ISRAEL'S DEPORTATIONS AND FORCIBLE TRANSFERS OF PALESTINIANS OUT OF THE WEST BANK DURING THE SECOND INTIFADA

OCCASIONAL PAPER 15

Kate Coakley

Marko Divac Öberg

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Al-Haq
P. O. Box 1413, Ramallah, West Bank
Tel.: +972 (0)2 2956421 / 2954646
Fax: +972 (0)2 2954903
E-mail:haq@alhaq.org
www.alhaq.org

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LIST OF ABBREVIATIONS

Abbreviation	Meaning
EU	European Union
Fourth Geneva Convention	Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949
Hague Regulations	Regulations Annexed to the Fourth Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
HCJ	Israeli High Court of Justice
ISM	International Solidarity Movement
OPT	Occupied Palestinian Territories
PNA	Palestinian National Authority
UDHR	Universal Declaration of Human Rights
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

INTRODUCTION

The purpose of the present study is to assess the legality, under international law, of the forms of deportations and forcible transfers of Palestinians from the West Bank adopted by the Israeli government since the outbreak of the second *intifada* in September 2000.[1] The West Bank, including East Jerusalem, and the Gaza Strip together form the Occupied Palestinian Territories (OPT).

The first instance thereof occurred in May 2002, on the basis of an international agreement. In April-May 2002, around the end of the large-scale Israeli military incursions in the West Bank ("Operation Defensive Shield"), a diverse group of Palestinians and foreigners were inside the Church of the Nativity in Bethlehem, under siege from the Israeli occupying forces. Under a secret agreement brokered with international assistance, 39 of the Palestinians were deported or transferred on 10 May 2002, 26 of them to the Gaza Strip and 13 others abroad, mainly to Europe. This study will show that these departures were coerced, in contravention of the international prohibition on deportations and forcible transfers of civilians in occupied territory, and not legalised by the existence of the agreement.

A few months later, in the summer of 2002, Israeli authorities came up with a plan to transfer West Bank family members of alleged "terrorists" to Gaza, in order to deter future attacks against Israelis. The transfers were presented as measures of "assigned residence". The first instance of such "assigned residence" took place on 4 September 2002, when two Palestinian siblings, Kifah and Intisar 'Ajouri, were transferred to Gaza. As of April 2006, a total of 28 Palestinians have been forcibly relocated from the West Bank to Gaza. The transfers were officially for periods of up to two years, although sometimes the transferees spent more than two years in Gaza. This study will show that

[1] Previous Al-Haq studies on deportations and forcible transfers include: *Israel's Deportation Policy in the Occupied West Bank and Gaza (1988), An Illusion of Legality: A Legal Analysis of Israel's Mass Deportation of Palestinians on 17 December 1992 (1993)* and *The Forced Transfer of Kifah & Intissar Ajuri (2002).*

the transfers did not respect the conditions of lawful measures of assigned residence and therefore cannot be considered as such. Instead, they must be classified as forcible transfers.

Under international humanitarian law, both deportations and forcible transfers are illegal. Under international criminal law, persons who engage in these practices incur international criminal responsibility. The material difference between them is the place of destination – deportations are to a destination outside of the borders of the territory of residence, while forcible transfers are to a destination within the borders of the territory of residence. This was clearly stated by the International Criminal Tribunal for the former Yugoslavia (ICTY):

> Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.[2]

Consistent with the above definition, the present study will use the term "deportation" for unlawful forcible displacements outside the OPT and "forcible transfer" for unlawful forcible displacements inside the boundaries of the OPT. The term "expulsion" will be used as a generic term for all forcible displacements.

[2] *The Prosecutor v. Radislav Krstic,* Case No. IT-98-33-T, Trial Chamber I, Judgement, 2 August 2001, para. 521. This distinction was affirmed in *The Prosecutor v. Milomir Stakić,* Case No. IT-97-24-T, Appeals Chamber, Judgement, 22 March 2006, para. 300.

PALESTINIANS EXPELLED WITH INTERNATIONAL BLESSING: THE CHURCH OF THE NATIVITY AGREEMENT

Unlike previous Israeli practice, such as the mass deportation of 415 Hamas and Islamic Jihad members to Lebanon in 1992, the deportations and forcible transfers of 39 Palestinians from the Church of the Nativity in May 2002 received an apparent stamp of international legitimacy by being approved in an internationally brokered agreement between Palestinian representatives and Israel. The agreement was designed as a political solution to the siege of the Church of the Nativity and was not concerned with the individual rights of those to be deported or transferred.

The Siege of the Church of the Nativity

From March to April 2002 the Israeli occupying forces carried out "Operation Defensive Shield" in the West Bank. As a part of these large-scale military operations, Bethlehem was invaded in a declared effort 'to root out militants'. On 1 April 2002, Israeli tanks surrounded Bethlehem. The next day, Israeli military planes, tanks and troops attacked the city. In early May, Bethlehem was the last West Bank city where the occupying forces were still present in the wake of "Operation Defensive Shield". They left only after the full evacuation of the Church of the Nativity, which was the scene of a stand-off between the Israeli army and a group of Palestinians who had taken refuge inside the Church.

On 2 April 2002, approximately 200 Palestinians fled the advancing Israeli forces into the Church of the Nativity in Bethlehem. During the siege, nine Palestinians inside the Church were killed and many more wounded by Israeli fire. The occupying forces lay siege to the Church for 39 days, during which

time many civilians and policemen left, some of whom were taken into Israeli custody. Among the people still present in the Church in early May 2002 were 39 Palestinian men wanted by the occupying forces, as well as various civilians, clerics, policemen, the Governor of Bethlehem Muhammad al-Madani, and 11 people who sneaked into the Church on 2 May - ten foreign activists of the International Solidarity Movement (ISM) and Carolyn Cole, a photographer of the Los Angeles Times.

Negotiations over how to end the siege were arduous and broke down several times. Besides the Palestinian and Israeli negotiation teams, those involved included clerics from the Church of the Nativity and officials from the USA, the European Union (EU) and the Vatican. Finally, an agreement was reached to end the siege [hereinafter: the Agreement]. The details of the Agreement have remained secret. According to the Israeli Military, the "main points" of the Agreement were:

- All the innocent people who were held hostage inside the church are now free to leave.
- The 26 wanted people have been exiled to Palestinian Authority territory in the Gaza Strip.
- All those exiled and the Palestinian Authority have personally committed not to return to terror activity in the future. Those exiled were evacuated from the Church of Nativity under supervision, were examined by IDF and treated according to the agreement.
- The 13 wanted terrorists will stay within the church until a country that agrees to receive them is found, at which point they will be immediately exiled.[3]

[3] IDF, "Agreement to the End of Negotiations at the Church of Nativity", 9 May 2002, at http://tinyurl.com/o6vqw, accessed 6 October 2006.

The number of Palestinians to be exiled under the Agreement varied throughout the negotiations. According to Anton Salman, who participated in the Palestinian negotiating team, the Israelis initially laid claim to between five and seven of the Palestinians inside the Church. For unknown reasons, the number then rose to 60 before the Palestinians negotiators managed to bring it down to the final number of 39. Several of the expelled Palestinians have testified to Al-Haq that while inside the Church they were presented with a list of nine individuals to be exiled. They were later surprised to discover that the number had risen to 39.[4] Israel considered the 13 to be deported to Europe as a greater threat than the 26 who were to be transferred to Gaza, but did not present the Palestinian negotiators with evidence regarding any of these people.

On 9 May, 26 men finally emerged from the Church into Manger Square, were taken on two buses to Gaza, under US escort, and passed through the checkpoint into Gaza on foot, after having been questioned at an Israeli army base. The following day, 10 May, the remaining 13 Palestinians left the Church. One of them, Jihad J'ara, was carried out on a stretcher, having had his leg broken by an Israeli bullet. The 13 men were then taken in a bus to Ben Gurion Airport (outside of Tel Aviv), from where a British military aircraft flew them to Cyprus. The remaining Palestinian policemen and civilians were released. Later the same day, the ten ISM activists were removed from the Church by Israeli police.

The 13 deportees arrived in Cyprus where they were to remain temporarily until the EU, which had undertaken to receive them, decided to which specific member states they would go. Staying at the Flamingo Hotel in Larnaca, 12 of the Palestinians were under constant supervision, had almost no access to the outside world, and had their freedom of movement limited to two floors inside the hotel, the one they lived on and the one where they took their

[4] Interviews with Palestinians transferred to Gaza, conducted by Al-Haq's Monitoring and Documentation Department, 20-29 March 2006.

meals. Jihad J'ara was hospitalised in Larnaca for the bullet wound in his leg and only arrived at the hotel on 14 May.

On 21 May, The EU finally decided on the host countries for 12 of the 13 deportees.[5] Italy and Spain would each take three, Greece and Ireland would each take two and Belgium and Portugal would each take one. On 22 May, the 12 Palestinians were taken under police escort to Larnaca airport. In the following days, they reached their destinations. No agreement was found with respect to the 13th man, Abdallah Daoud, described by Israel as "the most wanted of the wanted". He was eventually received by Mauritania on 25 November 2002.

