ISRAEL'S DEPORTATION POLICY

in the Occupied West Bank and Gaza

– A Report Commissioned by al–Haq –

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INTRODUCTION

In a cabinet session on 4 August 1985, the Israeli government decided to "revive" administrative detention, deportation and "other long-dormant measures" in order to "clamp down on terrorism and incitement in the administered areas." "Persons constituting a security risk" were to be singled out for deportation, and the Jerusalem Post reported that the expected targets would be "West Bank Arabs in student, professional and municipal groups, ranging from trade unionists to lawyers to members of student-union executives." 1)

In fulfilment of this announced policy, thirty-five Palestinians from the Occupied West Bank and Gaza had been deported to Jordan by the end of April 1986. (See Appendix 1). Of these 35, twenty-one were Palestinians who had been released, along with over 1,100 others, from Israeli prisons on 20 May 1985 following an exchange agreement between the Israeli government and 'Ahmed Jibril's Popular Front for the Liberation of Palestine - General Command. These ex-prisoners were told later that because they did not possess valid I.D. cards and were considered "infiltrators", they would be expelled from the Occupied Territories. The other fourteen were deported on charges of "incitement" and being leaders of "illegal organizations". They included two trade unionists, a journalist, a deposed member of the al-Bireh municipal council, students, and several others, five of whom also were Palestinians freed during the prisoner exchange of May 1985.

In this paper we intend to focus only on the two categories of deportees specifically affected by the revival of Israel's policy of administrative punishment in August 1985, namely those said to be infiltrators, and those accused of incitement. Israel's deportation policy includes at least two more categories, however: those people who are said to have signed a statement in prison apparently agreeing to leave the country at the end of their prison term, or in exchange for a reduced prison term; 2) and those who, having left the

country or having been forced to leave the country, are not allowed to return. The latter category of Palestinians who are effectively exiled is especially large, as the Israeli authorities have employed a variety of administrative measures to prevent Palestinians from re-entering the area and resuming residence. The Israeli government does not recognize the last two groups, nor those who are said to be infiltrators, as falling under the heading of deportation. We will argue, on the other hand, that people in all four categories are to be considered as deportees, a position supported by international human rights organizations 3), as well as by international law and conventions (see Chapter II, Section 3 below).

Deportation (or banishment or exile) is generally defined as the compulsory departure of an individual from the country of which he or she is a national, and implies the compulsory loss of that person's national rights. 4) In the case of the Palestinians, who have no national rights, it means being deprived of the right of residence in their homeland. Deportation is a particularly harsh form of punishment as it results in the forced separation of the deportee from his or her family and community. In the specific case of the Palestinians, deportation has the added significance of constituting an attempt on the part of the Israeli authorities to remove as much of the Palestinian population from the West Bank and Gaza as possible to facilitate eventual annexation, as exemplified by the expanding settlement movement.

Deportations constitute a clear violation of international law and conventions, including the 1907 Hague Regulations, the 1945 Charter and 1946 Judgment of the Nuremberg Military Tribunal, and the IV Geneva Convention of 1949, all of which - either implicitly or explicitly - rule out the use of deportation as a form of punishment or deterrent or for any other purpose, especially in occupied territories.

Deportations in Israel are a form of extra-judicial punishment, violating due process, since they are based on an administrative decision in which no formal charges are brought

against the deportee, no trial is held, and the person is deported on the basis of evidence to which neither he/she nor his/her lawyer can have access. Although the prospective deportee has the right to appeal the deportation order, the judges of the Israeli Supreme Court so far have not gone beyond a mere review of the procedures by which the Military Commander executes the deportation order, to determine simply whether or not he has stayed within the limits of his authority. On no occasion has the Court attempted to ascertain whether or not the petitioner was guilty.

The following paper is divided into three main parts, following a short historical background in Chapter I. In each part we will address a key issue. In Chapter II, we will establish which legal instruments the Israeli authorities have created or revived to deport Palestinians from the Occupied Territories, and how they justify their deportation policy in the light of relevant international law and conventions. In Chapter III, we will analyze the nature of the deportation procedures, and determine which rights a person facing a deportation order has under Israeli law and practice, and what chances he or she has to have the deportation order reversed. In Chapter IV, finally, we will attempt to explain the timing of the revival of the deportation policy and the choice of targets within the framework of the political situation that prevailed in Israel in the Summer of 1985.

I. HISTORICAL BACKGROUND

The history of Palestine is the history of control over the land of Palestine. Countervailing Jewish and Palestinian claims to the land have made for decades of strife, where the (Jewish) Israeli side, backed by powerful international interests, has succeeded in retaining the upper hand. The effort to claim the land for oneself implies a need to check the movement of population, and the Israelis, tightly in control of the state apparatus, have devised a number of methods by which they have regulated the in- and outflow of people in the area. Consequently, one of the main features of the on-going struggle has been the concurrent immigration of Jews (for example, through the exclusivist "Law of Return") and "emigration" of Palestinians. To effect the latter, the Israelis have employed existing laws, revived defunct ones or created new ones to force Palestinians to leave or, if they have already left or were not in the area at a certain time, to prevent them from returning. Of the many ways in which Palestinians have been forced to leave and stay outside their homeland, we will look only at the deportations that are being carried out by virtue of the British Defence (Emergency) Regulations of 1945, and of Military Orders 329 (West Bank) and 290 (Gaza Strip) of 1969.

The deportations of inhabitants of Palestine that have occurred since the final years of the British Mandate period are based on the Defence (Emergency) Regulations of 1945. Coming at the end of World War II, these regulations gave sweeping powers to the British occupying forces in their attempt to put down the growing unrest among the population of the area, where the Jewish inhabitants, supported by the allied powers and the promises of the British government (cf. the Balfour Declaration), were fighting to establish an independent Jewish state at the expense of the indigenous Palestinian population. Accordingly, the British deported many Palestinians (for example, to the Seychelles) and Jews (for example, to Kenya), and used other measures to quell the growing strife.

Upon its creation, the Israeli state continued to apply the 1945 Defence Regulations despite the fact that these had been repealed by the British the day before their mandate ended in May 1948. Many Palestinians were deported from Israeli territory during the period between 1948 and 1967 - some of them by virtue of the 1945 Regulations, and others by military order - and many more who had been forced to leave the area before and during the 1948 war were not allowed to return to their homeland. 1)

Deportations have been an integral part of Israeli policy in the West Bank and Gaza since the beginning of the occupation in 1967. Not counting all those who were compelled to flee during the 1967 war and who later were not permitted to return, the first official deportee (i.e. acknowledged to be one by the Israeli authorities) was Sheikh 'Abed al-Hamid Sayeh, president of the Muslim Religious Council, who was forced to cross the bridge into Jordan on 23 September 1967. Four more Palestinians, all prominent leaders in the West Bank community, were deported that year. The rate of deportations then steadily increased in the late 1960s, reaching a peak of 406 deportees in 1970, finally tapering off toward the mid-70s. All in all, at least 1,156 Palestinians had been deported from the West Bank and Gaza by the end of 1978, according to a study conducted by Ann Lesch for the American Friends Service Committee. 2)

It has proven very difficult to obtain accurate statistics about Israel's deportation policy, because the Israeli authorities do not systematically publish the names of those they have banished. In addition, the authorities do not label the majority of deportees as such, but rather as "infiltrators" who are being put back across the border, or as Palestinians who have "agreed to leave" following the termination of their prison sentences, or as "former residents" who were not registered in the 1967 census or who failed to renew their identity cards. As such, their deportation is often not reported in the local media, and therefore may go unnoticed. Irrespective, however, of the exact number of deportees and the official Israeli definition,

the point that needs emphasizing is that the Israeli authorities from the beginning of the occupation have created and applied legal methods to enable them to remove Palestinians from the West Bank and Gaza.

The last Palestinians to be deported before the recent reintroduction of the deportation policy were 'Abed al-'Aziz 'Ali Shahin, who was expelled to Lebanon on 17 February 1985, and Fahed Qawasmi, Mohamed Milhem and Sheikh Raja Tamimi, who were deported to Lebanon on 2 May 1980. Shahin was a prominent Palestinian leader in Gaza who had spent most of the years of occupation in Israeli prisons, and who was deported on the Israeli claim that he had "infiltrated" into the area even though he had indeed been registered in the 1967 population census. Qawasmi, Milhem and Tamimi were, respectively, the mayor of Hebron, the mayor of Halhul, and the Shar'ia judge of Hebron. They were expelled on unspecified charges of "incitement" as a result of settler pressure following the attack by Palestinian commandos on Israeli settlers in the center of Hebron. 3) During the mid-1970s, the Israeli authorities concentrated on two groups of Palestinians: those associated with the National Guidance Committee, the de facto Palestinian leadership in the Occupied Territories at that time; and alleged members of the outlawed Palestine Communist Party.

As international pressure on Israel to cease the policy of deportation mounted in the 1970s, the Israeli authorities began using the policy more sparingly, applying it exclusively against the top Palestinian leadership in the West Bank and Gaza, and solely at times of intense pressure from the settlers. Israel's ability to reintroduce the deportation policy in the summer of 1985 reflects the extent to which international public pressure had faded in the preceding half decade. The deportations that have since taken place were carried out smoothly, as international condemnation of the practice remained scattered and incidental.

Thirty-five Palestinians have been deported in the period between August 1985 when the Israeli cabinet announced its

decision to revive deportations as part of the "Iron Fist" policy in the Occupied Territories, and May 1986. Several of them were influential leaders of their community, members of organizations that are legal under prevailing Israeli law. Others were former political prisoners, some of whom had been released during the prisoner exchange in May 1985 and who were said to be "illegal residents" of the Territories. All had played a leadership role in cementing the base of Palestinian society, which has been weakened by the dispersion of a sizeable number of its members and nineteen years of military occupation. It seems that the decision to deport these Palestinians had less to do with security - the standard Israeli justification for its policy - than with Israeli efforts to remove as many Palestinians as possible from the Occupied Territories. In the next section we will analyze the instruments employed by the Israeli authorities in their latest effort to deport Palestinian residents of the West Bank and Gaza from their homeland.

II. LAWS APPLIED, LAWS BY-PASSED

Israeli law does not apply in the West Bank and Gaza which, according to international law, are occupied territories. Applicable law is the law that was in place prior to the occupation, which is a combination of Ottoman, British Mandatory and Jordanian laws in the case of the West Bank, and a mixture of Ottoman, British Mandatory and Egyptian laws in the case of Gaza. Upon Israel's conquest of the West Bank and Gaza in June 1967, the occupying authorities, in the person of the Commander of the Israel Defence Forces (IDF) in either region, decided to continue to apply the laws extant in the area as their own, by virtue of the following proclamation ("Proclamation No. 2"), issued on 7 June:

> The law in existence in the Region on June 7, 1967, shall remain in force, insofar as it does not in any way conflict with the provisions of this Proclamation or any Proclamation or Order which may be issued by me, and subject to modifications resulting from the establishment of government by the Israel Defence Forces in the Region. 1)

In this chapter we will look at the laws the Israeli authorities have chosen to apply to enable them to deport Palestinian residents from the Occupied Territories, as well as those laws they ignored in doing so. We will find that they have used two types of legislation to deport Palestinians during the most recent wave of expulsions that began in August 1985. First, they enforced Military Orders 329 (West Bank) and 290 (Gaza Strip) which enabled them to deport those Palestinians who were said to have entered the area illegally, that is without a permit from the authorities. Secondly, for those who could not be said to have "infiltrated", they enforced the Defence (Emergency) Regulations promulgated by the British Mandatory Power in 1945. The questions raised here are whether the Israeli government could legally enact and enforce Military Orders 329 and 290, and whether the 1945 Defence Regulations are still valid today. If it is found

that the government overstepped the bounds of legality by applying this legislation, we must then ask how the Israeli authorities went about creating legislation, or resurrecting defunct laws, in defiance of prevailing international law and conventions in their effort to intensify administrative punishment in the Occupied Territories; and how they justified their action in light of existing international law and conventions.

Since we are focusing on two separate categories of deportees (within a single deportation policy), we will look at the relevant legislation seriatim; i.e., first Article 112 of the British Defence (Emergency) Regulations of 1945 in Section A, and then Military Orders 329 (West Bank) and 290 (Gaza Strip) of 1969 in section B. Finally, we will analyze the legality of deportations in international law and conventions - the "laws by-passed" - in Section C.

A. The Defence (Emergency) Regulations of 1945

Between the reintroduction of the policy of administrative punishment in August 1985 and the beginning of May 1986, fourteen Palestinians were deported to Jordan by virtue of the 1945 Defence (Emergency) Regulations, the relevant sections of which read as follows: Article 108 of Part 10 ("Restriction Orders, Police Supervision, Detention and Deportation") states:

> An order shall not be made by the High Commissioner [today the Israeli Minister of Defence] or by a Military Commander under this Part in respect of any person unless the High Commissioner or the Military Commander, as the case may be, is of opinion that it is necessary or expedient to make the order for securing the public safety, the defence of Palestine, the maintenance of public order or the suppression of mutiny, rebellion or riot. 2)

And Article 112 (1) says:

> The High Commissioner shall have power to make an order under his hand (hereinafter in these regulations referred to as a "Deportation Order") for the deportation of any person from Palestine. A person in respect of whom a Deportation Order has been made shall remain out of Palestine so long as the Order remains in force. 3)

By what power can the Israelis claim the applicability of the 1945 Defence Regulations to deportation cases in 1985? And what arguments have been advanced by Palestinians to defeat Israeli contentions?

1. The Mandate's Legacy

During the height of Israel's deportation policy in the late 1960s and early 1970s, Palestinians were deported from the Occupied Territories without due process. They would be arrested and immediately transported either to the Lebanese or Jordanian border, and be told to walk. Consequently, having had no recourse to the Israeli Supreme Court, the deportees could not present arguments in their defence and challenge the decision of the military authorities. This situation came to an end in the late 1970s. In 1977, the government decided to establish precise appeal procedures so as to avoid violations of the rules laid down in the British Defence (Emergency) Regulations, a practice that was coming under increasing criticism at that time, including from the side of Supreme Court judges. In the landmark case Abu 'Awad vs. IDF Commander of Judea and Samaria (1979), Palestinians succeeded in submitting an (unsuccessful) appeal of a deportation order to the Israeli Supreme Court. In the proceedings, the counsel for the petitioner first questioned the applicability of the British Defence (Emergency) Regulations of 1945, which the Israeli authorities claimed were valid and in force, and then asserted the applicability of the IV Geneva Convention, which the Israeli authorities claimed did not apply to the Occupied

Territories but whose humanitarian provisions they have agreed to recognize. 4) The arguments presented by the Supreme Court in this case set a precedent that was followed by the few deportation cases that went to the Supreme Court after 1979, most notably that of Qawasmi and Milhem in 1980, and that of Nazzal, Maqbul and Jayusi in 1985.

