunity for the military government to exert pressure on a particular

person. A mayor, or political activist, may be granted or denied this permit depending on the acceptability of his views to the Israeli Government. A student's permit to study in the Arab University of Beirut may be withheld or delayed if he refuses to become an informer; another may be granted a permit only if he relinquishes the right to return to his homeland.

"...

"Palestinians who are denied by these methods the right to travel to and reside in their own homeland are convinced that the reasons for these restrictions are not related to security considerations but refer to the Israeli intention to rid the land of its original inhabitants". ^{37/}

(3) Collective punishment

The concept of personal responsibility is essential to the rule of law. The imposition of collective punishment involves taking summary action without any trial or the possibility of judicial review. Collective punishment is prohibited by the Fourth Geneva Convention on the treatment of civilians in occupied territories. This kind of punishment in various forms has been part of the Israeli policy in the occupied territories. It has not been denied by the Israeli authorities. The punishment is suffered by relatives, neighbours or even entire towns or villages. ^{38/}

(4) Freedom of assembly

Military Order No. 101 prohibits the gathering or convening without a permit of ten or more people for a march or a meeting where it is possible to hear a speech or talk on political subjects or a subject which may be considered political. The order has been broadly interpreted by the military courts.

Illegal assembly carries a maximum sentence of ten years' imprisonment and a fine of 750,000 Israeli shekels (about \$US 15,000).

One of the very few progressive changes introduced in the occupied territories' legislation is the abolition of the death penalty. Military order No. 268 of 24 July 1968 states:

"Whenever the law makes obligatory the passing of a death sentence, the court shall pass a sentence of life imprisonment, but if the law (permits but) does not make obligatory the passing of a death sentence, the court may pass a sentence on the accused of life imprisonment or of imprisonment for a specified period".

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4/ Alan Gerson, "Trustee-occupant. The legal status of Israel's presence in the West Bank". Harvard International Law Journal, vol. 14, No. 1, Winter 1973, p. 26.

5/ Cattan, op.cit., p. 198.

6/ Ibid., p. 203.

7/ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (United Nations document A/8089), p. 91.

8/ United Nations document A/34/PV.7, pp. 18-20.

9/ Quincy Wright, "The Middle East problem", American Journal of International Law, vol. 64, 1970 (American Society of International Law), pp. 270, 271.

10/ Alan Gerson, Israel, the West Bank and International Law (Frank Cass and Company Limited, 1978), p. 71.

11/ Ibid., pp. 71, 101.

12/ Entitled "Geneva Convention Relative to the Protection of Civilian Persons in Time of War," it is widely referred to as the "Fourth Geneva Convention".

13/ United Nations document A/32/PV.47.

14/ United Nations document A/8089, p. 24.

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18/ Raja Shehadeh, The West Bank and the Rule of Law (International Commission of Jurists, 1980), p. 103.

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22/ Ibid., p. 14.

23/ Ibid., pp. 15, 18, 19.

24/ Ibid., p. 18.

25/ Ibid., p. 15.

26/ Ibid., p. 17.

27/ Ibid., p. 1.

28/ Gerson, Israel, the West Bank and International Law, p. 124.

29/ Shehadeh, op. cit., p. 30.

30/ Ibid., p. 33.

31/ Ibid., p. 36.

32/ Jordanian dinar = 1,000 fill = \$US 3.

33/ Shehadeh, op. cit., p. 40.

34/ Ibid., p. 50.

35/ United Nations document A/8089.

36/ Ibid.

37/ Shehadeh, op. cit., pp. 71, 72.

38/ United Nations documents A/8089 and A/10272.