As of April 2006, the 12 Palestinians lived spread out across Europe, under varying degrees of official supervision and protection and were generally not permitted to travel abroad. They have not been able to obtain details of the Agreement under which they were deported, and Israel has threatened to put them on trial if and when they return home. Apparently, they remain under a threat of potential extradition to Israel.[6] The length of the exile remains unclear. Some Palestinians have claimed that the deportees would return as soon as a Palestinian State came into existence, or sooner. The Israeli government has spoken of 'permanent' exile, while the Europeans initially limited their hospitality to one year. Since then, the EU has incrementally extended the 12 Palestinians' permits to enable them to stay within their designated EU member state.[7]

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[5] "Council Common Position of 21 May 2002 concerning the temporary reception by Member States of the European Union of certain Palestinians", *Official Journal of the European Communities*, L 138, 28 May 2002, Article 2, p. 33.

[6] *Ibid.,* Article 7, p. 34.

[7] Most recently in November 2005 – see "Council Common Position 2005/793/CFSP of 14 November 2005 concerning the temporary reception by Member States of the European Union of certain Palestinians", *Official Journal of the European Communities*, L 299, 16 November 2005, p. 80.

The International Prohibitions on Arbitrary Exile, Deportations and Forcible Transfers

The Prohibition on Arbitrary Exile under International Human Rights Law

International human rights law, which is applicable also in times of armed conflict and occupation, prohibits arbitrary exile. The *de jure* applicability of the International Covenant on Civil and Political Rights (ICCPR) of 1966 in the OPT is almost universally accepted, Israel itself being a notable exception, and has recently been confirmed by the International Court of Justice (ICJ).[8]

International human rights law limits the recourse to exile, starting with the Universal Declaration of Human Rights (UDHR) of 1948, today reflecting customary international law. Article 9 of the UDHR provides that, "No one shall be subjected to arbitrary arrest, detention or exile." Article 13(2) provides that, "Everyone has the right to leave any country, including his own, and to return to his country."

This prohibition was confirmed by Article 12(4) of the ICCPR, which provides that, "No one shall be arbitrarily deprived of the right to enter his own country." There is no explicit provision prohibiting exile in the ICCPR, but only because a suggested provision to this effect was eliminated when it transpired that some of the framers of the Convention were opposed to any kind of exile, even non-arbitrary.[9] Hence, arbitrary exile is certainly illegal under the ICCPR. Indeed, according to the United Nations Human Rights Committee's (HRC) authoritative interpretation of Article 12(4), the right to enter one's own country "implies the right to remain in one's own country."[10] This right is broad enough to cover "an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien."[11]

[8] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* ICJ (2004), p. 43, para. 111.

[9] Yoram Dinstein, "The Israeli Supreme Court and the Law of Belligerent Occupation: Deportations", 23 *Israel Yearbook on Human Rights* (1993), pp. 1-26, at 5-6.

[10] HRC, "General Comment No. 27: Article 12: Freedom of Movement," CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 19.

[11] *Ibid*., para. 20.

Finally, the HRC stressed that the qualifier "arbitrarily" should not be lightly relied on to argue the legality of a measure in violation of Article 12:

> The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. *The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable*.[12]

Under international human rights law, as set out above, it is clear that the right of the 13 Palestinians to remain in their own country was violated by their arbitrary exile abroad.

The Prohibition on Deportations and Forcible Transfers under International Humanitarian Law

International humanitarian law, applicable in times of armed conflict and occupation, prohibits deportations and forcible transfers of civilians. The *de jure* applicability of the Fourth Geneva Convention in the OPT is almost universally accepted, Israel itself being a notable exception, and has recently been confirmed by the ICJ.[13] Article 49(1) of the Convention provides:

> 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.

The authoritative commentary by the International Committee of the Red

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[12] *Ibid*., para. 21. Emphasis added.
[13] See *supra* note 8, at 40, para. 101.

Cross (ICRC) notes that the prohibition on deportations is "absolute and allows of no exceptions, apart from those stipulated in paragraph 2".[14] These exceptions are inapplicable to the Nativity deportees.

The first exception in Article 49(2) is when an evacuation is demanded by "the security of the population." It is clear from the context of Article 49 that the population referred to is that of the occupied territory. The expulsions of the 39 Palestinians from the Church of the Nativity clearly were not demanded by the security of the Palestinian population in the OPT.

The second exception in Article 49(2) is when an evacuation is demanded by "imperative military reasons." It is hard to see how the expulsions of the 39 Palestinians would be demanded by imperative military reasons, especially in view of the alternative legal solutions available, notably independent and impartial investigations and fair trials.

In any event, Article 49(2) provides that, "Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement." In the case of the 13 deportees from the Church of the Nativity, there is simply no basis for claiming that the deportations were materially unavoidable.

Finally, Article 49(2) provides that, "Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased." Not only have the 39 Palestinians not been returned to the West Bank, it is furthermore clear that the Occupying Power does not want them to return.

A recent and authoritative ICRC study on customary international humanitarian law found that this body of law also prohibits deportations and

[14] ICRC, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), p. 279.

forcible transfers. The ICRC identified the following customary rule:

> Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand.[15]

Importantly, the ICRC identified the existence of contrary practice emanating from the Israeli High Court of Justice (HCJ).[16] This practice was not found sufficient to prevent the formation of the customary rule. Hence, deportations and forcible transfers are, as a rule, illegal under international humanitarian law.

The Defence (Emergency) Regulations and Article 49(1) of the Fourth Geneva Convention

The purported legal basis for Israel's deportations of Palestinians from the OPT is regulation 112 of the Defence (Emergency) Regulations enacted by the British Mandatory Power in 1945. The regulation gave the High Commissioner the power to make 'a Deportation Order' "requiring any person to leave and remain out of Palestine." Regulation 108 limited the High Commissioner's power to issue deportation (and other) orders to cases where it was "necessary or expedient for securing the public safety, the defence of the land, the maintenance of public order or the suppression of mutiny, rebellion or riot."

The purported legal basis is not valid. The British Mandatory Order on which the Defence (Emergency) Regulations are based had been revoked by the King of England with effect from 14 May 1948.[17] More importantly, any national legislation allowing for deportations of protected civilians from occupied territory is automatically illegal under international law. Thus, regulation 112 may not derogate from Article 49 of the Fourth Geneva Convention.

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[15] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (Cambridge, Cambridge University Press, 2005), p. 457. See also *supra* note 14, at 279, note 3.

[16] *Ibid*., at 458-459.

[17] See Al-Haq, *Israel's Deportation Policy in the Occupied West Bank and Gaza* (1988), pp. 10-21, for a detailed analysis of the legal status of the Defence (Emergency) Regulations.

Nevertheless, the HCJ has never struck down a single deportation order issued against protected civilians in the OPT. In the *Awad* case,[18] the HCJ reduced the absolute prohibition in Article 49(1) to the kinds of mass deportations carried out by Nazi Germany during the Second World War, an unduly restrictive interpretation that runs contrary to the clear text of both the Convention and the ICRC commentary.[19]

In the *Kawasme II* case,[20] the HCJ maintained this erroneous interpretation and added that the Fourth Geneva Convention was not part of customary law and therefore could not be invoked before Israeli courts (according to Israeli common law). As shown above, the assertion that the prohibition on deportations is not part of customary international law is also erroneous. Moreover, the rules of Israeli common law in no way excuse Israel's breach of its international treaty obligation.

In the *Na'azal* case,[21] the HCJ further added the argument that deportation of a Jordanian citizen to Jordan does not fall under the prohibition in Article 49(1) since Jordan would not be "any other country." However, Article 49 does not contain any exception based on the citizenship of the deportee. It is also clear from Article 49(1) that the expression "any other country" refers to any country other than that of the Occupying Power, hence including the country of citizenship of the deportee.

Finally, in the *Afu* case,[22] the HCJ added the new argument that interpreting Article 49 as an absolute prohibition would be absurd because it would prevent the deportation of enemy agents who infiltrated the occupied territory, or the extradition of criminals according to extradition treaties. In reality, the prohibition in Article 49 was not intended to cover infiltrators or

[18] HCJ 97/79, *Awad v. Commander of Judea and Samaria* (1979).

[19] See section "The Prohibition on Deportations and Forcible Transfers under International Humanitarian Law" *supra*, p. 10. In the later *Afu* case, concurring Judge Bach disagreed with the HCJ's interpretation – see *infra* note 22.

[20] HCJ 698/80, *Kawasme v. Minister of Defense* (1982) (*"Kawasme II" case*).

[21] HCJ 513/85, 514/85, *Na'azal v. Commander in Judea and Samaria* (1985).

[22] HCJ 785/87, 845/87, 27/88, *Afu et al. v. Commander of the IDF Forces in the West Bank et al.* (1988).

cases of regular extradition. Article 45(5) of the Fourth Geneva Convention explicitly permits "extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law." With regard to infiltrators, the prohibition in Article 49 was not meant to cover "persons who have entered the national territory illegally."[23] Thus, the HCJ's argument fails to justify its unduly restrictive interpretation of Article 49.

The HCJ has failed to show the legality of any deportations of protected persons from the OPT carried out by the Occupying Power.[24] The Church of the Nativity deportations and forcible transfers were not challenged before the HCJ. In order to demonstrate that this prohibition applied to the case of the 39 Palestinians from the Church of the Nativity, it is first necessary to show that they qualified as civilians under international humanitarian law.