In its ruling in the case against Riyad Abu 'Awad (HCJ 97/79, Abu 'Awad vs. the IDF Commander of Judea and Samaria), the Israeli High Court, sitting as the Supreme Court of Justice, decided in 1979 that "the Defence (Emergency) Regulation of 1945 remained in force in the West Bank as part of the Jordanian law." 5) The Defence Regulations were enacted by the British Mandatory Government in the person of the High Commissioner for Palestine in 1945 by virtue of Article 6 of the Palestine (Defence) Order in Council of 1937. The Israeli authorities claim that the Jordanians continued to apply the 1945 Defence Regulations through a proclamation ("Proclamation No. 2") made by the Military Commander of the Arab Legion on 19 May 1948, which reads:

> All Laws and Regulations in force in Palestine at the end of the Mandate, on 15 May 1948, shall remain in force throughout the regions occupied by the Arab Jordanian Army, or wherever the Army is entrusted with the duty of protecting security and order, save where that is inconsistent with any provision of the Defence of Trans-Jordan Law, 1935, or with any Regulations or Orders issued thereunder. 6)

In the Abu 'Awad case, the Supreme Court held that since no evidence had been submitted attesting that the Defence of Trans-Jordan Law had in any way been contravened, the Defence Regulations of 1945 remained valid and in force upon Jordan's assumption of sovereignty over the West Bank in 1948. It then argued that the Jordanian Constitution of 1952 did not explicitly repeal or otherwise affect the validity of the Defence Regulations; and that the Israeli authorities in turn had continued to apply the Regulations in 1967 (by virtue of

the Israeli Military Commander's Proclamation No. 2, cited above) following their conquest of the West Bank. Finally, the Court claimed that the Defence Regulations did not conflict with any new legislation promulgated by the Israeli occupying authorities, and therefore remained valid and in force. 7)

The Supreme Court's contentions in the 1979 case are based on arguments put forward as early as 1969 by the Israeli Attorney General Meir Shamgar, who today is the president of the Supreme Court. On 1 August 1969, the Attorney General circulated internal directives indicating by what arguments Israel was to justify its application of the 1945 Defence Regulations to the West Bank. He suggested that the proclamation made by the Commander of the Arab Legion, cited above, does not "[rob] the regulations of their legal force today, for the following [two] reasons:"

> (1) There is no contradiction between the provisions of the Transjordan Defence Law and its attendant regulations, and the provisions of the Emergency Defence Regulations of 1945; and for that reason alone, General Hashem's proclamation does not render the latter regulations null and void.
>
> (2) Even if there were such a contradiction, the order issued [by the IDF Commander, General Herzog] in 1967 specifies that emergency legislation may only be revoked "explicitly and by name;" and the Emergency Defence Regulations of 1945 were never revoked explicitly and by name. 8)

Palestinian lawyers and the legal counsel for Palestinians served with a deportation order under the Defence Regulations have addressed these two arguments. Since they are separate in nature, we will analyze them seriatim.

2. The 1945 Regulations in Jordanian Law

Palestinian advocate 'Aziz Shehadeh, a local authority on Jordanian law who provided expert opinions on this subject to the Israeli Supreme Court on several occasions, explained the status of Article 112 of the 1945 Defence Regulations in Jordanian law in a lengthy affidavit submitted to the Israeli Supreme Court in 1980 (in the deportation hearings against mayors Qawasmi and Milhem). His argument was that the 1945 Regulations were implicitly revoked by Jordanian legislation, and that the highest legislation in Jordan, the Constitution of 1952, specifically outlaws deportations. 9)

According to Shehadeh, King 'Abdallah of Jordan on 13 May 1948 extended the provisions of the Transjordan Defence Laws of 1935 to "the country or areas in which the Jordanian Arab Army shall be found or shall be entrusted with the security and order therein." Two days later, the Jordanian Army Commander issued Proclamation No. 2, quoted above, stating that the Jordanian authorities would continue to apply all ordinances and regulations in force in Mandate Palestine until 15 May 1948, "save where that is inconsistent with any provision of the Defence of Trans-Jordan Law, 1935, or with any Regulations or Orders issued thereunder." But, added Shehadeh,

> [t]he regulations that remained in force are those regulations which were issued by virtue of the Palestine ordinances. These regulations, however, do not include those regulations that were put into force by virtue of the Palestine Orders in Council. 10)

The Jordanian Constitution of 1952 also did not make direct reference to the Defence Regulations of 1945. The reason for this, according to Shehadeh, is that the Regulations had been invalidated by virtue of the fact that they at no occasion had been used after 1948. To back up this contention, Shehadeh argued:

> The most striking indication that the Palestine Defence Regulations were not in force in the West Bank after the Jordanian Defence Regulations were applied in the West Bank is that it is illogical that they would be in force at the same time, firstly because the provisions of these regulations are contradictory, and secondly because all defence regulations and orders issued during the Jordanian Regime were made by virtue of the Jordanian Defence Law of 1935 and never by virtue of the Palestine Defence Regulations of 1945. 11)

In opposition to the Israeli Supreme Court's argument (in th Abu 'Awad case) that Article 9(1) of the Jordania Constitution, which explicitly prohibits the deportation of Jordanian citizen from Jordan, cannot override previou emergency regulation, Shehadeh argued that the Jordania Supreme Court, when confronted with two conflicting laws, wil apply the legislation promulgated by the higher body. Ther is no doubt as to what that higher body is in Jordan: "Th constitution is considered as the highest legislation in th country," and "no decision can be taken contrary to it." 12)

In short, the argument is first, that the Jordania Defence Law of 1935, and not the Palestinian Defenc Regulations of 1945, applies to the West Bank, and that th Jordanian Defence Law, unlike the 1945 Regulations, does nc allow for deportation of subjects living in the area; ar secondly, that the Jordanian Constitution of 1952, which the highest legislation in Jordan, outlaws deportations. Th brings us to the second part of the Israeli argument, name that emergency legislation can only be revoked "explicitly a by name," and that the 1945 Regulations had in fact not be revoked explicitly and by name.

3. Israel's Resurrection of the 1945 Regulations

In the 1985 deportation case against Walid Nazzal, 'Am Maqbul and Bahjat Jayusi (HCJ 513/85, Nazzal et al. vs. t

IDF Commander of Judea and Samaria, and HCJ 514/85, Jayusi vs. the IDF Commander of Judea and Samaria), the Israeli Supreme Court rejected the argument, presented by the counsel of one of the petitioners, of the invalidity of the use of the 1945 Defence Regulations in 1985. Basing itself on HCJ 97/79 (the case against Abu 'Awad) and HCJ 698/80 (the case against Qawasmi and Milhem), the Court ruled, on 29 September 1985, that the 1945 Defence Regulations were indeed still in force in the West Bank since they had never been explicitly revoked, as stipulated in (Military) Interpretation Order No. 224 of 1968, cited below. The Court then repeated the old arguments that the Defence Regulations did not contradict prevailing Jordanian legislation, including the Constitution. 13)

In this case, however, the defence argued not only that the 1945 Regulations had been repealed by the Jordanians, but that they had been revoked by the British themselves as per 14 May 1948, and that they could not be revived by Israeli Military Interpretation Order No. 160 of 1967, or any later amendments thereof, such as Interpretation Order No. 224. The argument runs as follows. On 12 May 1948, the King of England issued the Palestine (Revocations) Order in Council, repealing as of 14 May 1948 all Mandatory Orders in Council up until the last one, which is the Order in Council of 1937 on which the Defence Regulations of 1945 are based. As a result, by 15 May 1948 the Defence Regulations were no longer in existence. "The Israeli military legislator was undoubtedly aware of this situation," argues lawyer Andre Rosenthal, "when he issued the Interpretation Order ... No. 160 of 1967." 14) Article 2 of Order 160 stipulates:

> So as to remove any ambiguity, it is hereby decided that any Hidden Law does not have, or has ever had, any effect.

"Hidden Law" is defined in Article 1 as "any legislation, whatever it is, which was enacted between 29 November 1947 and 15 May 1948 and which was not published in the Official Gazette, in spite of the fact that it was the kind of legislation whose publication in the Official Gazette was

required during that period whether by necessity or l custom." 15) The Palestine Gazette, of course, could nc appear in Palestine in this period because of the wa situation in the area, but all legislation was indee published in England in the British Statute Book. Rosenth argues, however, that Order No. 160 cannot be made to apply the Defence Regulations, because these themselves are governe by the Interpretation Ordinance of 1945. It is true th. Section 20 of this Interpretation Ordinance stipulates follows:

> All regulations having legislative effect shall be published in the Gazette and, unless it be otherwise provided, shall take effect and come into operation as laws on the date of such publication. 16)

The point is, however, that although the 1945 Interpretati Ordinance governs the 1945 Defence Regulations, th Ordinance's Section 20 is specifically overruled by Secti 3(2) of the Defence Regulations themselves, which states th several sections, among which Section 20, of t Interpretation Ordinance of 1945 do not apply to the Defen Regulations. 17) In other words, Israeli Interpretation Ord 160 cannot overrule the existing legislation, namely t British Interpretation Ordinance of 1945, which governs t 1945 Defence Regulations and which does not specify that t latter, nor their revocation, should be published in t Official Gazette.

In the case against Nazzal et al., the Israeli Supre Court also invoked Interpretation Order No. 224 of 1968 (whi is a fifth amendment to M.O. 160) to revive the Defer Regulations of 1945. Articles 2(b) and 3 of this Order reac

> 2(b). Emergency legislation is rendered null and void solely by legislation which explicitly repeals it by name.

> 3. Emergency regulation which was in force in the area after 14 May 1948 shall remain in force from the definitive date [i.e. 7 June 1967] onward as if it had been enacted as security legislation, unless it was explicitly revoked by name, as stipulated in section 2(b), either prior to or following the definitive date. 18)

The 1945 Defence Regulations were, however, revoked by the King of England when he revoked the enabling order of 1937, and they were therefore no longer in force after 14 May 1948.

Following the Court's judgment in the case, Rosenthal asked "on what basis is the military legislator of the Occupied Territories invested with the power to legislate [in 1967] such blatantly retroactive legislation nineteen years after the enactment of the offending legislation, the Revocations Order [of 1948]?" 19)

It appears that the question at hand is one of politics, not law. The decision taken by the Military Commander of the West Bank in 1967 to reactivate legislation that had clearly been revoked, basing his power to do so on the claim that in fact it never had been revoked explicitly, suggests at least two things. First, it demonstrates the unchecked power of the Israeli authorities, who are able to issue military orders (and thus to revive defunct legislation or create new laws), including interpretation orders, which so far have not been challenged seriously by the Israeli Supreme Court. 20) Secondly, it hints at a reluctance on the part of the Israeli authorities to enact laws themselves that would be equivalent to the British Defence Regulations, while they could easily have done so by means of a military order. In fact, they did do so with other punishments, for instance administrative detention. 21) The transfer of some forms of punishment but not deportation from British legislation to Israeli legislation, including military orders, suggests that the Israeli authorities so far have wanted to prevent the possible embarrassment they would face if they were to integrate deportation - an extreme punishment by any measure - into

Israeli law. It must be remembered that the 1945 Defen Regulations were condemned on numerous occasions by promine members of the Jewish community before 1948 and in Isra itself after 1948 (and have even been described by Israe leaders like Menachem Begin as "worse than Nazi rules"), a that the Law Committee in the Knesset as early as 1950 decid that it would be better for Israel to retain the 1945 Defen Regulations, since they were British, than for Israel create its own. In a recent newspaper interview, retir Supreme Court Justice Haim Cohn said:

> When I was a lawyer, I protested against [the Defence Regulations] in 1945 and I still protest against them. In 1950, when I was Attorney-General, I proposed a bill to abolish them, but they decided it was better to have this sort of regulation in a British law than in an Israeli one. 22)

In short, the Israeli authorities have wanted to ret. the power to deport Palestinians from the West Bank and G. granted them - or so they claim - by the Defense (Emergen Regulations of 1945. 23) For this purpose, they have iss military orders, not to enact a deportation rule, but interpret the 1945 Regulations as still being valid af 1967. Although it is undeniable that they have the power enact such legislation, one wonders what has happened to rule of law when, by the stroke of a pen, a law unequivocally declared revoked - can be revived, and applied to serve political ends.

B. Military Orders 329 (West Bank) and 290 (Gaza Strip)

In spite of the provisions stipulated in Article 64 the IV Geneva Convention, cited above, the Israeli authorit have modified prevailing law in the Occupied Territories by large number of military orders (1,164 in the West Bank as

25 February 1986, and 893 in Gaza as of 5 March 1986) to the extent of rendering these laws a pale reflection of their former selves. The reality is that the population of the Occupied Territories is ruled by an elaborate structure of Israeli military legislation in all vital areas of daily life. These include orders which are published with a serial number; legislative acts which are published but not serialized; regulations which are not published or serialized, and whose numbers are unknown; and oral and written directives which amend orders or regulations, and which are also not published. 24) One such military order enables the Military Commander to deport a Palestinian resident of the West Bank or Gaza on the single charge that - regardless of the person's official residence - at one time he or she entered the area illegally, thus earning the designation of "infiltrator."

1. Resident or Infiltrator

For Palestinians living in the West Bank and Gaza, who cannot call themselves the nationals of any state, even to be considered residents of the area in which they were born and where they have lived all their lives is problematic. The questions of residency and legitimacy have become so important for these Palestinians that their existence in their homeland can be reduced to their possession of a single piece of paper: an Israeli identity card. Under Israeli military orders that apply to the West Bank (M.O. 396 and M.O. 297), each male resident of the West Bank over the age of 16 must carry an identity card issued according to the orders. The Israeli authorities have generally made it very difficult for Palestinians to obtain or renew an I.D. card, as the long list of those who have applied for family reunion illustrates. 25) Those who have somehow lost their card must prove that they owned one to begin with; this, too, can be difficult. The scope of the problem with the identity cards seems to suggest that the Israeli authorities may be using their power to issue them or not issue them as a means, in conjunction with other methods, of gradually reducing the population level in the Occupied Territories. If this is so, then M.O. 329 (West

Bank), cited below, and its Gaza counterpart constitute a flagrant violation of international law and conventions pertinent to the conduct of an occupying power.

Military Order No. 329 of 1969, the "Order Concerning Prevention of Infiltration (West Bank)", and its equivalent counterpart in Gaza, Military Order No. 290 of 1969, regulate the status of Palestinians who are said to have entered the area from outside without having obtained a permit to do so from the Israeli authorities. Since the beginning of the "Iron Fist" policy in the Occupied Territories in August 1985, the Israeli Military Commanders of the West Bank and Gaza have used Military Orders No. 329 (West Bank) and No. 290 (Gaza) twenty-one times. In all cases it involved Palestinians who had been freed during the prisoner exchange between Israel and 'Ahmed Jibril's Popular Front for the Liberation of Palestine - General Command in May 1985, and who ostensibly had been given permission to remain in the Occupied Territories. The Israeli authorities argued that because these Palestinians at one point had illegally entered the area and were not in possession of a valid identity card, they were "infiltrators" and "illegal residents," and hence subject to deportation.