The Palestinians inside the Church of the Nativity: Civilians, not Combatants

The protection against deportations and forcible transfers enshrined in Article 49 of the Fourth Geneva Convention only applies to persons protected under that Convention. These persons are defined by Article 4 of the Convention as civilians "in the hands of a Party to the conflict or Occupying Power of which they are not nationals."[25] Clearly, the 39 Palestinians from the Church of the Nativity fell into the hands of Israel, a foreign Occupying Power. However, the question arises whether they were civilians or combatants at the time of the siege.

Under Articles 1-3 of the Hague Regulations, there are three ways in which

[23] *Final Record of the Diplomatic Conference of Geneva of 1949* (Berne, Federal Political Department, undated), vol. II, section B, pp. 89 and 118.

[24] On all of these HCJ cases, see David Kretzmer, *The Occupation of Justice – The Supreme Court of Israel and the Occupied Territories* (Albany, State University of New York Press, 2002), pp. 45-52.

[25] Despite the broad language of Article 4(1) and subject to the exceptions in Articles 4(2) and 4(3), which are not relevant for our purposes, only civilians are protected by the Fourth Geneva Convention, as indicated by Article 4(4), the title of the Convention, and *supra* note 14, at 50.

someone may be considered a combatant. The first is if the person is a member of the regular armed forces of a belligerent party.[26] In the Israeli occupation of the Palestinian territories, the only regular armed forces are the Israeli occupying forces, of which the 39 expellees clearly were not members.

The second way for a person to qualify as a combatant, as set out in Article 1, is if he or she is a member of a militia or volunteer corps that fulfils *all* of the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

It is sufficient for our purposes to conclude that the 39 Palestinians were not part of a corps having "a fixed distinctive emblem recognizable at a distance," and therefore did not come under this category of combatants.

The third and final category of combatants, set out in Article 2 and related to the so-called *levée en masse*, only applies to inhabitants of a territory not yet occupied. In 2002, at the time of the siege of the Church of the Nativity, the OPT had already been occupied for 35 years. It is therefore clear that the 39 expellees were not combatants.

Consequently, they were civilians, not associated with the armed forces of a belligerent party, and therefore protected by the Fourth Geneva Convention. This finds support in the ICRC's authoritative commentary on the Fourth Geneva Convention, according to which,

> Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, or again, a

[26] Such forces also include non-combatants as defined in Article 3 of the Hague Regulations, which covers for instance technical personnel not directly involved in combat.

> member of the medical personnel of the armed forces who is covered by the First Convention. *There is no* intermediate status; nobody in enemy hands can be outside the law.[27]

Al-Haq field information indicates that some of the 39 expellees did not take a direct part in hostilities immediately before or during the siege.[28] Those who were engaged in hostilities still retained their right under the Fourth Geneva Convention not to be deported. Civilians who take a direct part in hostilities remain 'protected persons' under the Fourth Geneva Convention but are no longer immune from attack for the duration of their engagement in hostilities.[29] When they lay down their arms, they do not enjoy prisoner of war status and may be arrested and tried for the mere fact of having engaged in battle. Beyond this, civilians taking a direct part in hostilities remain protected by the Fourth Geneva Convention, as is clear from its Article 5(2):

> Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

Hence, even someone who is "under definite suspicion of activity hostile to the security of the Occupying Power" remains a "protected person". The only rights limited by this provision are the "rights of communication."[30] Consequently, the 39 expellees were legally protected against deportation

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[27] See *supra* note 14, at 51. Emphasis in original. The ICRC's interpretation was endorsed by ICTY, *The Prosecutor v. Zejnil Delalic et al.*, Case No. IT-96-21-T, Trial Chamber II, Judgement, 16 November 1998, para. 271.

[28] See *supra* note 4.

[29] See *supra* note 15, at 19.

[30] Article 5(3) might give the impression that more rights are being limited. However, its purpose is strictly to emphasize the importance of the fundamental rights to fair trial and humane treatment. Indeed, in the words of the UK delegate to the Diplomatic Conference of the Fourth Geneva Convention, "it is quite clear that in occupied territory all that is being proposed is to deprive these suspected – and definitely suspected – persons of the rights of communication." (see *supra* note 23, at 380).

and forcible transfer at the time of the siege. It remains to be shown that the displacement was coerced rather than voluntary.

The Displacement of the 39 Palestinians was Coerced

The 39 Palestinians from the Church of the Nativity did not choose exile by their own free will. Several among them have independently expressed their conviction to Al-Haq that the Israeli forces would have stormed the church and killed them had they not accepted exile. Several said that they personally preferred death to exile, but that the nine persons initially listed for exile had accepted it for the sake of the others in the church.[31] In other words, they perceived no other option than to accept the expulsions, which therefore must be defined as coercive.

This qualifies as forcible displacement under international law. Article 49(1) of the Fourth Geneva Convention only prohibits "*forcible* transfers, as well as deportations" (emphasis added). The ICRC commentary on the provision confirms that this applies only to transfers and deportations carried out against the will of the protected persons.[32] However, such consent to being displaced must be truly free of coercion. The drafters of the Fourth Geneva Convention were aware of the pressure that could be brought to bear on protected persons.[33] The reality of their consent to be expelled must therefore be evaluated with regard to the coercive atmosphere in which the choice is made. Indeed, the Appeals Chamber of the ICTY has found with regard to deportations that, "Factors other than force itself may render an act involuntary, such as taking advantage of coercive circumstances."[34] Coercive circumstances also marred the conclusion of the Agreement itself.

[31] See *supra* note 4.
[32] See *supra* note 14, at 279.
[33] See *supra* note 23, vol. II, section A, at 759.
[34] See *Stakić supra* note 2, at para. 279.

The Agreement did not Legalise the Expulsions

The Agreement was concluded in a strongly coercive environment. Israel, as the Occupying Power, exercised total direct control of the West Bank through military means. The Palestinian authorities of the occupied territory were hardly able to operate. The President of the Palestinian National Authority (PNA), Yaser 'Arafat, was under siege in the ruins of the Muqata'a. Consequently, the Palestinian negotiators were in a very weak position compared to their Israeli counterparts. Anton Salman, who participated in the Palestinian negotiating team, has expressed the view to Al-Haq that the Agreement was effectively imposed on the PNA.[35]

This situation must be analysed under Article 47 of the Fourth Geneva Convention, according to which,

> Protected persons who are in occupied territory 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 the 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.

Hence, no agreement between the Palestinian authorities and the Occupying Power may deprive Palestinian civilians of the protection against deportation. As pointed out by the authoritative ICRC commentary on the Convention, in the case of occupied territories there is

> a particularly great danger of the Occupying Power forcing the Power whose territory is occupied to conclude agreements prejudicial to protected persons. Cases have in fact occurred where the authorities of an occupied territory have, under pressure from the Occupying

[35] Interview with Anton Salman conducted by Al-Haq on 18 June 2003.

> Power, refused to accept supervision by a Protecting Power, banned the activities of humanitarian organizations and tolerated the forcible enlistment or deportation of protected persons by the occupying authorities.[36]

The rationale behind the provision is that due to the unequal balance of power between the Occupying Power and the authorities of the occupied territory, "Agreements concluded with the authorities of the occupied territory represent a more subtle means by which the Occupying Power may try to free itself from the obligations incumbent upon it under occupation law."[37] The circumstances surrounding the conclusion of the Agreement show that both the letter of Article 47 and the rationale behind it apply in full. Consequently, the Agreement is null and void under international law.

In light of the above, it is clear that the deportations and forcible transfers carried out under the Agreement constituted violations of international humanitarian law. In addition, the 39 expellees from the Church of the Nativity suffered a violation of their rights of due process.

Due Process

Under international humanitarian law, deportations and forcible transfers do not become legal because they are carried out with due process. The absence of due process simply adds a further violation of the basic rights of the expellees. Articles 66-75 of the Fourth Geneva Convention of 1949 set outs, more or less explicitly, the essential components of a "fair and regular trial." The evolution of customary international humanitarian law has established that these essential guarantees include:

- Trial by an independent, impartial and regularly constituted court;
- Information on the nature and the cause of the accusation;

[36] See *supra* note 14, at 274-275.
[37] *Ibid*., at 274. See also pp. 273 and 275.

- Enjoyment of the necessary rights and means of defence;
- Possibility for the accused to examine witnesses; and
- Presence of the accused at the trial.[38]

Israel considers deportation to be an administrative, not criminal, measure. Consequently, some might argue that the standards of criminal trial do not apply. However, when the punishment is as severe as deportation, this would be an overly formalistic argument. The Occupying Power should not be allowed to eschew the rules regarding the conduct of trial merely by characterising the procedure as administrative rather than criminal.

The 13 deportees and 26 transferees from the Church of the Nativity did not benefit from any process, let alone due process. They were not given a hearing of any sort, nor were their cases considered individually. It is indeed doubtful whether the Occupying Power could have produced sufficient evidence as to a direct and real threat posed by each of the 39 Palestinians. Their deportations were simply made the object of an international agreement, in spite of the fact that less stringent measures were available, such as independent and impartial investigations and fair trials.

The Obligation to Respect and Ensure Respect for the Fourth Geneva Convention

As previously seen, the EU was involved in the negotiations that lead to the conclusion of the Agreement. Although its exact role in the Agreement is unclear, the EU eventually accepted receiving 12 of out of the 13 Palestinians deported under the Agreement. On 21 May, the EU decided on the specific host countries for them. Italy and Spain each received three, Greece and Ireland each received two and Belgium and Portugal each received one. Since then, the EU has incrementally extended the 12 Palestinians' permits to enable them to stay within their designated EU member state. As of April

[38] See *supra* note 15, at 354-371.

2006, the 12 Palestinians lived spread out across Europe.

Thus, the member states of the EU were instrumental in enabling the deportation of 12 Palestinians in breach of Article 49(1) of the Fourth Geneva Convention. This form of active participation in a violation contravenes Article 1 of the Convention, which provides, "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." Actively enabling deportations of protected persons is neither respecting nor ensuring respect for the Fourth Geneva Convention. Consequently, Al-Haq believes that the member states of the EU, to the degree of their individual involvement in enabling the deportations, are in violation of Article 1 of the Fourth Geneva Convention.[39]

In conclusion, the expulsions of the 39 Palestinians in the Church of the Nativity siege to Gaza or abroad violated the international legal prohibitions on arbitrary exile, forcible transfer and deportation. Their individual rights to due process were furthermore violated. Member states of the EU breached their obligations to respect and ensure respect for the Fourth Geneva Convention.

[39] For a similar conclusion, see Samuel Boutruche et Théo Boutruche, "Analyse Critique de l'Accord Portant Expulsion des Treize Palestiniens vers l'Union Européenne," *l'Observateur des Nations Unies*, 14 (2003), pp. 163-195, at 182.

FORCIBLE TRANSFERS IN A NEW CLOAK: "ASSIGNED RESIDENCE"

The Origins of the "Assigned Residence" Policy

In the summer of 2002, the Israel Security Agency (Shabak) and the Israeli Military devised a major plan which included measures such as demolishing the houses of the families of alleged terrorists, confiscating or destroying their property, and expelling them from the West Bank to Gaza. The main idea behind the plan was that targeting the families of Palestinians alleged to have carried out an attack against Israelis would deter future attacks. It was argued that even a Palestinian who did not care about his own life would be dissuaded by the harm that would be wrought upon his family.

On Friday 19 July 2002, the Israeli Attorney-General Elyakim Rubinstein held consultations on the plan, during which its underlying objective of general deterrence became evident. The Attorney-General stated that expulsions would be legal only if one could prove that a proposed expellee was directly involved in terror activities and not just a blood relation to such a person.[40] On the basis of the Israeli Attorney-General's opinion, a Foreign Ministry Spokesperson declared that "all the requisite means available by law, including movement to Gaza, may be employed against individual family members who were involved or active, in one manner or another, in the commission of the suicide terrorism, including aiding and abetting the attack."[41]

The international community, including the UN Secretary General, the Arab League, the EU Presidency and the US State Department, voiced strong criticism of the plan, especially due to its incompatibility with international

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[40] Israeli Foreign Ministry, "Announcement from Attorney-General's Office", 21 July 2002, at http://tinyurl.com/8u83u, accessed 6 October 2006.

[41] Israeli Foreign Ministry, "The Movement of Terrorists' Family Members from the West Bank to Gaza", 21 July 2002, at http://tinyurl.com/aczta, accessed 6 October 2006.

law. Among the most prominent legal arguments was that the expulsions to Gaza would constitute illegal forcible transfers and measures of collective punishment.[42] Nevertheless, on 31 July 2002, the Israeli Ministerial Committee for National Security unanimously approved the plan.

On 1 August 2002, the military commander of the West Bank issued Amendment No. 84 modifying Article 86 of the Military Order No. 378 (1970), in order to allow for expulsions to the Gaza Strip. Article 86(B)(1), as amended, gave the military commander the power to require a person "to live within the bounds of a certain place in the West Bank or Gaza." Despite the general language of the amendment, it was - in the words of an Israeli commentator - "directed at family members of suicide bombers, because there is evidently no effective means of deterrence against terrorists themselves."[43]

In parallel, the military commander in the Gaza Strip issued Amendment No. 87 to Gaza Military Order 1155 (2002), of which section 86(g) provided as follows:

> Someone with regard to whom an order has been made by the military commander in Judea and Samaria under section 86(b)(1) of the Security Provisions (Judea and Samaria) Order (no. 378), 5730-1970, within the framework of which it was provided that he will be required to live in a specific place in the Gaza Strip, shall not be entitled to leave that place as long as the order is in force, unless the military commander in Judea and Samaria or the military commander in the Gaza Strip so allow.

Thus, the Israeli authorities had prepared its military legislation in the OPT for the expulsion of West Bank Palestinians to Gaza.

[42] Yossi Verter, "U.S., Annan slam plan to deport terrorists' families", *Ha'aretz* (English edition), 21 July 2002.
[43] Daphne Barak-Erez, "Assigned Residence in Israel's Administered Territories: the Judicial Review of Security Measures", 33 *Israel Yearbook on Human Rights* (2004), pp. 303-313, at 306.

The "Assigned Residence" Expulsions from the West Bank to Gaza

In the middle of July 2002, Israeli authorities arrested 21 family members of alleged terrorists. Among them were Kifah 'Ajouri, brother of the wanted 'Ali 'Ajouri, and 'Abd-al-Naser 'Asida, brother of the wanted Nasser 'Asida. On 1 August, the Israeli Military Commander in the West Bank ordered the expulsion of Kifah 'Ajouri, and 'Abd-al-Naser 'Asida to the Gaza Strip for up to two years. On 4 August, the Military Commander issued a new order to expel for up to two years Intisar 'Ajouri, the sister of Kifah and Ali 'Ajouri, who had been in detention since she was arrested on 3 June. On 6 August, the wanted 'Ali 'Ajouri was shot and killed by the Israeli Army.

The three Palestinians intended for expulsion brought separate appeals, which were rejected on 12 August 2002 by the Appeals Committees, each recommending to the Respondent (the Military Commander) that he approve the validity of the expulsion orders. On the same day, the Military Commander decided that the orders would remain valid. On 13 August, the three Palestinians petitioned the HCJ, which issued an interim order preventing their removal to the Gaza Strip until further decision. On 3 September 2002, the Court delivered its judgment which accepted Israel's argument that this was a measure of assigned residence rather than forcible transfer and confirmed the expulsion of Intisar and Kifah 'Ajouri, but blocked that of 'Abd-al-Naser 'Asida who was deemed not to constitute a sufficient threat.[44]

On 4 September 2002, Kifah and Intisar 'Ajouri were taken to the Israeli military base at Beit El in the West Bank, where they were given half an hour to say goodbye to their families before they were expelled to Gaza. They

[44] HCJ, 7015/02, *Ajuri v. IDF Commander*, 3 September 2002. See Al-Haq, *The Forced Transfer of Kifah & Intissar Ajuri* (2002); Al-Haq, *The Israeli High Court of Justice and the Palestinian Intifada* (2004), p. 35. Meanwhile, Adib Mahmoud Thawabta, who did not appeal his case, was the first "assigned residence" case to be expelled to the Gaza Strip on 15 August 2002.

were given 1,000 shekels each, blindfolded and driven into the Gaza Strip in two armoured vehicles before being dropped off in an orchard on the edge of the Israeli settlement Netzarim. They did not know where they were, but met Gaza Palestinians who helped them reach the offices of the Palestinian Centre for Human Rights in Gaza City. During the first four months, the 'Ajouri siblings lived in an ICRC bomb shelter in Gaza City, until they obtained better housing provided by the PNA.

Since the 'Ajouri case, a total of 28 Palestinians have been expelled from the West Bank to Gaza, sometimes individually and sometimes in groups. For instance, on 14 October 2003, the Israeli head of Central Command General Moshe Kaplinski issued an order expelling 15 Palestinian administrative detainees from the West Bank to Gaza, to which three more Palestinians were added. Initially taken to the Erez detention centre in the Gaza Strip and then, after exhausting appeals, progressively released from detention, the expellees were forced to stay in Gaza for up to two years, in practice sometimes longer.

The first expellee to return to the West Bank was Intissar 'Ajouri on 15 March 2004, after one and a half years in Gaza. Her brother Kifah followed on 26 August 2004 having remained in Gaza for two years, the maximum period allowed under Israeli military legislation. In February and March 2005, in the context of the political optimism prevailing at the time, the Israeli army cancelled a number of "assigned residence" orders. On 20 February 2005, 16 expelled Palestinians were allowed to return to the West Bank.[45] On 15 March 2005, another four expelled Palestinians followed suit.[46] According to Al-Haq's field information, as of April 2006, only four "assigned residence" transferees remain in Gaza.[47]

[45] IDF, "Continued easing of restrictions for Palestinian population and IDF policy changes", 20 February 2005, at http://tinyurl.com/f4k8c , accessed 6 October 2006.

[46] IDF, "Assigned residence orders to four Palestinians involved in terrorist activity canceled", 15 March 2005, at http://tinyurl.com/qs7dh , accessed 6 October 2006.

[47] See *supra* note 4.

The Illegality of Israel's Measures of "Assigned Residence"

An Occupying Power's Right to Take Measures of Assigned Residence

Israel has invoked Article 78 of the Fourth Geneva Convention to justify its expulsions of West Bank Palestinians to Gaza. Article 78 entitles the Occupying Power, under certain conditions, to take measures of assigned residence against civilians in the occupied territory.