Article 3 (a) of Military Order 329 stipulates:

> Any Military Commander may order in writing the deportation of any infiltrator from the area, whether he was accused of an offence under this order or not, and the deportation order shall constitute a document for keeping the above-mentioned infiltrator in detention until he is deported. 26)

An "Infiltrator" is defined in Article 1 as "a person who knowingly enters the Area contrary to Proper Procedures, after having resided in the East Bank of the Jordan, or in Syria, or in Egypt, or in Lebanon, after the Determining Date," where "Proper Procedures" signifies "according to a permit issued by the Commander of the Area, or someone delegated by him", and "Determining Date" is the date on which the Israeli

authorities assumed official control over the Occupied Territories, i.e. 7 June 1967 in the West Bank, and 6 June 1967 in Gaza. Article 5 of the order decisively lays the burden of proof onto the shoulders of the accused:

> Any person, during any proceeding undertaken under this order, who is found to be in the Area without a document proving his identity as a resident of the Area, must prove that he did not infiltrate after the beginning of the operation of this order. 27)

And Article 6 reads:

> Any person who enters the Area after the Determining Date according to a permit and who remains in the Area contrary to due procedures shall be considered for the purposes of Article 3 as an infiltrator after the expiry of the permit or because of violation of its conditions. 28)

The text of Military Order 329 (and its equivalent in Gaza) is so ambiguous as to allow for a wide margin of flexibility in its interpretation. As a result, M.O.'s 329 and 290 potentially deviate from their supposed purpose, the preservation of security interests. This is a crucial point. In light of international conventions regulating the conduct of an occupying power, the Israeli authorities must endeavor to demonstrate that M.O. 329 (and its Gaza counterpart) in fact does serve their legitimate security interest. At the same time, they cannot enforce legislation that runs contrary to international law and conventions in other aspects. For example, prevailing international law permits the Israelis to enact legislation for the prevention of infiltration (a legitimate security concern), as in fact they have done. Such legislation, however, cannot legitimize deportation of the infiltrators, unless it could convincingly be shown that these infiltrators had never held residence in the area nor had spent time in it immediately following the infiltration with the intention of beginning residence. In the final analysis,

the issue is one of defining who is and who is not an infiltrator; i.e., who does and who does not have the right of residence. The criteria used by the Israeli authorities are participation in the population census of 1967, and the manner of entrance into the area.

There are several ways in which a Palestinian who was a resident of the West Bank prior to 7 June 1967 or of Gaza before 6 June 1967, and even afterwards, could be designated as an "infiltrator." In September 1967, three months after IDF forces occupied the West Bank and Gaza, the Israeli authorities, under curfew conditions, carried out a population census in the Territories, in principle granting every Palestinian who was included in the census an identity card. However, many Palestinians were outside the area at the time that the war broke out, and were not permitted to return once hostilities ended. Others who had been present sought refuge in Jordan during the fighting and were not allowed to return once the fighting ceased. Still others left shortly after the war for brief family visits in Jordan, following assurances by Israeli officials that they would be allowed to return, but were then denied re-entry. (The International Red Cross intervened on behalf of many families, and in fact succeeded in reuniting some). Some individuals from the above three groups may have returned "illegally" for the entirely peaceful purpose of rejoining home, family and land, but were not included in the census, or - if they were included in the census - were deprived of their identity card once the authorities realized that the person had "infiltrated." This happened, according to the Israelis, in the case of 'Abed al-'Aziz Shahin, cited below. Others may have been in hiding at the time of the census for fear of reprisal from the Israelis because of active involvement in the war in defence of their homeland. Others may indeed have been counted during the census but did not receive an identity card, for instance if they left the West Bank before the card was issued, as is said to have happened in the case of one of the recent deportees, Khaled Tantash, cited below. Others, having received an I.D. card, left the Territories and returned "illegally", were then arrested and imprisoned on charges of "infiltration", and lost

their I.D. card to the authorities. Others, finally, left the Territories with a valid I.D. card but were unable to renew it within three years after their departure, or their request to have it renewed was rejected by the Israeli authorities, and thus they lost it.

In the recent deportation cases, those served with a deportation order on the basis of M.O. 329 (or M.O. 290 if they were residents of Gaza) had to demonstrate to the military authorities that they were legal residents of the Occupied Territories. If they failed in their effort, they had the opportunity to appeal to the Supreme Court.

2. The Case of 'Abed al-'Aziz Shahin

The relevant precedent in this context is the case of 'Abed al-'Aziz 'Ali Shahin, who was deported on 17 February 1985, only a few months before the Israeli government reintroduced its policy of administrative punishment. In Shahin vs. the IDF Commander of the Gaza Strip, the Israeli Supreme Court held that Shahin had entered Gaza via the West Bank illegally after the June war (but before the September census), and that he therefore should not have been issued an identity card:

> The petitioner's residence in the Gaza Strip in 1967 could not have been a legal residency if he entered it illegally from Jordan via Judea/Samaria. Because of this action, his status is that of an infiltrator. The fact that those who carried out the census were unaware of this does not change anything, and petitioner's participation in the census should not have earned him a permit under these circumstances. 29)

Shahin spent fifteen years in Israeli jails. In 1976, the Military Commander issued a deportation order against him, effective upon his release from prison in 1982. Shahin appealed to the Supreme Court, but before the case was heard,

the Military Commander withdrew the order, granting Shahin a temporary permit to stay in Gaza (where he was banned to a remote desert town). In 1984, however, the Commander changed his mind, canceled the permit and issued a new deportation order. Shahin's counsel argued that the Commander could not renew the expulsion order after having canceled it. The Court, however, held that the Commander had withdrawn the original order "in the hope that the petitioner would behave himself in such a way so as not to endanger security." The Commander then changed his mind because of Shahin's "activities which undermined the effort to allow him to stay in the area." 30)

What this seems to indicate is that there may not be any strict criteria used in the defining of who is or who is not an infiltrator; or alternatively, that regardless of the criteria, the Military Commander can do as he pleases. In the case of Shahin, the IDF Commander of Gaza was able to apply the law selectively, withdrawing the deportation order against Shahin when he feared public rebuke, and issuing a new one when he sensed that the time was propitious. He even had it in his power, in the event that he could not substantiate his claim that Shahin was an "infiltrator", to withdraw the deportation order he had issued by virtue of M.O. 290 (Gaza), and to issue a new deportation order on the basis of the 1945 Defence Regulations. The law being as flexible as it is, however, there was no need for him to resort to such devices.

What is significant also in the Shahin case is that the Israeli authorities bent over backwards in blaming themselves and their own procedures in ever allowing Shahin to stay in Gaza, thus suggesting implicitly that their procedures are arbitrary and unjust. The Supreme Court, for example, went so far as to claim that the IDF had failed in stopping Shahin's "infiltration", that the census authorities had erred in granting Shahin a residence permit, and that the Military Commander of the Gaza Strip had been mistaken, as later events were to prove, in his decision to cancel the original deportation order. In other words, Shahin's right to stay in Gaza, granted on more than one occasion, was based on a purely

political decision, which consequently could be reversed at the whim of the Military Commander. The Supreme Court did not oppose the Military Commander but simply dismissed Shahin's appeal, and Shahin was subsequently deported on 17 February 1985.

3. The Case of the Freed Prisoners

In Walid Kasrawi et al. vs. the Minister of Defence, and Mahmud Hanini et al. vs. the IDF Commander of Judea and Samaria, the Israeli Supreme Court studied the case of eleven of the West Bank Palestinians who had been released in the prisoner exchange of 20 May 1985. It asked itself two questions:

> (a) Is there a real basis for the charge made against each of the aforementioned petitioners, namely that he is an infiltrator?
>
> (b) Does any official body have the authority today to order the deportation of an infiltrator? 31)

Basing the illegality of entering the West Bank on Military Order No. 5 of 1967 which declared the West Bank a closed area as of 8 June 1967, the Court then held:

> There exists no doubt that each of the petitioners wittingly entered the area illegally, i.e. without a permit from any body authorized to grant an entrance permit into the area, after having spent time since 7 June 1967 in the places specified in the order [i.e. M.O. 329, which mentions Jordan, Syria, Egypt or Lebanon]. 32)

As to the second question, the Court argued:

> The power of issuing a deportation order belongs to an administrative body, which must operate in accordance with the legal criteria stipulated in

law; but it is not a criminal punishment. Therefore, it is entirely possible for John Doe to be expelled without there being any legal steps taken against him, or for Richard Roe to be deported after legal steps have been taken against him, sentence passed, and punishment served. Punishment and deportation are two separate levels, with the only thing they have in common being that, in both cases, the elements of infiltration must be present, since the power of deportation, insofar as emerges from the aforementioned ordinances, is only to be used against an infiltrator.

And:

Participation in a population census, under circumstances such as these - namely in the event of an infiltrator's being counted - neither adds nor detracts anything, as we already pointed out in Supreme Court Case 159/84 Shahin vs. the IDF Commander of Gaza: being counted in a census did not bestow legality on a person's presence in those cases where the subject concealed his infiltration, or in cases where the census was conducted after the subject was already imprisoned following his infiltration - and one or the other of these alternatives was in fact the case in this petition. 33)

The Court subsequently rejected the petitions and revoked the restraining orders, and the eleven, joined by seven others who had decided not to appeal the deportation orders, were deported on 15 September 1985. It is significant to look at the status of some of the petitioners at the time of the arrest. According to the Court:

1. Walid Mohamed Kasrawi ... said explicitly that he had left the area on 12 June 1967 [i.e. after the war] for Jordan, returning, he claimed, on 20 August 1967 [i.e. before the September census] ...

He was arrested in November of that year and tried and convicted of causing death, of membership in an illegal organization, and of illegal infiltration...

2. Salem 'Ahmed Breiwesh affirmed that he had left the area at the end of 1968 [i.e. after the census], and entered Judea and Samaria illegally in September 1969 after legal entry via the Jordan Bridges was denied him. As stated by the respondent in an affidavit to the court, the petitioner sought to enter the area together with a terrorist band by crossing the Dead Sea in a boat, and was caught in Israeli waters during this attempt. He was sentenced to life imprisonment.

3. Mahmud 'Abdallah Hamdan infiltrated on 10 July 1969 and was shortly thereafter sentenced to twenty years in prison. 34)

Seven out of the eleven petitioners were actually registered in the 1967 census, and two of these had been informed that an identity card had been allocated to them (although they never received the card). The other four Palestinians could not have been registered in the census since they were not in the area at the time, but all four were born and raised in Palestine before 1948 and in the West Bank thereafter if they were born before 1948, or in the West Bank if they were born after 1948. 35)

Another Palestinian released in the exchange of May 1985, Khaled Mohamed Tantash, was deported on 17 December 1985 on the basis of the allegation that he was not in the possession of a valid Israeli identity card at the time of his arrest in 1969. Tantash, a resident of Jerusalem, claimed that he had in fact been in the area at the time of the 1967 census but that he had left before he had been issued a card. At the time of his arrest in November 1969, three years had not yet elapsed, and he should have been able to get an I.D. on the basis of Israeli census records, as the law stipulates.

Tantash charged that the Israeli authorities refused his lawyer, Ibrahim Abu 'Ata, access to the census record to verify his claims. 36)

In HCJ 449/85, 'Ahmed Radad vs. the State of Israel, the Minister of Defence, and the Military Commander of Tulkarem, the Supreme Court argued as it had in the case of Shahin and of Kasrawi et al., and dismissed the appeal by 'Ahmed 'Abed al-Majed Radad from Tulkarem, who was subsequently deported on 12 February 1986. Radad was a legal resident of the West Bank in 1967. He left in September 1967, and returned without a permit (i.e. "infiltrated") in May 1968. He spent the years between 1968 and 1985 in prison, and was served with a deportation order because "the petitioner's imprisonment did not change his status to one of a lawful resident in the area," regardless of his status prior to his departure in September 1967. 37)

From the above cases it transpires that at one time the Palestinians deported by military order in 1985 and 1986 were indeed legal residents of the West Bank or Gaza; they may have been included in the 1967 census, and they may even have been issued an identity card. The U.S. State Department in its annual report on human rights conditions in the world made reference to overt Red Cross criticism of the deportation of the twenty-one Palestinians expelled on 15 September 1985. It said that the deportation

> [drew] a rare public rebuke from the International Committee of the Red Cross (ICRC), which had helped negotiate the original exchange agreement. The ICRC disagreed with the Israeli interpretation of the residency requirements as established in the agreement. Israel maintained that those who had re-entered Israel illegally had forfeited their residency rights; the ICRC disagreed. 38)

In short, the point that needs stressing is that regardless of where they were born or where they had lived at least part of their lives, the fact that at a certain time certain Palestinians entered the area illegally, as defined by

Israeli military order, makes them into "infiltrators" and, as such, subject to punishment, including deportation, even though they are not legal residents, let alone citizens, of any other nation in the world. In other words, it appears that the Israeli authorities have created a legal framework by which they can deport Palestinian residents of the West Bank and Gaza, and keep them out of the area, irrespective of the natural right of these Palestinians to remain residents of their homeland if they so choose. Such deportations, however, are expressly prohibited by pertinent international law and conventions, a subject to which we will now turn.

C. Deportations in International Law and Conventions

The most serious charge that has been leveled against Israel's deportation policy is that it runs counter to international law and conventions. The conduct of an occupying power is regulated by a number of laws, treaties and conventions, some of which are customary international law, and thus binding on the nations that ratified them, while others are not. Generally, Israel's deportation policy has been condemned on the basis of the following laws and practices: the 1907 Hague Regulations, the 1945 Charter and the 1946 Judgment of the Nuremberg Military Tribunal, the IV Geneva Convention of 1949, and international customary practice. The question is how the Israeli authorities have justified their policy in light of these laws and conventions.

1. The Hague Regulations and the Nuremberg Tribunal

The rights of nationals, especially the residents of occupied territories, are well-protected in treaty law. Article 43 (Section III) of the IV Hague Regulation of 1907, for example, stipulates:

> 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 laws in force in the country. 39)

No mention is made of deportations in the Hague Regulations. Georg Schwarzenberger explained this as follows:

> At the Hague Peace Conferences of 1899 and 1907, the internment of civilians by belligerents was discussed. It was generally rejected as falling below the minimum standard of civilisation and, therefore, not requiring express prohibition. To raise the issue of the illegality of the deportation of the population of occupied territories was considered unnecessary; the illegality was taken for granted. 40)

The 1945 Charter of the International Military Tribunal at Nuremberg, however, which is based on the 1907 Hague Regulations and recognized them as declaratory of customary international law 41), explicitly condemned deportations. In Article 6 of the Charter, the Tribunal defined the following crimes, inter alia, as falling within its jurisdiction:

> (b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity. (Emphasis added).
>
> (c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian

> population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. 42)

The Tribunal declared deportation illegal in its judgment on 30 September 1946. 43) Israel has adopted the charter and judgment of the Nuremberg Tribunal, as well as the 1907 Hague Regulations, both of which the Supreme Court has held to be declaratory of customary international law and as such, binding on Israel. 44)

The "principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal" were adopted unanimously by the United Nations General Assembly on 11 December 1946. The United Nations also promulgated legislation of its own. Article 9 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948, states unequivocally: "No one shall be subjected to arbitrary arrest, detention or exile." 45) And Article 12 (4) of the International Covenant on Civil and Political Rights of 1966 reads: "No one shall be arbitrarily deprived of the right to enter his own country." 46)

2. The IV Geneva Convention of 1949

Most importantly, Article 49(1) of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949, which was designed specifically to protect the rights of the population of occupied territory, states:

> 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. [Emphasis added]. 47)

The authoritative commentary by the International Committee of the Red Cross clarified the prohibition on deportations, stating that it is "absolute and allows of no exceptions." 48)

The Israeli authorities signed the four Conventions on 8 December 1949, and ratified them on 6 January 1952, but they did not adopt the IV Convention as part of Israeli domestic law, and they have claimed that the Convention does not apply to their occupation of the West Bank and Gaza, but that they are willing to abide by its humanitarian provisions. In 1971, the Israeli Attorney General, Meir Shamgar, prepared the groundwork for all further legal justifications of Israel's occupation of the West Bank and Gaza. Arguing that "[t]he whole idea of the restriction of military government powers is based on the assumption that there had been a sovereign who was ousted and that he had been a legitimate sovereign," and that "Israel never recognized the rights of Egypt and Jordan to the territories occupied by them till 1967," he concluded:

> The territorial position is thus sui generis, and the Israeli government tried therefore to distinguish between theoretical juridical and political problems on the one hand, and the observance of the humanitarian provisions of the Fourth Geneva Convention on the other hand. Accordingly, the Government of Israel distinguished between the legal problem of the applicability of the Fourth Convention to the territories under consideration which, as stated, does not in my opinion apply to these territories, and decided to act de facto, in accordance with the humanitarian provisions of the Convention. 49)

He then defined "rule of law" as:

(a) de facto observance of the humanitarian rules of the Hague Rules and of the Fourth Geneva Convention;

and (b) observance of the basic principles of natural justice as derived from the system of law existing in Israel, whether or not these rule have found expression in the Fourth Convention. 50)

Shamgar then proceeded to interpret Article 49 of the IV Geneva Convention in the context of above interpretation of the Convention as a whole:

> Deportation of a person to Jordan is, according to the conceptions of the persons deported, neither deportation to the territory of the occupying power nor to the territory of another country. It is more a kind of return or exchange of a prisoner to a power which sent him and gave him its blessing and orders to act. There is no rule against returning agents of the enemy into the hands of the same enemy. Article 49, therefore, does not apply at all. [Emphasis in the original]. 51)

In addition, in reference to the motives for the deportation mentioned in Article 49, Shamgar held that "any comparison between deportation for the purpose of slave labor and the release of a saboteur to his fellows and commanders is out of context." 52)

Shamgar thus arrogated to himself the prerogative of defining to Israelis and the outside world the conceptions the Palestinian deportees hold of themselves, depriving them of their Palestinian nationality and identity, and turning them into saboteurs hailing from Jordan and operating on behalf of the Jordanian enemy, regardless of the fact that these Palestinians may have been born and have lived and worked all their lives in the West Bank or Gaza. As recently as September 1985, Shamgar, now in his capacity as President of the Supreme Court, still referred to the deportation of a

Palestinian to Jordan as "the expulsion of a Jordanian citizen to the Kingdom of Jordan." 53)

As the legal architect of Israel's occupation of the West Bank and Gaza, Shamgar had a decisive influence on Supreme Court judgments in deportation cases. In "Abu 'Awad vs. the IDF Commander of Judea and Samaria", the Israeli Supreme Court ruled that "nothing associates the deportation of selected individuals for reasons of public order and security", as it claimed had been provided for by the Hague Regulations, "with the deportations envisaged under Article 49 of the Fourth Geneva Convention", which it interpreted as constituting mass deportations for purposes of forced labor or extermination. 54) In the subsequent case, "Qawasmi, Milhem and Tamimi vs. the Minister of Defence et al.", the Supreme Court argued against the validity of the IV Geneva Convention altogether:

> All of Article 49, as the Fourth Geneva Convention in general, does not form part of customary international law, and therefore the deportation orders do not contravene the domestic law of the State of Israel or of the Judea and Samaria Region, according to which an Israeli court reaches its decisions. [Emphasis in the original]. 55)

And:

> The decision of the Israeli Government to apply de facto the humanitarian provisions of the Fourth Geneva Convention is a political one, not pertaining to the legal plane with which this Court is concerned. 56)

3. Critique of Israel's Position

There are a number of contradictions in the Supreme Court's arguments. It is unclear, for example, how the Court can justify its refusal to recognize the sovereignty of Jordan over the West Bank while at the same time it defines West Bank

residents as Jordanian citizens and treats them as such. 57) It is also unclear how the Court can claim to comply with the IV Geneva Convention's humanitarian provisions while simultaneously defending its own violation of the article prohibiting deportation which, as Professor Ian Brownlie has pointed out, is in itself an important humanitarian principle. 58) Finally, it is unclear how Israel can deport residents of Gaza, who are definitely not Jordanian citizens, to Jordan, or West Bank residents to Lebanon, which is not their country of origin.

There has also been criticism of deportations from inside Israeli society, even from within the Supreme Court itself. Dissenting from the views held by his two colleagues in the case against Qawasmi et al., Justice Haim Cohn argued that "the beginning of Article 49 of the Geneva Convention contains a nucleus of the customary law of nations, which has applied all over the world from time immemorial." Further, according to Justice Cohn, the prohibition of deportation is absolute, so that arguments of security or military considerations cannot be brought against the defendant. Justice Cohn also asserted that Article 112 of the British Defence (Emergency) Regulations of 1945 refers only to the deportation of aliens, since customary international law has outlawed the expulsion by a state of its own citizens. 59)

In a later interview, Cohn explained the position of the Supreme Court:

> [Interviewer:] You were in the minority in the case of the deportation of the mayors in 1980.
>
> [Cohn:] The difference in opinion between us was whether customary international law would allow the deportation of a man from his own country. I held that international law does not allow deportation from one's own country. Another judge held that international law had nothing against it. The third judge held that, as these people were Jordanian citizens, they could be expelled to

Jordan. Palestine, or the West Bank, was not their country. So you have three opinions here, but the differences were purely legal.

[Interviewer:] That means it does not matter whether you think the West Bank is Palestinian or not?

[Cohn:] No, that has nothing to do with it.

[Interviewer:] But if the other judges had thought the West Bank was Palestinian, they would not have supported the deportations.

[Cohn:] No, they would have acted in the same way. It is purely a question of law.

[Interviewer:] So, which judge was right?

[Cohn:] I am always right!

[Interviewer:] Then why were the mayors deported?

[Cohn:] Because I was in the minority, and the law always goes according to the majority.

[Interviewer:] Then the law was not right.

[Cohn:] That happens very often. 60)

The Security Council of the United Nations has explicitly stated that the IV Geneva Convention is applicable to Israel's occupation of the West Bank and Gaza, including Jerusalem, and the Golan Heights and Sinai. 61) The U.S. government has held the same position. 62) Israel is bound to abide by international law, whether customary law or treaty law, by virtue of the provisions of Article 13 of the "Declaration of Rights and Duties of States", which was adopted by the International Law Commission in 1949:

> Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty. 63)

And, in fact, the Israelis have acknowledged the validity of the Geneva Conventions, and other international law, in the past. In its 1961 judgment in the case against Adolf Eichmann (The Attorney General of the Government of Israel vs. Eichmann), the District Court of Jerusalem explicitly relied on certain provisions in the Geneva Conventions relevant to the case at hand. 64) The Court also stated unequivocally that it had

> failed to find any foundation for the contention that Israeli law is in conflict with the principles of international law. On the contrary, we have reached the conclusion that the law in question conforms to the best traditions of the law of nations. 65)

The "law in question" is the "Nazis and Nazi Collaborators (Punishment) Law", which the Court claimed could justifiably be applied against Adolf Eichmann by virtue of the 1946 Judgment of the Nuremberg Military Tribunal, which, as noted above, had defined war crimes and crimes against humanity, thereby not singling out the genocide of Jews during World War II, but including other crimes, such as deportation. How can the Israeli Supreme Court, which accepts applications from Israeli citizens as well as from residents of the West Bank and Gaza, and claims to judge them by a single standard, justify its refusal to acknowledge the applicability of the Geneva Conventions and other international laws after 1967 if these laws and conventions did apply in previous cases in Israel?

Moreover, the Israeli authorities had originally agreed to abide by the terms of the IV Geneva Convention, i.e. in Article 35 of Proclamation No. 3 of 7 June 1967. They

repealed this article specifically, however, through Military Order No. 144 of 22 October 1967. 66) It appears, finally, that the Israeli government, by agreeing to ratify the Geneva Conventions but refusing to let them pass in the Knesset, is being disingenuous, because first it signs a document in front of an international forum, and then it turns around and claims that this document does not really apply in the case of Israel. Israel is not the only country in the world to do so, but Israel, like other countries who ratified the Conventions, is bound by Article 1 of the IV Convention, which states:

> The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances. 67)

The National Lawyers Guild, a prominent organization of U.S. lawyers, has condemned Israel's deportation policy as being in violation of the IV Geneva Convention, not only Article 49, cited above, but also Article 68, which states in part:

> [i]nternment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. [Emphasis added]. 68)

The Guild concluded that deportation "is a form of punishment neither contemplated nor permitted under either of these articles," and that "regardless of their number, or of Israeli motives [i.e., including expulsions following release from prison], or of what those expelled might have done, any expulsion of an inhabitant of occupied territory violates Article 49(1)." 69)

The deportation of eighteen former Palestinian prisoners on 15 September 1985 earned the Israeli government criticism even from its staunchest ally, the United States. A State Department spokesperson said in reaction to the expulsion:

> We consider the deportation is likely to foster tension in the area. We also believe it is contrary to the Fourth Geneva Convention. 70)

The deportation of three Palestinians on 5 February 1986 drew a public response from the International Committee of the Red Cross, an organization which rarely publicizes its views on specific measures taken by the Israeli government. The deputy head of the delegation in Israel told the Jerusalem Post that deportations are "completely illegal" in light of Article 49 of the IV Geneva Convention, which, he said, is "one of the clearest articles" there are. 71)

In short, deportations have been outlawed by the 1907 Hague Regulations, the 1945 Charter and 1946 Judgment of the Nuremberg Military Tribunal, and the IV Geneva Convention, all of which apply to and are binding on Israel. In addition, deportations have been considered illegal in international customary practice, for example in the Chevreau case (1931), where the Arbitrator ruled that Chevreau's deportation from Persia to Mesopotamia, India and Egypt was illegal, thus legitimizing a claim under international law. 72)

The Israeli Supreme Court has been remarkably impervious to international criticism of its stand on the applicability of the Geneva Conventions in general and of Article 49 of the IV Convention in particular. In the recent deportation cases against Shahin and against Nazzal et al., for example, the Court brushed aside all objections to its position on this issue, and discouraged counsel for the petitioners from continuing to broach the matter. In the case against 'Azmi Shu'aibi et al. (who withdrew their appeal when it became clear that the Court would not move from its previous positions), it did so very explicitly. In the words of one of the petitioners' lawyers, Felicia Langer:

> After I explained to the Court that I was going to bring up the issue of international law, the President of the Court, Judge Dov Levin, told me clearly that I would not be allowed to argue that

the deportation is prohibited, because this claim had already been made and decided. When I tried to convince him that at least one judge, Judge Haim Cohn, had ruled otherwise [in the past], and that perhaps the present panel of the Court (Judges Shoshana Natanyahu and Eliezer Goldberg) might change the ruling, the answer was an absolute no. I asked if this meant that the Supreme Court was opposed to the Geneva Convention, and [Judge Levin] answered that if it is a question of prohibiting deportations as I claimed in the past, according to Article 49 of the Convention, this is so indeed. 73)

The Supreme Court's contumacy in its response to criticism of its stand on the applicability of international law, let alone in its unwillingness to change this stand, has forced lawyers of Palestinians appealing deportation orders to pursue alternative paths to prevent the expulsion of their clients. One way has been to point at procedural errors in the execution of an order, justifying its cancellation. This is the subject of the next section.

III. THE DEPORTATION PROCEDURES: EXTRA-JUDICIAL PUNISHMENT AND LACK OF DUE PROCESS

Because the Israeli Supreme Court refuses to hear arguments that base themselves on international law, the defendants and their lawyers must resort, if they choose to appeal, to attempting to convince the court of the illegality of deportations in Israeli law, or of technical errors committed by the military authorities in the deportation procedures.

A. Arrest, Detention, Right of Appeal

It appears that, when the Israeli government announced the reintroduction of administrative punishment, including deportation, in August 1985 - for reasons analyzed in chapter 5 below - the Israeli secret service operative in the Occupied Territories, the Shin Bet or Mukhabarat, was given the green light to select Palestinians under the policy. It was then at the discretion of the Military Commanders (either the Area Commanders governing the Central District, which includes the West Bank, and the Southern District, which includes the Gaza Strip; or the Regional Commanders governing smaller areas inside the Occupied Territories) to implement the new government directives on the basis of the information provided to them by the Shin Bet and by means of the laws described above.

The Palestinians who had been targeted were arrested by the military forces accompanied by member of the Shin Bet and a local mukhtar, usually in the middle of the night, and taken to the nearest detention center. There they were informed orally of the order in force against them, before being transferred to the prison where they remained until the actual deportation was carried out. The procedures for those deported under the 1945 Defence (Emergency) Regulations differ from the procedures stipulated in Military Orders 329 (West

Bank) and 290 (Gaza Strip) in some aspects, and are similar in others. We will therefore look at them separately where they vary, and take them together where they are alike.

1. Procedures According to M.O. 329 (West Bank) and M.O. 290 (Gaza Strip)

Palestinians who have been issued a deportation order under Military Order 329 (West Bank) or 290 (Gaza) have the right to appeal to the Israeli Supreme Court. The Court merely studies whether or not the Military Commander stayed within the prerogatives granted him by the law, and does not evaluate whether or not the prospective deportee should actually be deported; it does not question the legality of the evidence brought against the petitioner, but merely decides whether the evidence supports the Military Commander's case. The Supreme Court, in other words, monitors the legality of the order and of the steps taken in its execution. In spite of the judicial review on the highest level, however, lapses occur frequently. (For a lengthier discussion of the role of the Supreme Court, see Section 2b below). We will here cite two examples: the procedural aspects of the case of 'Abed al-'Aziz Shahin and that of the Palestinians freed in the 1985 prisoner exchange.

a. The Case of 'Abed al-'Aziz Shahin

In the case of 'Abed al-'Aziz 'Ali Shahin, the military authorities ignored internal governmental regulations, circulated on 18 March 1981, which stipulated that those ordered expelled for being "infiltrators" must be deported to the country of their choice, the country of their nationality, or to the country from which they originally entered the area without a permit. Shahin, a Palestinian resident of Rafah in the Gaza Strip, had entered Gaza from Jordan via the West Bank and Israel in 1967, without having obtained a permit. Both the Egyptian and the Cypriot governments, through intervention of Shahin's lawyers, had agreed to give Shahin asylum once he

crossed their border. However, the Israeli authorities put Shahin across the northern border into South Lebanon which, at the beginning of 1985, was still occupied by Israeli troops which were operating in collusion with the pro-Israeli South Lebanon Army (SLA) of Commander Antoine Lahad. A previous Palestinian deportee, Riyad Abu 'Awad, deported in 1979, was said to have been tortured by the SLA, then headed by Sa'ad Haddad. Shahin's lawyers, fearing a speedy deportation to South Lebanon following the Supreme Court decision, had appealed for a fifteen-day postponement of the expulsion on humanitarian grounds in order to secure a more hospitable location. The Court, however, rejected the appeal, affirming confidence in the military authorities' willingness to abide by the internal guidelines, mentioned above. The Military Commander was not reprimanded later for having violated the guidelines. 1)

). The Case of the Freed Prisoners

In the case of the Palestinians who had been released during the exchange of May 1985 and who later were handed expulsion orders, the Israeli authorities were accused of having violated the terms of the exchange agreement between Israel and the Popular Front for the Liberation of Palestine - General Command, an agreement which was supervised by the International Committee of the Red Cross. Counsel for the petitioners in the cases of Kasrawi et al., Naserallah, Kantash and Radad argued that the exchange agreement had allowed for those Palestinians who so desired to stay in Israel or the Occupied Territories, and that the deportation of twenty-one of them ran contrary to this agreement. Lawyer Felicia Langer, for example, who defended Mohamed Hanini and Jamais Naserallah, told the local press:

> The Israeli authorities have broken their promise to the prisoners that they can stay in the Occupied Territories after their release, and they also violated the agreement they signed with the PFLP-GC. 2)

Following the exchange in May 1985, the Israeli authorities informed the Red Cross that they were considering deporting thirty-one of the released prisoners on the basis that they had originally infiltrated into the area, and that they were not in the possession of a valid Israeli identity card; in short, that they were not legal residents of the Territories. Ten of them subsequently were permitted to stay after it became apparent that they did have I.D. cards, but the other twenty-one were ordered expelled. Eighteen of them - eleven of whom appealed unsuccessfully to the Supreme Court - were deported on 15 September 1985. The remaining three were special cases. Khaled Tantash and Khamis Naserallah claimed that expulsion to Jordan would endanger their lives, and the deportation was then postponed, for three months in the case of Tantash and for one month in the case of Naserallah. Both were eventually deported to Jordan: Naserallah on 27 November 1985, and Tantash on 17 December 1985. 'Ahmed Radad had been given an expulsion order while still in prison, and the authorities were now faced with the technical problem of issuing a new order. This obstacle was also overcome in due time: Radad was deported on 12 February 1986.