However, according to Article 6(3) of the Fourth Geneva Convention some provisions of the Convention – including Article 78 – cease to apply "one year after the general close of military operations." The ICJ has found that, "Since the military operations leading to the occupation of the West Bank in 1967 ended a long time ago," these provisions no longer apply to the OPT.[48] One might therefore argue that Israel has lost the authority to invoke the powers contained in Article 78.

However, in Al-Haq's view, the situation in the OPT is a belligerent occupation and by nature an international armed conflict between the state of Israel and the Palestinian people holding the right to self-determination.[49] Notably, the Court misinterpreted the phrase "the general close of military operations" contained in Article 6 as referring to "the military operations *leading to the occupation*."[50] According to the drafters of the Fourth Geneva Convention, "the general conclusion of military operations means when the last shot has been fired."[51] This is clearly not the case in the OPT, where military operations are on-going.

[48] See *supra* note 8, at 48, para. 125.
[49] *Ibid*., at 46, para. 118.
[50] Emphasis added. See Ardi Imseis, "Critical Reflections on the International Humanitarian Law Aspects of the ICJ Wall Advisory Opinion", *99 American Journal of International Law* (2005), pp. 102-118, at 106.
[51] See *supra* note 23, vol. II A, at 815.

Consequently, Al-Haq believes that the Occupying Power maintains in principle its right to use measures of assigned residence against the civilian population of the OPT. However, Israel's policy of "assigned residence" does not fall within the powers contained in Article 78 of the Fourth Geneva Convention.

The Legal Regime of Assigned Residence

The HCJ, in its *Ajuri* judgment of 3 September 2002, attempted to define the contents of, and limits to, the legal regime of assigned residence. Its reasoning was singularly unpersuasive. The HCJ chose to accept the argument of the state of Israel and analyse the case under the provisions on assigned residence in Article 78 of the Fourth Geneva Convention, as opposed to the provisions on forcible transfer and deportation in Article 49 of the same convention. It gave two reasons for doing so.

The first reason given was that Article 78 should be understood as specific law (*"lex specialis"*) prevailing over general law.[52] The Court did not explain whether Article 49 was such a general provision or give any reason why Article 78 was more "*lex specialis*" than other provisions of the Convention. Indeed, there is no basis on which to claim that this is the case.

The second reason given was that the Military Commander "took account of the provisions of Article 78" when he issued amending order 84.[53] Essentially, the amendment authorised the military commander to require a person "to live within the bounds of a certain place in the West Bank or Gaza." This vague formulation could encompass a forcible transfer as well as a measure of assigned residence.

The HCJ sought to justify its "dynamic interpretative approach" by the fact that

[52] See HCJ *supra* note 44, at para. 17.
[53] *Ibid*.

the drafters of the Fourth Geneva Convention probably had not anticipated "protected persons who collaborated with terrorists and 'living bombs.'"[54] In reality, the drafters had indeed anticipated protected persons carrying out hostile acts against an Occupying Power, as notably witnessed in Articles 5, 68 and 78 itself of the Fourth Geneva Convention. Moreover, the "dynamic interpretative approach" is problematic under the rules of interpretation in international law, as reflected in Article 31(1) of the 1969 Vienna Convention on the Law of Treaties, according to which "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." This rule does not accommodate for any "dynamic interpretative approach."

Nevertheless, one may agree that a many decades old convention sometimes needs to be read in light of modern technology, situations and needs. As pointed out by Orna Ben-Naftali and Keren Michaeli, the ICTY has also used dynamic interpretation, but, unlike the HCJ, it did so to *broaden* the protection afforded to protected persons, in coherence with the object and purpose of international humanitarian law conventions. What the drafters of the Fourth Geneva Convention probably did not predict was an occupation as prolonged as that of Israel over the West Bank. In this light, the longer the occupation, the greater should be the protection of the occupied population.[55]

It is easy to identify a better interpretation of Article 78 of the Fourth Geneva Convention than the one adopted by the HCJ. Article 78(1) provides:

> If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

[54] *Ibid*., at para. 40.

[55] Orna Ben-Naftali and Keren Michaeli, "Parashat Lech Lecha: Between Person and Place - Reflections on HCJ 7015/02, Ajuri v. Commander of IDF Forces in the West Bank", *HaMishpat* 15 (February 2003), at pp. 18-20 [unofficial translation from Hebrew, at http://tinyurl.com/j444s, accessed on 6 October 2006]. See also Reuven Ziegler, "The 'Assigned Residence' Case", 36 *Israel Law Review*, pp. 179-195, at 194.

Article 78(2) provides that such measures "shall be made according to a regular procedure," including, but not limited to, right of appeal and periodical review of the decision. Article 78(3) adds, by reference to Article 39, that if the measure of assigned residence results in the affected person "being unable to support himself," then the Party that took the measure "shall ensure his support and that of his dependants."

According to the ICRC's authoritative commentary of the Convention, "only absolute necessity, based on the requirements of state security, can justify recourse to [assigned residence or internment], and only then if security cannot be safeguarded by other, less severe means. All considerations not on this basis are strictly excluded."[56] Moreover, "there can be no question of taking collective measures: each case must be decided separately."[57] Finally, "the protected persons concerned will benefit by the provisions of Article 49 and cannot be deported; they can therefore only be interned or placed in assigned residence, within the frontiers of the occupied country itself."[58]

In summary, the Occupying Power is entitled to assign the residence of a protected civilian in occupied territory only if the following conditions are fulfilled:

- The measure must be taken for "imperative reasons of security", when no other less severe means are available to achieve the same goal.
- The place of assigned residence cannot be outside the frontiers of the occupied country.
- Measures of assigned residence must be taken on an individual basis.
- The Occupying Power must ensure, to the extent necessary, the support of the person placed in assigned residence and that of his or her dependants.
- Regular procedure (due process) must be respected.[59]

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[56] See *supra* note 14, at 258. Article 78 should be read in conjunction with articles 41 and 42 – see *ibid*., at 368.
[57] *Ibid*., at 367.
[58] *Ibid*., at 368.
[59] For a detailed discussion of the procedural standards applicable to assigned residence and similar deprivations of liberty, see Jelena Pejic, "Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence", 87 *International Review of the Red Cross* (2005), pp. 375-391.

Any measure not in conformity with these conditions must be considered to be a forcible transfer or deportation. In fact, Israel's policy of "assigned residence" has not fully respected any of these conditions.

The Absence of Imperative Reasons of Security

The only legitimate motive behind measures of assigned residence is "imperative reasons of security." Kenneth Mann has argued that the expulsions of West Bank Palestinians to Gaza could not be characterised as measures of assigned residence under Article 78 of the Fourth Geneva Convention because of the

> lack of proven necessity, from a security perspective, for using the West-Bank-to-Gaza mode of transfer, as opposed to transfer within the West Bank or administrative arrest.[60]

Indeed, it is hard to see how Israel's invocation of Article 78 is necessary for "imperative reasons of security" when there were alternative legal solutions available, notably independent and impartial investigations and fair trials. Moreover, it is questionable how the expulsions to Gaza improved Israel's security. The ICRC's authoritative commentary on the Fourth Geneva Convention remarks, "The object of assigned residence is to move certain people from their domicile and force them to live, as long as the circumstances motivating such action continue to exist, in a locality which is generally out of the way and *where supervision is more easily exercised*."[61]

In this light, Yuval Shany has noted that "the removal of allegedly dangerous persons from the West Bank, where Israel now exercises almost total control, to Gaza City, where such individuals find themselves outside the reach of the

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[60] Kenneth Mann, "Judicial Review of Israeli Administrative Actions Against Terrorism: Temporary Deportation of Palestinians from the West Bank to Gaza", 8 *Middle East Review of International Affairs* (2004), pp. 25-38, at 35.

[61] See *supra* note 14, at 256 (emphasis added). Article 78 should be read in conjunction with articles 41 and 42 – see ibid., at 368.

[62] Yuval Shany, "Israeli Counter-Terrorism Measures: Are They 'Kosher' under International Law?", *Terrorism and International Law: Challenges and Responses*, p. 109, at http://www.michaelschmitt.org/images/4996terr.pdf, accessed 6 October 2006. See also *supra* note 55, at 25.

Israeli Authorities, does not make much sense."[62] This analysis of the relative degree of Israeli control in the West Bank as compared to that in Gaza, has remained true ever since 2002. Indeed, of all the "assigned residence" expellees who were interviewed by Al-Haq, including Intisar 'Ajouri, not one had detected signs of being under supervision during their time in Gaza.[63]

What then are the true motives behind Israel's policy of "assigned residence"? Various statements by Israeli officials indicate that the main motives are punishment and general deterrence. As reported by the media,

> The Israeli police, army and intelligence services unanimously recommended relocating attackers' relatives from the West Bank to Gaza as punishment for having helped the militants and as a deterrent.[64]

Justice Minister Meir Sheetrit, commenting on the expulsion policy, said, "People ought to know that if they perpetrate a terrorist attack, their families and supporters will be truly hurt."[65] In the *Ajuri* case, State Attorney Shai Nitzan argued that the three Palestinians intended for expulsion to the Gaza Strip deserved punishment and noted that the expulsion was primarily a deterrent measure:

> "We believe the deterrent factor is legitimate," said Nitzan. "There is no question that the deterrent factor has been accepted as legitimate in some matters, such as house demolitions. The army carries out other deterrent measures such as bombing empty Palestinian security buildings."[66]

According to the Israeli newspaper Ha'aretz, during the oral proceedings,

> Supreme Court President Aharon Barak asked the state's representatives

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[63] See *supra* note 4.