In the case of the eleven Palestinians who appealed, the Israeli State Prosecutor argued that "the prisoner-exchange agreement need not be honoured as it had been concluded under duress." 3) Defence Minister Yitzhak Rabin on 12 September 1985 (the day of the Supreme Court decision in the case) denied that Israel had violated the exchange agreement. The Jerusalem Post reported:

> The deportation of the 11 terrorists does not break any agreements signed by Israel, Rabin declared ... [He said that] the 11 were part of a group of 30 terrorists released under the exchange deal for the return of the Israelis. This particular group, however, had no permanent address in Israel or the administered territories. It had been agreed before the exchange that the International Red Cross would try to find a country to accept the 30

terrorists. But three months had elapsed and Israel now had the right to implement its wishes ... Rabin maintained that Israel had given no undertaking regarding the 30 terrorists ... and is under no obligation to them. The court ruling meant that the government could now implement its decision ... But there were other factors to be taken into consideration. These include where to send the 11, the timing of the deportations and whether they would be sent in one group or in batches. 4)

The exact wording of the terms of the exchange agreement became a crucial issue in the evaluation of the case of these Palestinian deportees. In HCJ 454/85, Kasrawi et al. vs. the Minister of Defence, and HCJ 456/85, Hanini et al. vs. the IDF Commander of Judea and Samaria, Justice Shlomo Levin stated in a concurring opinion issued with the Court's judgment:

> The attorneys for the petitioners repeatedly stressed in their arguments before this court that, according to their clients, there exists an explicit agreement, or 'understanding', between the concerned parties (of which the State is one), stipulating that the petitioners and their fellows shall not be deported. Had such an agreement to which the State was a party been proved, there would have been room to consider its consequences, under the circumstances in which it was reached, in terms of the authorities' exercise of judgment. The decision on this question is not at all easy, and might well depend not just on concrete factual data but also on difficult legal questions. But the question does not arise in the case before this court, because the petitioners did not exercise their right, at the appropriate stage of the proceedings, to obtain a writ for perusal of said agreement or 'document of understanding', although they were given the opportunity to do so. [Emphasis added]. 5)

Lawyer Lea Tsemel had in fact asked to see the text of the exchange agreement, but apparently not "at the appropriate stage of the proceedings." 6) This made little difference, however. Lawyer Ibrahim Abu 'Atta did follow proper procedures when he requested to see a copy of the agreement in the following case (against Khaled Tantash), but his request was refused outright, first on the basis that there was no written exchange agreement between the Israeli government and the PFLP-GC but merely a "Memorandum of Understanding", and that this memorandum had to remain secret; and secondly because Tantash "and his friends were not included in the memorandum," they "were all terrorists," and the exchange was "blackmail." 7) The lawyers of Zaki Abu Steiteh, who was deported on 28 April 1986, were equally unsuccessful in their attempt to see the text of the agreement/memorandum. Thus, the petitioners effectively were denied the right to defend themselves in front of the body that is their last legal resort, the Israeli Supreme Court.

2. Procedures According to the Defence Regulations of 1945

The British Defence (Emergency) Regulations of 1945 outline step by step the procedures to be taken in the deportation of a person targeted by the authorities, from the arrest to the various appeals to the actual deportation. 8) In 1977, the Israeli government decided to institutionalize the appeals procedure after it had been criticized for some clear violations of the Defence Regulations, as in the case of 'Ahmed Hamzeh al-Natsheh from Hebron and 'Abed al-'Aziz al-Haj 'Ahmed from al-Bireh. Both men were deported on 27 March 1976 in the middle of a five-minute summary trial, an event that, according to the 1978 National Lawyers Guild report, "so outraged Supreme Court Justice Moshe Etzioni, who was to have heard an injunction request concerning Dr. Natsheh's case, that he suggested the appearance of 'an effort to evade a hearing'." The report also mentioned that the Israeli daily Ma'ariv "editorialized that the deportation operation's clandestine nature indicated the possibility that the authorities may not have had solid evidence in the case." 9)

The nature of the new guidelines was explained by Reuven Pedhazour in the Israeli daily newspaper Ha'Aretz:

> A procedure was established in 1977 which forced the military government to act according to clear guidelines. It was established that the deportation order would not be issued without prior confirmation of the government's legal advisor or his representative. Only after the legal advisor has confirmed the deportation order from a strictly juridical point of view is the matter passed on to the Ministry of Defence for confirmation. Having been informed of the order issued against him, the person affected by the order receives 48 hours to appeal to the advisory committee. From the moment this committee gives its recommendation and the Regional Commander has confirmed the order, the person slated for deportation is granted another delay of 48 hours to appeal to the Supreme Court of Justice. It must be underlined that the deportation order - from the moment it has been issued - constitutes a mandate to keep the person under arrest until the deportation order is either carried out or canceled. 10)

. Appeal to the Advisory Committee

We will now look in detail at the appeal procedure that s used today. After the person has been arrested and served a eportation order, he or she has 48 hours to appeal to an dvisory Committee set up by the Military Government. The rospective detainee cannot by law be deported until these 48 ours have passed, and then only if he or she has not ppealed. If an appeal is made, the Military Commander cannot arry out the deportation order until after he has heard the ecommendation of the Advisory Committee. This Committee has hree members, all of them military officers, none of whom as to be a jurist, but the head of which must be either a egal officer or a ranking person in the military government.

In fact, in most of the recent cases the Committee's chairperson has been the president of the military courts in the West Bank or Gaza, respectively. The Committee convenes in the detention center where the prospective deportee is being held, and it may inform the petitioner of the time of the session so that both petitioner and legal counsel can be present. In the case of Khalil Abu Ziyad in August 1985, neither the petitioner nor his lawyer were reportedly allowed to attend. But if given permission, the counsel can present arguments to the Committee. 11)

The case of the defense in the most recent cases has been that there was no evidence justifying the deportation order, that deportation runs counter to international law and conventions as well as to the Jordanian Constitution, and that it is an arbitrary measure. If allowed to attend, the petitioner is usually also permitted to testify in front of the Committee. The Committee will provide only very general information about the reasons for the deportation order, such as, for example: "He has been a leader of this or this organization, he was once convicted on charges of membership, he has been under town arrest or administrative detention for such and such period, and he is still active today in recruiting new members," etc. Subsequently, and without the petitioners or their counsel present, the Committee studies the secret evidence provided by the Shin Bet, and then makes its recommendation to the Military Commander. Such a recommendation may read, for example: "We are convinced that there is a strong basis for the deportation order, and we therefore share the opinion of the Military Commander." The Committee, in other words, does not make a decision about the legality of the deportation order, but merely reviews the steps taken by the Military Commander in issuing the order including the question whether the alleged offences committed by the petitioner warrant such a drastic measure as deportation order. There are no strict rules laid down for the operations of the Committee, but in practice the counsel for the petitioners has been allowed to ask the panel questions. In most cases, however, including the recent cases against Shu'aibi, Abu Hilal and 'Abed al-Jawad, the Committee

would respond only after it had already made its recommendation to the Military Commander. 12)

The proceedings of the Advisory Committee usually last no more than two or three days, as in the case against Nazzal, Maqbul and Jayusi, for example. But there are instances where the proceedings are prolonged considerably. The case against Shu'aibi, Abu Hilal and 'Abed al-Jawad, heard by the Advisory Committee in November 1985, stretched out over an entire month due to an additional appeal made by the petitioners. In the middle of the deliberations, the counsel for the petitioners asked the Committee to summon the Regional Commander who had issued the deportation order so as to interrogate him in front of the Committee. The Committee refused the request, upon which the petitioners made an appeal to the Israeli Supreme Court to order the Regional Commander to testify. This petition was rejected after a period of two weeks, but during the time that the Supreme Court was studying this request, a prohibition order was in force against the Advisory Committee, preventing it from continuing its proceedings. 13)

Another delay in the case occurred because of concerns over 'Azmi Shu'aibi's health. The medical reports filed separately by Shu'aibi's (Israeli) doctor and the military doctor appointed by the authorities (who wrote his report and submitted it to the Advisory Committee without even having seen Shu'aibi) were so contradictory as to warrant further examination. Paying heed to the defence counsel's claim that Shu'aibi's deportation would be tantamount to issuing a death sentence, the Committee in its final recommendation to the Regional Commander included the proviso that a full medical report on Shu'aibi's health should be obtained, and that the deportation ought not to be carried out if he was found to be medically unfit for travel abroad. 14)

There has been only one case in the past year where the Advisory Committee recommended to the Regional Commander that he reconsider the deportation order. In the case against Khalil Abu Ziyad, the Committee was unconvinced of the severity of the charges brought against the appellant, and it

claimed that on that basis the Regional Commander had exceeded the limitations of his authority by issuing a deportation order. After the Regional Commander upheld the order and Abu Ziyad had initiated his appeal to the Supreme Court, the Commander, fearing defeat and an embarrassing precedent, settled for a compromise solution whereby Abu Ziyad would leave the country for a period of three years after which he could submit a request to return, which would be taken into consideration and honored on condition that Ziyad would not engage in activities directed against Israel while outside. Some lawyers observing the Ziyad case attribute the Committee's decision to the authorities' choice of chairperson. The latter, Lt. Colonel Avi Gorfinkel, was not a military prosecutor but someone brought in from outside. After studying the case on its merits, he concluded that Ziyad had only been helping former Palestinian prisoners to set up their lives again and was not involved in any so-called "terrorist" activity, and he issued his recommendation on that basis. 15) Gorfinkel argued:

> In spite of the legal and justified reason for issuing the expulsion order, and although the evidence we have heard links the petitioner to the Fateh organization, there is nothing to link him directly with terrorist attacks. Therefore we recommend that the Military Commander reconsider whether, under the circumstances, and considering the role of the petitioner in Fateh, deportation is necessary, in view of its extremely drastic and serious nature. 16)

The authorities did not err in their choice of chairperson again following this near-debacle. But the affair brought to the fore the issue of the appointments of military court judges and other personnel in the IDF's legal branch, until now an internal IDF domain. Military court judges of the first instance have been appointed so far by the Israeli Chief of General Staff, who has acted on recommendation of the President of the Supreme Military Appeals Court. The latter does not need to have had any legal training. The Chief of

General Staff can appoint and fire court judges and other legal personnel at will, without judicial or governmental review. The subjugation of the judiciary inside the IDF to the Chief of General Staff and his regional and corps commanders has been under discussion in recent years, and a reform of the military justice code is expected in the near future. 17) In the meantime, Palestinians appealing a deportation order have little reason to expect to find an Advisory Committee that is sufficiently independent from the military cadres that appointed it to make a recommendation deviating significantly from the order issued by the Military Commander.

b. Appeal to the Supreme Court

Once the Advisory Committee has forwarded its recommendation to the Military Commander, the deportation is once again in full force. Now the prospective deportee has forty-eight hours to submit an appeal to the Israeli High Court, which sits as the Supreme Court of Justice. An appeal must be made to the Supreme Court as opposed to the High Court, since the High Court is an appeals court for civil and criminal cases whereas the Supreme Court intervenes on the grounds of justice and is the only civil institution in Israel that is able to provide recourse for administrative measures taken by IDF Commanders.

The position of the High Court (or Supreme Court for administrative measures) in relation to inhabitants of the Occupied Territories should here be clarified. Today it appears that Palestinian residents of the West Bank and Gaza in growing numbers are resorting to the Israeli High Court, which Israel made available to them after, in the words of Raja Shehadeh, it had "reduced the jurisdiction of the West Bank courts, abolished the Court of Cassation, and reduced the instances when an appeal can be submitted to the High Court of Justice of the West Bank." 18) Its record in dealing with applications from the West Bank and Gaza is unimpressive, claims Shehadeh, due to the Court's "self-imposed

restrictions," one of which is its reluctance to interfere with the authority of the military commanders in the Occupied Territories.

Retired Supreme Court Justice Haim Cohn has stressed the power of the Supreme Court over IDF Commanders:

> The court assumed jurisdiction, which in effect is extra-territorial, over the persons of the military commanders and their subordinates, the underlying reason being that all organs of the Government of Israel are subject to the jurisdiction of the [Supreme] Court of Justice in respect of all their acts and omissions, wherever they may have taken place. It is by virtue of this personal - as distinguished from territorial - jurisdiction that the court will order any military commander, or any subordinate official in the administered areas, to do any act which by law he is obliged to do, or to abstain from doing any act which by law he ought not to do. 19)

This leaves the Military Commander considerable leeway, however, in enacting his own legislation. For this reason alone, the High Court in practice has little effective control over the IDF Commanders.