[64] Joshua Brilliant, "Palestinians Fight Planned Deportation", *United Press International*, 26 August 2002.

[65] Tracy Wilkinson, "Israel Faces Court Test of Deportation Plans", *L.A. Times*, 6 August 2002.

[66] Dan Izenberg, "High Court hears Palestinian's petitions against expulsions", *Jerusalem Post*, 27 August 2002.

> why the suspects are not being put on trial for assisting terrorists. They responded by stating that deportation serves as a greater deterrent and is more immediate. Legal proceedings, they explained, would be less effective.[67]

According to the authoritative ICRC commentary on the Fourth Geneva Convention, punishment and general deterrence are invalid motives for taking measures of assigned residence. "The persons subjected to these measures are not, in theory, involved in the struggle. The precautions taken with regard to them cannot, therefore, be in the nature of a punishment."[68] Furthermore, "Article 78 speaks of imperative reasons of security; there can be no question of taking collective measures: each case must be decided separately."[69]

The cumulative effect of the motive of general deterrence and that of punishment amounts to collective punishment, which is strictly prohibited by Article 33(1) of the Fourth Geneva Convention:

> No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.[70]

This clearly applies to expulsions of people on the basis of their family ties to alleged terrorists. As stated by Louise Doswald-Beck and Ian Seiderman in their Expert Opinion in the *Ajuri* case,

> the consideration that the deportation policy of Israel may be intended to deter future attacks cannot not remove it from the ambit of the proscriptions contained within article 33.[71]

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[67] Moshe Reinfeld and Baruch Kra, "Court hearing petitions on Gaza deportations", *Ha'aretz* (English edition), 26 August 2002.

[68] See *supra* note 14, at 368.

[69] *Ibid*., at 367.

[70] This rule is not limited to penal sanctions, but rather covers "penalties of any kind." – *ibid*., at. 225.

[71] Louise Doswald-Beck and Dr. Ian D. Seiderman, "Expert Opinion on the Transfer of Westbank Residents Facing Deportation", section VII, at http://www.icj.org/news.php3?id_article=2697&lang=en, accessed 6 October 2006.

The HCJ tried to dispel the impression of collective punishment and general deterrence in the *Ajuri* case by requiring that the person being removed himself constitute a present danger, that assigning his place of residence would aid in averting that danger, and by pointing out that the purpose of assigned residence was preventative, not penal.[72] Nevertheless, the Court accepted that the military commander, in making his decision to assign residence to a person, could also take into consideration general deterrence.[73] Consequently, the third review committee in the case of the 'Ajouri siblings, for instance, openly relied on general deterrence in declining to end the "assigned residence" order.[74] The HCJ's attempted justifications for the use of general deterrence do not explain why the policy of "assigned residence" was specifically devised to target family members of wanted Palestinians.

The Court's analysis was heavily criticised by Yuval Shany, who pointed out that,

> The "personal guilt" paradigm dominating the judicial discourse in the case is a problematic exercise in legal fictions. The basic motivation of the Israeli authorities in deciding to deport terrorists' family members was to deter future terrorists; the personal threat deriving from the family members was, at best, a secondary consideration. Yet, in the Court proceedings, the priorities were reversed, and the measure's deterrent effect was deemed almost irrelevant to the review of its legality under Article 78 of Geneva IV. Thus, it looks as if Article 78 was taken out of context, detached from the realities of the situation and in a manner totally different than was anticipated by its framers.[75]

In other words, the aim of punishing family members is to deter future anti-Israeli acts carried out by Palestinians, for fear of having similar measures

[72] See HCJ *supra* note 44, at para. 24.
[73] *Ibid*., at para. 27.
[74] Appeals Committee in the cases of Kifah and Intisar 'Ajouri, "Recommendations of the Committee," hearing of 10 August 2003, in particular at para. 29.
[75] See *supra* note 62.

used against their own families. As pointed out by Eyal Benvenisti, "harsher measures, such as 'assigned residence', are nothing more than misplaced retribution."[76] This is an impermissible motivation for taking purported measures of assigned residence.

Expulsion to a *de facto* Separate Territory

Assigned residence may only be implemented inside the borders of the occupied territory. In the *Ajuri* case before the HCJ, the petitioners argued that if Article 78 were applied, it would not allow a transfer from the West Bank to Gaza, as these two areas should be considered separate territories for the purposes of that provision. This argument was rejected by the Court, which regarded the two areas as socially and politically unified and both subject to Israeli military legislation that was identical in content. The Court also drew support from the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip which provides that "the two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which shall be preserved during the interim agreement" (clause 11) and calls for the establishment of a "safe passage" between the two areas (clause 31(8)). Consequently, according to the Court, "one military commander is competent to assign the place of residence of a protected person outside his area, and the other military commander is competent to agree to receive that protected person into the area under his jurisdiction."[77]

This legal construction is completely detached from the actual situation on the ground. The West Bank and the Gaza Strip are geographically separated and the absence of free movement between the two since 2000 severs them both socially and economically. As an illustration, since the outbreak of the second *intifada*, Israel "has not approved a single change of address from Gaza to the West Bank."[78] Indeed, at the time of the *Ajuri* judgment in 2002

[76] Eyal Benvenisti, "*Ajuri et al*. – Israel High Court of Justice, 3 September 2002", 9 *European Public Law* (2003), pp. 481-491, at 491.

[77] See HCJ *supra* note 44, at para. 22.

[78] Amira Hass, "Israeli control over the population registry means continued control over Gaza", *Ha'aretz* (English edition), 26 September 2005.

there was no "safe passage" whatsoever between the two areas. The Court, in short, drew authority from unfulfilled legal and political aspirations, rather than the factual situation on the ground.

This judicial determination concerning Gaza and the West Bank received strong criticism from many commentators. Eyal Benvenisti pointed out that "the decision to treat them as a 'single territorial unit' in the interim Israeli-Palestinian agreement was motivated by concerns on both sides that the other would change unilaterally the status of any parts thereof, not by a decision to consolidate Israeli control over them."[79] Daphne Barak-Erez criticised it on the grounds "that the Gaza Strip was formerly ruled by Egypt, whereas the West Bank was occupied by Jordan. In addition, they are geographically detached from one another and separated by an Israeli area."[80] Orna Ben-Naftali and Keren Michaeli argued that, "Territorial contiguity between the West Bank and the Gaza Strip is lacking, and movement between the two areas entails border crossings controlled by Israel."[81]

In light of the situation on the ground, the West Bank and Gaza must realistically be considered *de facto* separate areas for the purposes of Article 78 of the Fourth Geneva Convention.

The Measures Must be Taken Individually

Generally, the 28 cases of "assigned residence" were taken on an individual basis in as far as each person was given an individual expulsion order and formal right to appeal the decision. However, sometimes several individuals were grouped under one order. Notably, on 14 October 2003, the Israeli head of Central Command General Moshe Kaplinski issued an order expelling 15 Palestinian administrative detainees from the West Bank to Gaza, to which three more Palestinians were added. The previously discussed objective of

[79] See *supra* note 76, at 484-485.
[80] See *supra* note 43, at 312.
[81] See *supra* note 55, at 24.

general deterrence also casts some doubt on whether the measures should be qualified as individual or collective.

The Occupying Power's Obligation of Support

In assigning residence, the Occupying Power is bound to guarantee support for the affected civilians and their dependants. In the *Ajuri* case, Israel failed to fulfil its obligations of support. Only once, at the outset of their transfer to Gaza, did Israel provide Kifah and Intisar with assistance (1,000 shekels each). Subsequently, they had their daily needs covered by the ICRC, until the PNA started providing them with some financial support. Kifah found work with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for two months, earning approximately 200 USD per month.

Also, Israel did not ensure the support of the dependants of the 'Ajouri siblings. Fifteen members of the 'Ajouri family lived in temporary accommodation in Askar refugee camp (having had their house demolished in July 2002). During the absence of family providers Kifah and Intisar, the 'Ajouri family relied on one sporadic wage of the brother Ahmad, having to receive food parcels from the United Nations and other charitable organisations. Their standard of living was significantly worse than before the expulsion of Intisar and Kifah took place. Indeed, Kifah and Intisar sent to their family some of the money that Kifah earned while working for UNRWA.[82]

In the first periodic review of the case, it was argued by the Israeli state that Kifah had not done enough to find work in the Gaza Strip. This view is rather implausible given the high unemployment and poverty levels in Gaza. In August 2002, the United Nations Special Coordinator for the Middle East Peace Process (UNSCO) estimated the unemployment levels in the Gaza Strip

[82] See *supra* note 4.

at 50% and the poverty levels at 70%.[83] The fact that Kifah later found brief employment is remarkable and quite exceptional compared to other West Bank Palestinians expelled to Gaza.