In the case of deportations, the role of the Supreme Court is to judge whether or not the Regional Commander has exceeded the limitations of the authority bestowed on him by issuing the deportation order. In the case against Fahed Qawasmi and Mohamed Milhem, the High Court

> would not interfere with the Commander's discretion as to the measures which should be taken against citizens who endanger public safety - whether these include administrative arrest or deportation from the area. The choice of adequate measures lies exclusively at the Commander's discretion, which is subject to review by the Advisory Board. Since the

latter had considered all the arguments presented to it by the petitioners and had nevertheless found that their return to the area would cause violence, there was no room for the intervention of the High Court. 20)

In his book, Occupier's Law: Israel and the West Bank, Raja Shehadeh referred to the case Suleiman Hilu vs. the Government of Israel. In it,

> Justice Vitkon clearly expressed his opinion that Military Orders are primary legislation beyond the power of the High Court to question. As long as the military governor is the sole unchecked legislator in the West Bank, and his orders are viewed as beyond the scrutiny of the High Court, access to the High Court becomes worthless, since his essential authority remains unchallenged and any reverses suffered by him are quickly remedied by subsequent "legislation". 21)

This view has been underwritten by Israeli advocate Moshe Nigbe, a former head of the International Law Section of the IDF Attorney General's office, who remarked in an address on International Human Rights Day 1985:

> But gentlemen, now we reach the critical point, which as a matter of fact turns the Supreme Court of Justice in ninety percent of the cases into a powerless body concerning administrative punishment. The law grants discretion and wide authority to the military governor concerning a series of punishments which I have mentioned above, which the Supreme Court cannot allow itself to disqualify. It is stated in the law that it depends on the subjective description or the subjective evaluation of the military governor that damage was caused to the security of the state or the security of the region. By the way, in general not only the security of the state or the security

> of the region are used, but also a series of vague terms, like the public order or the public peace. Such terms can include almost anything. So it is hard for the court to say to the military governor, "You were not right to see the situation as such and the security of the state is not in danger." The military governor, on the other hand, who is generally a high-ranking officer, signs an oath of testimony declaring that the person is dangerous. Here by the way I stress that he does not need to show that the person [in question] has done anything. This in itself is not a necessary basis for using administrative punishment. As a matter of fact, it is not always a basis, until that person poses any potential threat. Then the military governor gives an oath of testimony which the court almost cannot contradict. And the other party cannot contradict it either. 22)

Nigbe concluded his argument in stating that even though " is possible to appeal against a detention or an expulsi order, the final decision is at the discretion of the milita commander." 23)

In short, the Supreme Court until recently has n interfered with the decision of the Military Commander on t claim that the Court does not possess the tools to adequate evaluate security matters, i.e. that this is not its busines In the most recent deportation hearings, however, the Cou has at least begun to look into individual cases with so depth, and to peruse the secret evidence provided by the Sh Bet.

After receiving an appeal, the Supreme Court issues a interim injunction prohibiting the deportation pending th outcome of the Court hearing, and an order nisi instructir the Military Commander or the Minister of Defence to sho cause why he should not refrain from deporting the appellant.

The arguments presented by the defence, which have been outlined in greater detail in Chapter II above, have centered generally on the illegality of deportations in public international law and customary international law as well as in the Jordanian Constitution, and on the arbitrariness of the measure. In the case of Shu'aibi, Abu Hilal and 'Abed al-Jawad, counsel for the petitioners also argued that their clients had been denied the right to defend themselves as they had not been permitted to interrogate the Military Commander who had issued the deportation order. 24)

Since deportation is an administrative and not a legal punishment, no official charges are brought against the subject, and both appellants and legal counsel are left guessing about the exact reasons for the expulsion. Some general accusations are usually made, but the incriminating evidence, if any, is kept from public scrutiny. Although either petitioners nor their counsel in the deportation cases have so far been permitted to see the secret evidence, the petitioners have a choice to request either that the three Supreme Court justices examine this evidence and formulate their recommendation to the Military Commander on the basis of their findings, or that an external judge examine the secret evidence and then advise the Supreme Court whether this evidence ought to remain classified or not. This rule is not enshrined in law, but it has been applied in practice in the recent deportation cases. In both the Nazzal and the Shu'aibi cases, the petitioners asked for an external judge to study the secret evidence, and in both cases this judge advised the Supreme Court that the evidence should remain secret. 25) We will dwell on the issue of secret evidence at some length in section C2 below.

B. The Deportation and Its Aftermath

Once the Supreme Court has endorsed the deportation order signed by the Military Commander, there is nothing to prevent

the latter from carrying out the order. Between September 1967 and 9 November 1969, deportees were put across the bridges into Jordan, but this practice ended when Jordan began to refuse to accept the deportees. Between November 1969 and some time in 1974, deportees were expelled to Lebanon, but after 1974, it became practice to take the deportees to an isolated and deserted border crossing in the Wadi 'Araba south of the Dead Sea, and to order them to start walking without looking back. The deportees would have to walk for several hours before encountering a Jordanian army unit, which would then take them to Amman. In the late 1970s and early 1980s, Palestinians were again deported to Lebanon, including Shahin as late as February 1985. The current practice, however, is to deport Palestinians through the Wadi 'Araba, but now the Jordanians are usually waiting to receive them.

'Azmi Shu'aibi, 'Ali Abu Hilal and Hasan 'Abed al-Jawad appeared in the Israeli Supreme Court on Thursday 30 January 1986. When it became clear to them that the Court was not interested in the applicability of the IV Geneva Conventions, they dismissed their lawyers, made their own statements in their defence, and subsequently withdrew their appeal. They were immediately taken back to their cells in Jnaid Prison in Nablus, where they spent two hours with their friends - a number of administrative detainees who at that time were being held there. At nine o'clock in the evening they were transferred to Hebron Prison in the South, without having been given permission to see their relatives, contrary to a previous arrangement between their lawyers and the military authorities. At eight o'clock in the morning on Friday 31 January, the three were taken, handcuffed and blindfolded, to the Wadi 'Araba, where they arrived at 11. They were told that they were no longer residents of the West Bank, and that they should walk. They crossed the river. A Jordanian military patrol was awaiting them on the other side. The commander stepped forward and asked: "Who among you is 'Azmi Shu'aibi?" After 'Azmi replied, the commander said: "Welcome to Jordan." They then took the three deportees to Amman, where they reportedly received a warm welcome. 26)

All the Palestinians who have been deported in the last year have left behind their homes and their families. Some of the nearest relatives have been able to rejoin them in Jordan later, but for others this has been impossible. 'Ali Abu Hilal's wife, Siham Barghuti, faces a restriction order barring her from leaving the West Bank. She has been told that she can leave only on condition that she will not be allowed to return for three years. Siham finds this unacceptable, because she was born and raised in the West Bank and lives and works there now, and also because she feels that the three-year condition is tantamount to a deportation, not unlike the case of Khalil Abu Ziyad. 27)

C. To Appeal or Not to Appeal

Out of the thirty-five Palestinians who have received a deportation order since August 1985, eleven chose not to appeal the order, and eight appealed initially but then declined to go through the entire appeal procedure. In the latter category is Khalil Abu Ziyad (deported on 28 August 1985), who withdrew his appeal after he reached a compromise with the Military Commander. Hasan Mohamed al-'Amudi and Hilal Hafez 'Azizeh from Bureij refugee camp in the Gaza Strip (both deported on 5 February 1986) decided not to appeal to the Supreme Court following the recommendation of the Advisory Committee against them, sensing that an appeal to Israel's highest judiciary organ was bound to be fruitless. 28) 'Azmi Shu'aibi, 'Ali Abu Hilal and Hasan 'Abed al-Jawad withdrew their appeals to the Supreme Court on the day that the session was held in protest against the procedures. In a statement to the public, the three declared:

> The Israeli Supreme Court [threw its] support [behind] the arbitrary policy of deportation and gave it a legal cover, claiming that the basis for their decision was secret material that cannot be revealed under the pretext of 'security'. By

taking such a decision, the court in effect closed all doors before the lawyers and their right to defend us legally, and deprived us of our democratic right to defend ourselves ... Being fully convinced that the Israeli Supreme Court's role is to complement the occupation's repressive and arbitrary policy in a fraudulent attempt to give it a legal cover and that the court's decision in our deportation case will be complementary to the occupation authorities' tyrannical decision, we have decided to withdraw our appeal which was earlier presented to the Israeli Supreme Court. 29)

Of the eleven who did not appeal at all, seven were Palestinians freed from Israeli prisons in the exchange in May 1985. They were deported on 15 September 1985. The other four are Yunis Salem al-Rujub from Dura (Hebron) and Mahmud 'Abdallah Da'is from Beni Na'im (Hebron), who were both deported on 9 December 1985, and Mahmud Fa'nun from Nahalin (deported on 5 February 1986) and 'Adnan Mansur Ghanem from Tulkarem (deported on 10 February 1986). Da'is and al-Rujub's lawyer, Lea Tsemel, initially submitted appeals on behalf of her clients to the Advisory Committee, but the two decided against appealing in order not to aid in maintaining Israel's democratic image in world public opinion. In their own words:

> We refuse to participate in measures which will give the deportation orders the appearance of legality, while they are contrary to international law, the rules of natural justice, and the law accepted by civilized nations, even in times of occupation ... There is no reason to go through the legal measures when we are convinced that the [Advisory] Committee's hearing, like the hearing before the Supreme Court later, will only serve the interests of the State of Israel, which wishes to project a democratic image to the unjust and arbitrary deportation orders ... The law is only the continuation of a policy, and as such we do not

believe in it ... We have no confidence in the Area Commander who ordered our deportation, nor do we have any confidence in a committee which was appointed by him, nor do we believe in the legal bodies which will come in its wake ... We are willing to appear in front of any objective international forum which will examine our case and weigh our acts, and we have no doubt that such a forum will decide in our favor ... We are not prepared to have the occupation authorities act as enemy and judge at one and the same time ... 30)

It emerges from the above statements, and from similar ments raised publicly at an increasing frequency since st 1985, that the determination with which the Israeli eme Court has been underwriting the decisions of the tary authorities in the Occupied Territories has dissuaded Palestinians from seeking legal recourse against the rtation orders issued against them by appealing to it. r first line of defence - relevant international law and entions, which unequivocally outlaw deportations - was arily shoved aside by the Supreme Court when it argued the IV Geneva Convention, which is the most comprehensive ement on the rights and obligations of an occupying power, not apply to Israel's "administration" of what in Israel fficially designated as Judea, Samaria, and Gaza, and that IV Geneva Convention is not part of international omary law, and therefore is not binding on Israel. 31) ived of the protective umbrella of internationally agreed standards designed to control the conduct of an occupying r, Palestinians must fall back on their second line of nce: appealing the deportation orders on procedural nds. What are the odds for their succeeding on this e?

xtra-Judicial Punishment

As deportation is an administrative measure, the appeal edures are defined and take place within the

administrative realm - a realm not enshrined in law, or subject to judicial checks and balances. Administrative punishment has its origins in penal law, and it has many of the trappings of penal law, but it is not controlled by penal law. Deportations therefore occur in the overall context of penal law in what can be seen only as its most general expression: deportations can be said to be part of penal law only to the extent that, in fact, they constitute a form of punishment.

For example, although every detainee by law has the right to a fair trial, prospective deportees - being administrative detainees - are not brought to trial as such, but may be permitted to attend hearings convened by the authorities to review their case. Palestinians can appeal a deportation order, and officers have been designated in the military structure to review such an order, but these officers cannot rescind the order; they can only issue a recommendation to the Military Commander supporting or opposing it. Aside from the Advisory Committee, which is essentially a review board set up within the military hierarchy, the Supreme Court is the only institution in Israeli society authorized to review administrative measures. The Supreme Court can issue an injunction temporarily blocking the execution of a deportation order, and it can force the Military Commander to show cause why he should not desist from carrying out the order, and it can even overturn an order if the Military Commander has demonstrably exceeded his authority in issuing the order, but the Supreme Court does not judge the legality of the order or the legality of the evidence brought against the appellant.

2. Secret Evidence

There is one other aspect of Israel's deportation policy which serves to underline its extra-judicial nature: No formal charges are brought against the prospective deportees, and the evidence on which the order is based is not submitted to scrutiny by either the appellants or their legal counsel.

The absence of due process is one of the most glaring atures of the deportation policy. Until the late 1970s, portees were not even given the opportunity to appeal the der. Today, the defendants are still not allowed to see the idence that the Shin Bet has collected against them. The curity forces withhold the evidence on the claim that it st remain secret for overriding security concerns: that its sclosure might endanger the lives of those who collected it, might make further intelligence gathering according to the tablished methods impossible. This procedure is codified in icle 44 of the Order of Evidence and Article 128 of the al code of 1977. 32)

In an address on International Human Rights Day, 10, ember 1985, Colonel Joel Singer, Head of the International Section of the IDF Attorney General's office, responded to ticisms leveled against the security forces for their usal to divulge evidence in deportation cases. Singer d:

> It was argued here and in other places that the person who is subjected to administrative measures does not know what the charges are against him. He defends himself against an invisible accuser, and this makes it impossible for him to defend himself properly. Here I must admit that there is a problem. There is, however, nothing that can be done. The basic problem in this administrative procedure is that there is secret evidence that cannot be revealed. This is a basic problem which we are very worried about, and we do our best to deal with it ... So when a case is brought to the Advisory Committee ... we bring as much evidence as possible in order to deal with the case. This is not simple. Whenever we ask the security authorities to reveal some of their evidence, their natural and immediate reaction is, "no, nothing, everything is dangerous, it is not possible." Then there is a confrontation between us the jurists and the security services. We try to get them to

reveal as much as possible to the deportee and his lawyer, so that he can present a defence against the accusation. I would have to be an idiot to say that the situation is ideal. I can only say that we are doing our best to uncover as much as possible to the person, at least on the level of clues, so that he can know the content of the accusations against him. 33)

Colonel Singer then went on to stress that the procedures have built-in safeguards to protect the rights of the person against whom a deportation order has been issued. "The appellant's lawyer has the right to appeal to the Supreme Court and claim that the secret evidence should not be secret." Then the three judges can obtain the evidence from the security services, examine it, and determine whether or not it supports the Military Commander's case, but they cannot disclose the evidence to the petitioner. Alternatively, a fourth Supreme Court judge, who is not a member of the panel in the case, can look at the evidence and decide whether part or all of it can be made available to the petitioner. As a third possibility, the appellant's lawyer can draw up a list of questions addressed to the representative of the security services and submit it either to the Advisory Committee or to the Supreme Court, depending on the stage of the appeal. The lawyer will not receive the answers, but the Committee or the Court supposedly does, and Court or Committee will take this information into account when it formulates its recommendation to the Military Commander. 34)

In reality, these safeguards amount to very little, and the prospective detainee is effectively kept ignorant of the charges against him or her, except "on the level of clues." In fact, there is no guarantee that the list of questions put together by the counsel of the petitioner is ever presented to the security services, let alone that the Shin Bet representative provides comprehensive answers, or any answers, to the Court or Advisory Committee. Advocate Felicia Langer, who represented several of the Palestinians deported during the last year, has described part of the process as follows:

The material, packed in big cardboard boxes, was brought every time by representatives of the security services. Thus we could only wonder what the boxes contained and who were these anonymous individuals who brought up the accusations and who caused the uprooting of men from their families and from their homeland, and why the contents of the boxes were more convincing than the statements of the candidates for deportation and their lawyers. 35)

Former Supreme Court Justice Haim Cohn remarked in ference to the secret evidence:

The decision taken by the two judges of the Supreme Court not to reveal to the appellant the evidence which has been used against him is totally incorrect. No security consideration should be put before the basic principle that a judgment of a person should never be taken without the presence of the person under discussion. The latter should know upon what charges he has been convicted or on what basis he has been accused. He should be given the opportunity to answer. 36)

There are no official records available of the iberations of the Advisory Committee. But there are ords of the sessions of the Supreme Court - in those cases re the court reached a decision and the petitioners did not hdraw their appeal mid-way. These records provide only e information (at most, however, on the level of clues) ıt the accusations against some of the deportees. Since ıst 1985, only one case (HCJ 513/85, Nazzal et al. vs. the Commander of Judea and Samaria, and HCJ 514/85, Jayusi vs. IDF Commander of Judea and Samaria) went all the way ıugh the Supreme Court, which formulated its judgment on 29 ember 1985. In the case of Walid Nazzal, 'Amin Maqbul and at Jayusi, who were deported on 1 October 1985, the IDF ander provided the following information to the Supreme t:

... [T]he appellants are key persons in the infrastructure which the terrorist organizations - those which are designated as "Fateh" and "DFLP" - with increasing intensity are attempting to set up in Judea and Samaria. All three are active in the northern part of the region, that is in Samaria. Each one of them is a prominent and influential activist in Samaria within his organization, is guided by it and maintains permanent subversive links with it; each one of them systematically maintains links with other activists in the organization; and in the framework of the hierarchy in which he occupies or is supposed to occupy a top leadership role, he recruits others whom he induces to act for his organization. Each of the appellants occupies a key position in Samaria in these systematic subversive activities, and each is indefatigable in working to accomplish the goals of his organization according to the instructions and guidelines provided by the organization's leadership abroad, and thanks to the elaboration of an infrastructure which he initiated and for which he is continuing to recruit supporters. 37)

The IDF Commander also provided some "details concerning each of the appellants." In the case of Walid Nazzal he said:

> The appellant Walid 'Ahmed Mahmud Nazzal from Qabatiya was, it appears, inducted into the Democratic Front in Damascus; upon his return to Nablus in 1982, he was charged with having maintained contacts with a hostile organization, and convicted to ten months in prison, with fourteen months suspended. He began to recruit for said organization, and today he is one of its top leaders in Samaria. He carried out a variety of activities in the Front's name, and for this reason a restriction order was even issued against him, but this did not stop him from continuing his activity. 38)

In the same case, the Supreme Court also referred to the Advisory Committee, which had stated as part of its recommendation (earlier in the case):

> We have obviously studied all the materials that have been presented to us conscientiously, and we have analyzed the arguments which induced the IDF Commander to issue the expulsion orders on the basis of the totality of materials that has been submitted for each petitioner. We are convinced that the arguments of the Military Commander of Judea/Samaria at the time of the issuing of the expulsion orders were just and intended to preserve public peace, the security of the region and public order. 39)

We also have some clues about the accusations against Shu'aibi, Abu Hilal, 'Abed al-Jawad and Zaki Abu Steiteh, who all received a deportation order on 28 October 1985, because Israel's Attorney General, Itzhak Zamir, highlighted their cases in a paper he filed on 15 February 1986, apparently in response to increasing international queries about Israel's justifications for its deportation policy. He listed the four cases in an addendum, prefacing his revelations with the proviso that "for security reasons we are not at liberty to reveal the full nature and details of any of these individuals' activities." In the case of Hasan 'Abed al-Jawad, he produced the following information:

> Fararjeh [i.e. 'Abed al-Jawad] is a citizen of Jordan and a resident of the administered areas. He has been active in the so-called Popular Front for the Liberation of Palestine ("PFLP") terrorist group since 1974. Starting as head of the students' affiliate, he has, after holding two intermediate posts, been elevated to the position of head of the PFLP in Judea and Samaria. 40)

It should be clear from the above that the information provided by the Supreme Court to the petitioner is very

general and vague, lacking specific details that would enable the petitioner to argue in his or her defence. In addition, the fact that this information is provided at the end of the proceedings makes it difficult for the petitioner to react at all. The president of the National Lawyers Guild, Mark van der Hout, said following a mission to Israel in November 1985:

> We have concluded that the present deportations have no basis in Israeli law or in international law. It is the most fundamental right in a deportation or criminal hearing to know the charges against yourself, so the defendant can be adequately represented in court. 41)

3. Criteria for Selecting the Deportees: The Official View

Next to the clues about the accusations, the only other pointers as to the nature of the charges that the prospective deportees have at their disposal are hints about the criteria employed by the authorities in selecting their targets. Colonel Joel Singer, the IDF Attorney General, has made reference to these criteria - which apply to victims of all forms of administrative punishment, not just deportees - in his aforementioned speech on International Human Rights Day 1985. He said:

> When evidence is provided against a person, the first question that is asked is:
> 1. "Is the Military Commander truly and honestly convinced that using a measure such as deportation is necessary at this time?" No jurists, neither those of the court or those of the government, can put themselves in the place of the Military Commander, because the latter has the appropriate means to consider these questions from the point of view of security. Such means are not at the jurists' disposal.

Furthermore, there are other questions that we ask.

2. "Is there evidence which is truly incriminating, i.e. incriminating from the point of view of the regulations and rules fixed by the Supreme Court?"

3. "Is the evidence attributed to the recent period?" ... If it can be proved that the activity has been going on in the recent period, the matter is decided upon.

4. "Are we dealing with sporadic activity, once a year or every two years?" We require an intensive and continuous activity. Such activity - its nature and seriousness - should indicate that the activist is dangerous and not a person who occasionally, or every now and then engages in activity defined by the Military Commander as dangerous.

5. "Is this specific punishment [e.g. deportation] a necessary punishment, one that must be taken? Is it possible perhaps to use a lighter punishment on the scale of administrative punishments? Why use this precise punishment? Has another lighter punishment already been used against him? Have other measures been used? Is it possible to use another measure and achieve the same result?" Why use a hammer of five kilograms when we could use a lighter one?

6. "Furthermore, what is the social standing of the person in relation to other people? Are we dealing with a senior or a junior person? If he is senior, how senior is he in comparison with other people?" In general, the tendency in the cases of administrative punishment is to use it very selectively against senior people and not against junior people. 42)

Attorney General Itzhak Zamir also remarked on general criteria for deportation:

> Typically, the recipient of a deportation order has a long history as a leader or officer of a terrorist organization; moreover, he has demonstrated that he will not be deterred by detention or lesser administrative measures. 43)

The vagueness of the criteria designating the candidates for deportation, the paucity of clear accusations brought against the deportees, and the absence of tangible evidence which would serve as the basis for a lawyer's argument in defence of his or her client, give Palestinians appealing a deportation order very little chance of success. They are sentenced before they are even indicted, and there is not even an actual indictment, merely a number of references to acts they are said to have committed. Thus they find themselves in a rather Kafka-esque scenario where they are threatened with deportation on the basis of charges they may not know, on the basis of evidence they may not see, and from a homeland that does not exist in name and of which they certainly cannot be citizens. Palestinian advocate 'Ali Ghuzlan summarized poignantly the predicament prospective deportees and their lawyers face when he said: "As far as we [lawyers] are concerned, we cannot defend potential deportees because we are not allowed to learn anything about the charges brought against our clients, and therefore, there is no point in conducting a legal argument with the authorities ... If one knows nothing about the charges, one certainly cannot refute them." 44)

As the legal resort has been shown to be a mere formality blocking the Military Commander's path toward a quick expulsion, the problem of whether or not to appeal a deportation order becomes a political one. The choices are to follow the appeal procedures so as to give time for public support in Israel and abroad against the deportation policy to build up, but to legitimate the procedures in the process; or not to appeal, exposing the policy and its procedures for what

ey are - arbitrary, illegal and unjust - in an attempt not legitimize them, but as a result falling victim to a usque separation from family and homeland. The issues of blic opinion and legitimation become important because, ain in the words of 'Ali Ghuzlan, deportation orders are not lated to law as much as they are linked to politics. 45) e political nature of deportation orders provides the focus the next chapter.

IV. DEPORTATIONS: TIMING AND TARGETING

In this chapter we will attempt to explain why the new policy of intensified administrative punishment, dubbed the "Iron Fist", was launched by the Israeli government in the Summer of 1985, and how the Palestinians who received a deportation order were selected.

A. Settler Reaction to the Prisoner Exchange

On 20 May 1985, the Israeli government, in a move that apparently surprised many Israelis, freed 1,150 Palestinian political prisoners from Israeli jails in exchange for three Israelis held captive by the Popular Front for the Liberation of Palestine - General Command, in Lebanon. Those Palestinians who had been residents of the West Bank or Gaza prior to their arrest were given the choice, as part of the arrangement that was supervised by the International Committee of the Red Cross, to stay in the Occupied Territories. Approximately six hundred of them decided to do so. The government's release of what the Israeli press repeatedly referred to as "known terrorists" into the West Bank and Gaza caused an uproar in the Israeli settler movement, whose spokespeople claimed to fear a backlash in the Territories in the form of stepped-up resistance by a reinvigorated Palestinian population.

During the next month, settlers carried out a campaign of intimidation against the released prisoners, attacking some ex-prisoners' homes, plastering "Wanted" posters in some West Bank and Gaza towns, and generally harassing the local population. The events of this period received extensive coverage in the Israeli press. 1)

On 16 June 1985, the settler movement Gush Emunim organized a mass rally in Tel Aviv in reaction to the prisoner exchange. Settlers were particularly outraged because of the

ent arrest, trial and conviction of a number of settlers on rges of having attacked Palestinian targets in the Occupied ritories during previous years. Speakers at the rally, as orted in the Jerusalem Post, "denounced the government for easing the 1,150 Arab terrorists in exchange for the eli prisoners of war [in May] and accused the government the attorney general [Itzhak Zamir] of 'siding with the os'." At least one of the speakers, a member of the eli Knesset (Avner Shaki of the National Religious Party), anded the death penalty and deportation for "Arabs guilty terrorist crimes," adding, according to the Jerusalem , that "it was necessary to blow up terrorists' houses and ort their families." 2)

On 29 June 1985, former Defence Minister Moshe Arens, now minister without portfolio in the Peres government, laimed that "terrorists responsible for killing people ld be executed," adding, as reported by the Jerusalem , that "public opinion polls show the death penalty has ificant popular support" and that he hoped that "this ld] be reflected in cabinet decisions." 3)

By the middle of July, the Israeli cabinet was beginning show signs of bowing to pressures from the side of the lers, who had strong backing in the frail coalition rnment. On July 24, Defence Minister Yitzhak Rabin unced on Israel Radio that the Israeli government would gh the possibility of reinstating selective deportations administrative detentions discontinued by the Likud rnment in 1979," claiming that this "might be necessary Israel's bid to find a quick and effective reply to orist activity in Israel and the territories." Rabin] "an increase in terrorist activity inside Israel in t months, with most of the terrorists coming from the Bank and Gaza." "Speedy reaction is the key to ssful war against terror," Rabin is reported to have 4) On a separate occasion, Rabin had "denied that the t increase in terror was connected in any way with the se of 1,150 prisoners" in the May exchange. 5) He also that the government would look into the possibility of

reviving the death penalty, a measure that he was reported to favor personally. 6)

On July 24, Vice Premier Yitzhak Shamir at a reception in honor of the Israel Bar Association's new chairman called for the death penalty for "terrorists convicted of especially cruel murders," and for deportations, both measures ostensibly designed to serve deterrent purposes. According to the Jerusalem Post reporter present at the reception, Shamir said that "law and democracy are not absolute and supreme values in themselves, but are tools that should serve the national and state interest." Addressing Israel's Bar Association members (!), Shamir referred to the Israeli settlers convicted of premeditated murder of Palestinians in the West Bank and other attacks, declaring: "It is intolerable that [attorneys and judges] treat persons who serve the state and endanger their lives for the state [i.e. the convicted settlers] as severely and strictly as they treat the enemies of the state." 7)

On July 30, Defence Minister Rabin backtracked on his earlier statement (on July 25) that there had been an increase in resistance activity, presumably because he had no evidence for his allegation. According to reports in the Jerusalem Post, Rabin conceded that "the number of hostile incidents had fallen, but [that] their nature had recently become more serious." 8) Apparently there was considerable frustration in government circles about the fact that the brunt of the resistance activity occurring during the Spring and Summer of 1985 did not seem to have been ordered and directed by the Palestinian leadership outside, but consisted of attacks carried out by individuals operating autonomously - attacks which were therefore difficult to control. Settler pressure and government frustration at its own inability to deal adequately with this perceived new form of Palestinian resistance to military occupation combined to lay the groundwork for a tough new government policy in the Occupied Territories. Rabin remarked:

> Our task just now is to find out why the number of local terror initiatives, not organized from the

outside, is now on the increase. Most residents of Judea and Samaria are not actively hostile. But incidents will increase if we do not take wise and measured steps. 9)

ıe work that remained was to determine which measures should ; implemented and which ones would be counterproductive.

There were strong voices in the government favoring the ath penalty, but the security services (Shin Bet) were parently opposed to this measure. The Jerusalem Post quoted source close to Shamir as saying that the Vice Premier was ɔt opposed to the death penalty," but that he was "aware of e security forces' opinion that instituting it, while ssibly satisfying public opinion, [might] not be the most icient means to combat terrorism." Sources in the Shin reportedly said that it was "doubtful whether a death alty [would] be of any help in fighting this new kind of nap-and-murder terrorism." 10)

Settler and Likud pressures on the Labor Alignment, the ior partner in the coalition government, reached fever ch at the very end of July. Likud member of Knesset Uzi dau charged that "under the present government the murder Jews has become an Arab national sport." He argued, ɔrding to the Jerusalem Post, that "the release of 1,150 orists by the entire government had burst all the dams," that "the 600 terrorists permitted to return to Judea and ıria in the prisoner exchange had become a focal point for ration and pilgrimages, but [that] those [Jews] who defend selves are thrown into prison." He also claimed that re is a lot of wind coming from the Prime Minister's ce on the fight against terror, but no action," and that government's weakness is actually encouraging terror."

In the end, a compromise apparently was reached between s headed by Shamir, who favored the death penalty and tough measures "to deter attacks by terrorists" 12), and supporters of Prime Minister Shimon Peres, who was

initially reported to have seen the need only for "increased patrols and roadblocks" in Israel and the Occupied Territories. 13) On August 4, the government announced its new policy of administrative punishments, which included deportations, administrative detention, an intensification of house demolitions and sealings, and more rigorous censorship of the Palestinian press, but which excluded capital punishment. On August 8, the first deportation order was issued: to Khalil Abu Ziyad, who was deported on August 28.