Despite the failure of the state to explain during the review why it had not complied with the obligations under Articles 78 and 39, compliance was not viewed by the first review committee as a precondition to the continuation of the "assigned residence" order. This interpretation flies in the face of the legal basis set out by the HCJ, albeit incorrect, to consider the *Ajuri* case one of assigned residence rather than forcible transfer. According to the Court,

> a study of the Amending Order itself and the individual orders made thereunder shows that the maker of the Order took account of the provisions of article 78 of the Convention, and acted accordingly when he made the Amending Order and the individual orders. The Respondent did not seek, therefore, to make a forcible transfer or to deport any of the residents of the territory.[84]

According to the court's logic, if the state fails to uphold the conditions under Article 78, the measure becomes one of forcible transfer rather than assigned residence, in which case it is manifestly illegal and the order would have to be cancelled by the review committee. However, the Committee, while recognising that the Israeli authorities had not answered the appellants' requests for assistance, did not let this get in the way of recommending the renewal of the "assigned residence" orders.[85]

Due Process

The Israeli procedure of "assigned residence" is unsatisfactory. Article 87(E)

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[83] UNSCO, "UN: New Economic Figures for West Bank and Gaza Show Rapid Deterioration Leading to Human Catastrophe," 29 August 2002, at http://tinyurl.com/fe3n8, accessed 6 October 2006.

[84] See HCJ supra note 44, at para. 17.

[85] Appeals Committee in the cases of Kifah and Intisar 'Ajouri, "Recommendations of the Committee," 24 March 2003, in particular at para. 31, 50.

of Israeli Military Order No. 378 (1970) for the West Bank, as it stood in August 2002, provides for a committee to hear any initial appeal of "assigned residence" orders, and to review cases every six months. The Military Commander makes the initial decision to assign residence, establishes and determines the composition of the appeals committee, which is confined to making non-binding recommendations to the Military Commander. In other words, he effectively reviews his own decisions.

In the *Ajuri* case, the same Military Judge, Colonel Daniel Friedman, who headed the original appeals committee for Kifah 'Ajouri and 'Abd-al-Naser 'Asida in August 2002, also headed all the subsequent six-monthly review committees for Intisar and Kifah 'Ajouri. Moreover, the case was based on secret evidence. This resulted in a denial of the petitioners' right to know the nature and source of the accusations and charges attributed to them, and to confront the witnesses of the respondents and try to refute the charges. Such a procedure is neither independent nor impartial, amounting to a denial of due process.

Articles 43(1) and 78(2) of the Fourth Geneva Convention provide that a person placed in assigned residence must benefit from, *inter alia*, "regular procedure", with a "right of appeal" to an "appropriate court or administrative board." When these provisions are read in light of the evolutions in customary law concerning due process, it is clear that the individual protected person slated for assigned residence must receive a fair hearing, before an independent, impartial and regularly constituted body, capable of determining whether the measure is truly justified. The accused must be informed of the nature and the cause of the accusation, enjoy the necessary rights and means of defence, and have the possibility to examine witnesses and to be present at the hearing.[86]

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[86] See *supra* note 38.

Under international human rights law, the right to a fair hearing is notably enshrined in Article 9 of the ICCPR. It is irrelevant that the "assigned residence" measures are classified in Israeli law as administrative rather than criminal sanctions. The HRC has confirmed that this provision is applicable to all deprivations of liberty, whether in criminal cases or in other cases of deprivation of liberty.[87] Besides, in an expert opinion given to the High Court in the *Ajuri* case, Professor William Schabas pointed out that,

> It seems mere sophistry to suggest that deportations are administrative sanctions rather than punishment or 'sentence,' when they are clearly conducted within the context of criminal law and the repression of crime.[88]

In accordance with Article 4(3) of the ICCPR, Israel has derogated from its obligations under Article 9 of the Covenant. However, the HRC has made clear that,

> As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency.[89]

This authoritative interpretation is in harmony with Article 4(1) of the ICCPR, according to which State Parties' measures of derogation cannot be "inconsistent with their other obligations under international law." As

[87] HRC, "General Comment No. 8, Right to Liberty and Security of Persons (Art. 9)," 30 June 1982, paras 1 and 4.

[88] William Schabas, "Expert Opinion", 7 August 2002, at http://www.hamoked.org/items/503.pdf, p. 5, accessed 6 October 2006.

[89] HRC, "General Comment No. 29: Article 4: Derogations during a State of Emergency," CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 16.

the Committee has pointed out, this concerns "particularly the rules of humanitarian law."[90] Indeed, "States parties may in no circumstances invoke Article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance . . . by deviating from fundamental principles of fair trial."[91]

In conclusion, Israel's purported measures of "assigned residence," moving West Bank Palestinians to Gaza, cannot be characterised as such in international law, as the prescribed conditions are not fulfilled. Firstly, the measures were not taken for "imperative reasons of security" but rather in pursuance of punishment and general deterrence, despite the fact that other less severe options were available. Secondly, in light of the reality on the ground and for the purposes of Article 78, Gaza must be considered *de facto* "outside of the frontiers of the occupied country." Thirdly, there have been at least some cases in which Israel clearly did not guarantee the support of the affected persons and their dependants. Lastly, the requirements of due process were not respected. Consequently, the expulsions constitute forcible transfers, which are illegal under international humanitarian law.

[90] *Ibid*., at para. 9.
[91] *Ibid*., at para. 11.

WAR CRIMES, GRAVE BREACHES & ENFORCEMENT

The deportations and forcible transfers examined in the present study constitute war crimes under customary international law and grave breaches of the Fourth Geneva Convention. This implies a duty of enforcement on all High Contracting Parties.

War Crimes

Under customary international law, all serious violations of international humanitarian law constitute war crimes.[92] One such serious violation is "the deportation or transfer of all or parts of the population of the occupied territory within or outside of this territory."[93] Article 6(b) of the 1945 Charter of the International Military Tribunal at Nuremberg, based on pre-existing customary international law, characterises "deportation to slave labor or for any other purpose of civilian population of or in occupied territory" as a war crime.[94] The criminalisation of deportations and forcible transfers was later codified in the Statute of the International Criminal Court.[95]

A person commits a war crime if he or she carries out an act constituting a serious violation of international humanitarian law (material element or *actus reus*), with a certain state of mind such as intent or recklessness (mental element or *mens rea*). In order to qualify as a war crime, the crime must of course have been carried out in connection with an armed conflict. All of

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[91] *Ibid*., at para. 11.

[92] See *supra* note 15, at 568.

[93] *Ibid*., at 576, 578.

[94] Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279, [hereinafter Nuremberg Charter]. The District Court of Jerusalem, in *Criminal case No. 40/61, The Attorney General of the Government of Israel vs. Eichmann*) 15 December 1961, found that the Nuremberg Charter and Judgment of the Tribunal constitute customary international law, and are thus binding on Israel.

[95] Articles 7(1)(d) – crime against humanity, 8(2)(a)(vii) – grave breach, and 8(2)(b)(viii) – war crime.

these conditions must be satisfied for a person to be guilty of the war crime of deportation or forcible transfer. Indeed, all of these elements are fulfilled in the case studies examined here.

Regarding the material element, the present study has demonstrated that the deportations and forcible transfers carried out under the Church of the Nativity Agreement were contrary to the rule of international humanitarian law prohibiting the deportation or forcible transfer of all or parts of the civilian population of an occupied territory. The present study has demonstrated that the so-called "assigned residence" measures moving West Bank Palestinians to Gaza were in fact forcible transfers in violation of the same rule of international humanitarian law. Consequently, the material element of the war crime of deportation is fulfilled for all deportations and forcible transfers examined in the present study.

As for the mental element, customary international criminal law requires that those who carry out the illegal acts do so "wilfully and knowingly."[96] The very existence of the Agreement to deport and forcibly transfer 39 Palestinians under siege in the Church of the Nativity shows indisputably that the acts were carried out knowingly and wilfully. The Israeli authorities' very goal behind the Agreement was to bring about the situation prohibited by the international rule against deportations and forcible transfers. Similarly, the existence of an official policy of the Israeli authorities to forcibly transfer Palestinians from the West Bank to Gaza, albeit disguised under the notion of "assigned residence", satisfies the mental element with regard to the Israeli officials who committed, or ordered to be committed, the illegal acts. Consequently, the mental element of the war crime is fulfilled for all deportations and forcible transfers examined in the present study.

Finally, for a crime to qualify as a war crime, it is necessary to show that it

[96] *Flick and Five Others Case*, in UNWCC, *LRTWC*, vol. IX, p. 3; 14 AD 266 at 269; *IG FARBEN Trial,* in UNWCC*, LRTWC*, vol. X, pp. 4 ff.; 15 AD 668; *A. Krupp Trial*, in UNWCC, *LRTWC*, pp. 74 ff; 15 AD 620.

was carried out in connection with an armed conflict. All the deportations and forcible transfers examined in the present study were carried out in the context of, and were associated with, the occupation and associated armed conflict that reached a particularly high level of intensity in 2002-2003. It is inconceivable that the Israeli authorities were not aware of the factual circumstances that established the existence of this conflict.

Consequently, the forcible transfers of West Bank residents to Gaza and deportations abroad constitute war crimes under customary international criminal law.

Grave Breaches

Article 147 of the Fourth Geneva Convention defines as a grave breach the "unlawful deportation or transfer" of a protected person. The drafters of the Convention intended 'lawful' deportations or forcible transfers to refer to "deporting persons who have entered the national territory illegally."[97] Also, these grave breaches are encompassed within customary international law.[98] Provisions similar to the one in Article 147 of the Fourth Geneva Convention can be found in Article 2(g) of the ICTY Statute and in Article 8(2)(a)(vii) of the Statute of the International Criminal Court. In other words, an act of "unlawful deportation or transfer" of a protected person is not only a war crime but also a grave breach of the Fourth Geneva Convention.

This holds true irrespective of the ICJ's finding that Article 6(3) of the Fourth Geneva Convention applies to the OPT.[99] Article 147 is not among those listed in Article 6(3) as remaining applicable one year after the "general close of military operations." Al-Haq has criticised the Court's finding on this point (see *supra* page 22). However, even if the Court's finding was accepted, the legal regime of grave breaches would still apply.

[97] See *supra* note 23.
[98] See *supra* note 15, at 574.
[99] See *supra* note 8, at 48, para. 125.

The last article of the Fourth Geneva Convention listed in Article 6(3) is Article 143, but Articles 144 onwards apply not to a specific situation of armed conflict or occupation, but rather to all High Contracting Parties, at all times. For instance, Article 144 provides, "The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention…" Article 146 provides, "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches…" These obligations apply to all High Contracting Parties, at all times, independent of Article 6 and the specific situation in the OPT. Moreover, all of the violations listed as grave breaches in Article 146 correspond to prohibitions in other Articles of the Convention that *are* listed in Article 6(3).

Consequently, the forcible transfers of West Bank residents to Gaza and deportations abroad constitute grave breaches of the Fourth Geneva Convention.

Enforcement

The legal regime of grave breaches is set out in Article 146 of the Fourth Geneva Convention. It places on all High Contracting Parties the duty to provide effective penal sanctions for persons committing, or ordering to be committed, any of the 'grave breaches' detailed in Article 147, including the grave breach of "unlawful deportation or transfer" of a civilian. Furthermore, it obliges each High Contracting Party to search for such persons and to bring them to justice, either before a domestic court or a foreign court, by regular extradition.[100] In other words, this regime demands that High Contracting Parties establish universal jurisdiction over grave breaches.

[100] See *supra* note 14, at 590.

Therefore, the High Contracting Parties have a duty to actively search for the perpetrators of the grave breaches of "unlawful deportation or transfer" of Palestinian civilians, as described in the present study, and to bring them to justice under effective domestic penal legislation that reflects the rules of international humanitarian law. The active search must, of course, remain within the limitations of general international law. If a suspect is present on the territory of a High Contracting Party, this Party has a duty to apprehend the suspect and bring him or her to justice. If the suspect is on the territory of another state, the searching state may request his or her extradition by regular procedure. Dismissal of a case based on lack of jurisdiction or inadmissibility, outside generally recognised principles of international law, would be a breach of duty by the given High Contracting Party under the Fourth Geneva Convention.

CONCLUSION

The Palestinians inside the Church of the Nativity in the spring of 2002 were protected persons under the Fourth Geneva Convention. Their expulsions did not have their free and informed consent, or the purpose of protecting them. Furthermore, the existence of the Agreement could not serve to legalise the expulsions. Consequently, the Israeli authorities violated the prohibition on deportations and forcible transfers of civilians under international humanitarian law.

As for the "assigned residence" cases, these did not satisfy the requirements of Article 78 of the Fourth Geneva Convention and were in fact camouflaged cases of forcible transfer. Consequently, they also violated the prohibition on forcible transfers of civilians.

The deportations and forcible transfers examined in the present study were not only violations of international law, but also constituted war crimes and grave breaches. This entails the individual criminal responsibility under international law of the persons responsible for or instrumental in carrying out these violations. The High Contracting Parties have a duty to search actively for such persons and bring them to justice. To date, this has not been done with respect to any of the perpetrators.

In allowing these violations to be carried out, the High Contracting Parties to the Fourth Geneva Convention have not upheld their obligation under Article 1 to ensure Israel's respect for the Convention. The lack of respect for this duty is particularly clear in the EU's (the member states of which are High Contracting Parties) direct participation in brokering the Church of the Nativity Agreement and acceptance of its consequences for the deported Palestinians.

The violation of Palestinians' rights will remain a fundamental feature of the occupation for as long as it is allowed to continue. A just and lasting

peace cannot be achieved unless and until Israel is held accountable by the international community for its violations of international law. Third states must exercise the legal means available to them, including the exercise of universal jurisdiction, to enforce international law in the OPT. The international community has, for far too long, been a passive witness to the continued violations of the rights of Palestinians.

ANNEX

Al-Haq's statistics of the Palestinian deportees and transferees whose cases are examined in the present study.

Name	Date of Deportation	Destination
Fahmi Muhammad Kan'an	09-May-02	Gaza
Firas Muhammad 'Oda	09-May-02	Gaza
Hasan 'Isa 'Alqam	09-May-02	Gaza
Hatem Muhammad Abu-al-'Adas	09-May-02	Gaza
'Isa 'Izzat Abu-'Ahour	09-May-02	Gaza
Iyad 'Abdallah 'Adawi	09-May-02	Gaza
Jamal Ahmad Abu-Jalghif	09-May-02	Gaza
Jihad Ahmad Nawawra	09-May-02	Gaza
Khaled Hamdallah al-Manasra	09-May-02	Gaza
Majdi 'Abd-al-Mu'ti Da'na	09-May-02	Gaza
Mousa Ahmad Sh'eibat	09-May-02	Gaza
Mu'ayyad Fathi al-Janazra	09-May-02	Gaza
Muhammad Nasri Khleif	09-May-02	Gaza
Nader Muhammad Abu-Hmeida	09-May-02	Gaza
Naji Muhammad 'Beiyyat	09-May-02	Gaza
Ra'ed Mousa 'Beiyyat	09-May-02	Gaza
Ra'ed Samir Shatara	09-May-02	Gaza
Sadeq Mustafa Khalil	09-May-02	Gaza
Sami 'Abd-al-Fattah Salhab	09-May-02	Gaza
Suleiman Muhammad Nawawra	09-May-02	Gaza
Sultan Muhammad al-Hreimi	09-May-02	Gaza
Yasin Muhammad al-Hreimi	09-May-02	Gaza

Name	Date of Deportation	Destination
Zeid Mahmoud Salem	09-May-02	Gaza
Khaled Suleiman Salah	09-May-02	Gaza
Rami Hasan Shihada	09-May-02	Gaza
Mazen Taher Husein	09-May-02	Gaza
Ahmad 'Leiyyan Hamamra	10-May-02	Spain
'Anan Muhammad Tanja	10-May-02	Portugal
'Aziz Khalil 'Beiyyat	10-May-02	Spain
Ibrahim Mousa 'Beiyyat	10-May-02	Spain
Ibrahim Muhammad 'Beiyyat	10-May-02	Italy
Jihad Yousef J'ara	10-May-02	Ireland
Khaled Muhammad Abu-Nijma	10-May-02	Italy
Khalil Muhammad Nawawra	10-May-02	Belgium
Mamdouh Ihsan al-Wardyan	10-May-02	Greece
Muhammad Fawzi Mhana	10-May-02	Greece
Muhammad Sa'id Salem	10-May-02	Italy
Rami Kamel Kamel	10-May-02	Ireland
Abdallah Daoud	10-May-02	Mauritania
Adib Mahmoud Thawabta	15-Aug-02	Gaza
Intisar Muhammad 'Ajouri	04-Sep-02	Gaza
Kifah Muhammad 'Ajouri	04-Sep-02	Gaza
Mahmoud Suleiman al-Sa'di	18-May-03	Gaza
Naser Yousef Salama	13-Oct-03	Gaza
Raja 'Atallah Hirzallah	13-Oct-03	Gaza
'Ala' Fou'ad Hassouna	14-Oct-03	Gaza
Sami Hasan al-Sous	17-Oct-03	Gaza
Ahmad Husein Mishqah	08-Nov-03	Gaza

Name	Date of Deportation	Destination
Samer Subhi Bader	12-Nov-03	Gaza
Taha Ramadan al-Dweik	12-Nov-03	Gaza
Mishref Muhammad al-Bzour	13-Nov-03	Gaza
Rami Fawwaz Hjeijiya	04-Dec-03	Gaza
Hani Hamdi al-Rajabi	04-Dec-03	Gaza
Kamal "Muhammad Mousa " Idris	04-Dec-03	Gaza
Munther Muhammad al-Ju'ba	04-Dec-03	Gaza
Rasem Khattab Mustafa	04-Dec-03	Gaza
Samir 'Abd-al-Ghaffar Abu-Zeina	04-Dec-03	Gaza
Lou'ay Muhammad Daoud	05-Dec-03	Gaza
Shadi Isma'il 'Ayyash	14-Dec-03	Gaza
Husam Hamdallah 'Oda	15-Dec-03	Gaza
Ghanem Tawfiq Salmi	28-Dec-03	Gaza
Mustafa Hasan 'Abed	31-Dec-03	Gaza
Anwar 'Abd-al-Latif Abu-Zahou	21-Jan-04	Gaza
Lou'ay Taysir Salama	19-Feb-04	Gaza
Ra'ed 'Abd-al-Muhsen Hasan	26-Feb-04	Gaza
Muhammad Ahmad Taqatqa	03-Mar-04	Gaza
Ibrahim Mustafa Abu-'Eisha	27-Feb-05	Gaza