B. The Launching of the New Policy

It is clear from the above that the decision to deport and otherwise punish certain Palestinians was a political decision resulting not so much from a supposed upsurge in Palestinian resistance activity, as from strong pressures from various forces inside Israeli society and the government itself to act more forcefully against the Palestinian population of the Occupied Territories. Defence Minister Rabin explicitly declared on August 6 that "stronger laws had not been adopted, but that existing laws would be implemented in a stronger way." 14) He had also in an earlier statement declared that "speedy reaction" was instrumental for success in combatting what he perceived as terror. Rabin presumably had in mind the fracas surrounding the deportation of Qawasmi and Milhem in 1980, when one Supreme Court justice, Haim Cohn, denounced the decision of the Military Commander, and his two colleagues, although they approved the deportation order, recommended that the deportations be reconsidered on a political level. 15) To forestall the occurrence of similar obstacles in the expulsion of Palestinians, a seven-member ministerial panel discussed in July 1985, before the announcement of the new policy, the question of whether and how to adjust the law so as to ease and speed up deportation procedures. The Jerusalem Post reported on July 30:

> Those who favour deportation say that the process is complicated by the right to appeal deportation orders before a special panel [i.e. the Advisory Committee]. The ministerial committee will have to consider whether to change that procedure, and whether such changes should be through executive regulations, which are open to challenge in the High Court of Justice, or through special legislation. This could result in international criticism because of possible contraventions of article 49 of the Geneva Convention which prohibits an occupying power from forcibly moving or deporting any part of the population under its control. 16)

e panel apparently reached a solution to that question. The binet communique of August 4 announcing the government's new licy also outlined the procedures. According to the usalem Post:

> Procedure for deportation would not be altered, but the cabinet took note of the state prosecutor's announcement that it will do all in its power to accelerate the legal procedures. Those named for deportation will continue to have the right to appeal to the High Court of Justice in Jerusalem. It is understood that there is no inclination on the part of the High Court to telescope [i.e. prolong] any of the steps involved. In the past, delays were sometimes caused by the security agencies and the public prosecution taking inordinate time to prepare their brief for the High Court hearings. 17)

C. The Deportees

Once the political groundwork had been laid for the deportation of Palestinians from the Occupied Territories, it was up to the Israeli security services, or Shin Bet, to select possible targets. The role of the Israeli security services presents a question in itself. Little is known about the extent of the power of the Shin Bet, which does not fall under any government ministry but responds directly to the Prime Minister. In the words of Ian Black, correspondent of the London-based Guardian:

> It is the Shin Bet internal security service, rather than the army, that is behind the policy [of deportations]. The Shin Bet is the smallest, but most powerful of all the Israeli bodies dealing with the occupied territories. The high quality of its manpower and the fact that it is directly answerable to the Prime Minister means it usually gets its way. 18)

The Shin Bet's relative autonomy in Israel's government structure gives it considerable leeway in its selection of prospective deportees, without fear of being censored by the Military Commander, who simply implements the government's policy, or by the Supreme Court, which so far has meekly complied with the cabinet directives.

Who then was selected for deportation? The deportees fall essentially into two groups. In the first group are those who were easy to deport because it could be shown that they once had entered the area without a permit, and they could therefore be labeled as "infiltrators". The Israeli government had an interest in deporting them because of settler outrage at the release of the Palestinian prisoners in the May exchange. By deporting those it could most easily deport, the government may have hoped to appease the settlers, who - after all - had called for the re-arrest and expulsion of ALL released Palestinian prisoners.

The second group presents more of an enigma - at least nitially. It includes Palestinians who were said to onstitute a "security threat". Among them are Khalil Abu iyad, who spent ten years in an Israeli prison and who was ctive upon his release as head of the Committee for the efence of Prisoners which coordinates aid to Palestinian olitical prisoners and helps to arrange family visits to isons; Walid Nazzal, who was an active trade unionist in e northern part of the West Bank where he served as a member the executive committee of the Workers Unity Bloc; 'Amin qbul and Bahjat Jayusi, both prominent student leaders at -Najah National University in Nablus; Hasan 'Abed al-Jawad, o was a journalist in Dheisheh refugee camp where he headed e camp's youth center, which is currently closed on orders the military authorities; 'Ali Abu Hilal, who was the cretary general of the Workers Unity Bloc in the West Bank; j 'Azmi Shu'aibi, who was the deputy mayor of al-Bireh fore the dismissal of the municipal council by the military thorities in 1982. The others who were deported had spent ngthy periods of time in Israeli jails, often on charges of mbership in an illegal organization", and were prominent bers of their community because of their prison experience particular and their role in the Palestinian movement in eral.

Several of the deportees in this category had also been ced under restriction orders in recent years: Khalil Abu ad had been under town arrest in his village of 'Izariye ce February 1982; Walid Nazzal had been ordered to remain his hometown of Qabatiya since December 1984; Yunis al- ib was placed under town arrest in his village of Dura diately following his release from prison in the exchange lay 1985; Mahmud Da'is, who spent a total of nine years in eli prisons and whose house was demolished by the military orities as an act of collective punishment in 1973, had confined to his home village of Beni Na'im since 1983; Abu Hilal had been under town arrest in his village of Dis since February 1982; and 'Azmi Shu'aibi had been town sted in al-Bireh since May 1980. 19)

The most salient feature of the Palestinians deported for "security reasons" is that they were influential members of their communities. Some of them were members of organizations, like student councils and labor unions, which are not illegal, and they had carried out their activities openly. This is an important point to stress, because had their activities been illegal, the Israeli authorities could easily have taken them to court. But the deportees were not even interrogated about their activities following their arrest, which strongly suggests political motives on the part of the Israeli authorities. In the words of the president of the National Lawyers Guild, Mark van der Hout:

> They are accused of incitement. If they have committed crimes against the state, they should be tried in a criminal court. But the state of Israel will not try these individuals because it will have to present evidence against these people - in front of the court and in front of the Israeli public. 20)

It should be pointed out here also that the deportees are accused, not of armed attacks against Israeli citizens (an offence for which they could easily be tried and convicted), for example, but of incitement and membership in an "illegal organization." The Palestinian weekly al-'Awdah reports for instance that Zaki Abu Steiteh, from the Jabalya refugee camp in the Gaza Strip, who was deported on 28 April 1986 on charges of "incitement", had never concealed his views:

> At no time did Abu Steiteh deny that he held "strong political convictions," but it was his consistent assertion that his beliefs were no less extreme than those of the average Palestinian in the Occupied Territories today - that the occupation must end and an independent Palestinian state be established. 21)

Amnesty International, the internationally recognized human rights watchdog organization, designates individuals

ed on this type of charges as "prisoners of concsience," ıing both their detention and their deportation. In one case in the West Bank, Amnesty International emphasized licy in this matter:

> ɔmbership of an organization engaged in violent ctivities does not of itself necessarily emonstrate the use or advocacy of violence. While nesty International recognize[s] that military ings of various PLO factions carr[y] out acts of iolence, some individuals in, or associated with, ne PLO [are] engaged in exclusively political and iplomatic activity and [do] not themselves ecessarily advocate the use of violence. 22)

D. The Role of the Deportees in Their Community

ne fact that the authorities resorted to administrative es to imprison and deport a number of Palestinians tes that the latter could not be accused of illegal ties, that there was no evidence of illegal activities, they had not committed any illegal activities. It is icient to argue that regular court proceedings cannot be since they would necessitate an open discussion of ce that must remain secret, because in the event of s charges one would at least expect the defendants to be ogated about their activities; none of the recent ees were. In other words, not once - from the moment of - did the authorities display an interest in following judicial procedures, not even when there was no danger osing informants or otherwise jeopardizing intelligence ions. The question then arises why the authorities ed these Palestinians, if they could not be said to have ted any offence.

here is no clear answer to this question, but there are er of indicators which point to two motives, at least on

the part of the military authorities, to get rid of these Palestinians. In the first place, it must be clear that the Israeli authorities from the beginning of the occupation in 1967 have done the utmost to stifle any independent political or cultural expression from the Palestinians living in the West Bank and Gaza. The Palestinian media are heavily censored, artists are prohibited from displaying their work, unionists are harassed and jailed, offices of unions, associations and clubs are temporarily or indefinitely closed, universities are frequently under temporary closure orders, Palestinian activists are barred from traveling abroad or are restricted to their home towns, and in the past many Palestinians have been deported. Journalist Rami Khouri has argued on the basis of the list of deportees compiled by Ann Lesch of the American Friends Service Committee over the period 1967-1978 that

> several hundred of the deportees were in natural "leadership" roles in their communities, such as municipal officials, teachers or labor union activists, and ... at least 100 deportees stand out as hard-core, active leaders in an organized manner, such as presidents of professional associations, editors of newspapers, mayors and municipal council members, heads of students' or women's groups, university presidents and school principals, judges, religious leaders (both Moslem and Christian), lawyers, doctors, village mukhtars, tribal leaders, and heads of social, welfare or charitable organizations. 23)

Continuing expulsions, according to Khouri, are part of an on-going Israeli effort to "systematically wipe out the indigenous Palestinian Arab leadership in the occupied territories." What is Israel's interest in doing so? In Khouri's words:

> The truth is probably that the systematic and methodical exile of the natural leadership of the Palestinian Arabs serves two overriding Israeli

purposes: it physically eliminates the leaders who can rally the citizens to a resistance of the occupation, and, in its bitter example for those who are still living in the West Bank and Gaza, it deters the growth of an alternative, natural and open political leadership that could express the political rights and aspirations of the West Bank and Gaza Arabs. 24)

Perusal of the list compiled by Ann Lesch 25) will roborate Khouri's argument - an argument which is nforced when the AFSC's list is compared with the list of estinians who have been deported since August 1985. (See endix 1). The Israeli military authorities presumably wish keep their hold on the Occupied Territories as tight as sible, so that in the event of negotiations over the itories' future disposition, no strong dissenting voices l emerge to thwart Israeli interests. It is in this text that we must see the statement by a senior IDF cer, interviewed by Ian Black of the Guardian (London):

> Our policy is not one of mass arrests and expulsions, but of precise work to find people in the middle echelons who have been planted in various organisations and try to pull the whole group in an extremist direction. 26)

lar allusions were made also by the Israeli Coordinator of vities in the Occupied Territories, Shmuel Goren, on l Television on 29 August 1985. He said, according to Jerusalem Post, that

> Israel will continue to deport or try to deport those who [in Goren's words] "engage in incitement, in calling for civil uprisings and attacks against us" if they cannot be tried, for whatever reason. [Emphasis added]. 27)

There is a second motive that has played a role in l's decision to deport Palestians, a motive that helps to

explain the timing of the policy. In the Autumn of 1985, Israeli Prime Minister Shimon Peres, having just extricated most of his military forces from Lebanon, was dabbling in peace overtures toward Jordan, which itself had received a fiat from the PLO to initiate open contacts with the Israelis in order to facilitate future negotiations between the Israelis and a joint delegation of Jordanians and Palestinian representatives. Many Palestinians in the Occupied Territories had voiced strong opposition both to the contents of the discussions that were taking place and to the fact that they were taking place at all, as well as to the choice of Palestinians who had been selected and approved in Amman to represent the Palestinian side in a possible delegation. Most of the deportees at one time or another in 1985 had come out strongly against Jordanian-Israeli plans of condominium rule over the West Bank, or failing that, an autonomy for Palestinians on the West Bank unilaterally imposed by Israel and hence reflecting Israeli interests. 'Ali Abu Hilal, for example, had come out openly against such plans on at least one occasion. 28) Michael Smith, an American lawyer and a member of the National Lawyers Guild visiting the area in November 1985, concluded on the basis of his visit:

> I believe the Israelis are deporting Palestinian leaders - unionists, journalists, politicians - because they are the ones who can present and mobilize opposition to the government's designs vis-a-vis the West Bank. 29)

It appears that the Israelis deliberately aimed at influential Palestinians in social leadership positions in the Palestinian community when they implemented their policy of administrative punishments. The situation in the Occupied Territories had been relatively quiet throughout 1985 in comparison with the more turbulent periods of the past, like the early 1980s. It is significant, for example, that the Israelis did not deport one Palestian during the large and prolonged demonstrations against the Israeli invasion of Lebanon in 1982. The Palestinian organizations, all of them legal 30), in the West Bank and Gaza were in a period of

tation in 1985, recovering from the earlier loss of their dership in the late 1970s, and evolving new leadership. It ld be quite sensible to suppose that the reason for the ival of the administrative measures described above, of ch deportations were the most extreme and cruel, is that Israelis watched the emergence of a new Palestinian lership in the Occupied Territories with alarm, and decided dispose of it and deter others before the movement could too strong. In the words of Mary Rita Luecke, Vice ident of the National Lawyers Guild, interviewed during NLG's mission to Israel and the Occupied Territories in mber 1985:

> [Israeli officials] told us they issue deportation orders in cases where they do not really have the hard evidence they need to go to court, but they have the hearsay evidence from their network of informers. They agree that deportation is the most severe punishment, and they reviewed the procedural safeguards that are intended to ensure that this step is used only against the most dangerous people in the most dangerous circumstances. But it is so troubling meeting with Israeli government officials and seeing how they totally deny what is going on. On one hand, they say these are people trying to set up a pre-state government. In a sense, that recognizes the national liberation character of the struggle - and it is very clear to me from my visit that it is a national liberation struggle that is going on here. But the Israelis' whole emphasis is on trying to characterize these Palestinians as criminals. They refuse to acknowledge the mandates of the Geneva Convention and paint these people who are sincere and legitimate leaders in their own communities as 'terrorists.' The use of that word is a red herring. 31)

CONCLUSION

Between August 1985 and May 1986, thirty-five Palestinian residents of the West Bank and Gaza were forced to leave their homeland following Israel's introduction of a policy of intensified administrative punishments. Many others were compelled to leave under similar circumstances in previous years, or have not been allowed to return, or must limit their visits to their families in the Occupied Territories to three months or less. Few Palestinians have any doubt that these practices are part of an overall Israeli policy to "spirit out", in the words of Theodor Herzl, as many Palestinians as possible, and to keep out those who left or were forced to leave. In the process of deporting some prominent Palestinians, the Palestinian community in the West Bank and Gaza is left leaderless - one more incentive for others to leave their homeland of their own "free" will.

A policy, by definition, is based on a political decision or set of decisions, and it was a political decision on the part of the Israeli authorities, as demonstrated above, to manipulate the law extant in the West Bank and Gaza both before and after the onset of the Israeli occupation in 1967 for political ends.

On a practical level, the issue is reduced to the power to define and to interpret. Who is an infiltrator? Who is a resident? To most Palestinians, the answers to these questions are unambiguous: All Palestinians who once lived or still live in Israel or the Occupied Territories, or whose families once lived or still live in the area, are residents, with all the rights and obligations pertaining to that status. The Israelis, who have occupied the land and declared it a closed area, have an entirely different perspective on the matter, and they have resorted to legalistic instruments to control the movement of people into and out of the area. Although Israel has been condemned in the international community for its obvious breach of international law, it has faced few effective restraints in its exercise of these instruments, and it has employed them vigorously.

Another term that has defied clear definition is the term itement." When the Israeli Minister of Defence Yitzhak n discussed the new policy of intensified administrative shments in August 1985, he made the following remarks:

> The policy is based on the principle of fighting against terror and terrorist organizers, with all the legal means available to us. Those who are caught preparing, organizing or carrying out terrorist acts - those people ought to be brought to court. But for those who instigate and call for participation in terror, even though they themselves are not active, administrative detention or deportation are the most effective means to cope with them, and I will not hesitate to use these measures. Not on a large scale, but mainly as a deterrent. 1)

The reality in the West Bank and Gaza is that there is a ? Palestinian community living under the conditions ;ed by a long occupation. The Palestinians face ictions in all aspects of their daily lives, and for them ; imperative to struggle to keep their community alive and :her. Those who have chosen to pursue non-violent means ieir effort to fight against an unjust occupation have few uments at their disposal to express and enforce their ests, since the occupier has deprived them of their ical institutions and has limited the activities of other ; of organizations, cultural, social or economic. After een years of occupation, it is not surprising that the tinian community of the West Bank and Gaza has produced digenous leadership, not one chosen in national elections h are proscribed), but one that has emerged informally - uite naturally. If the Israeli authorities want to use istrative punishments as a deterrent, the question is, "a rent to what?" To the emergence of a natural leadership community suffering national oppression? For Israelis to e such leaders of being inciters and of "instigating r" has been a useful excuse, presumably designed for tic and international consumption, for deportation, but

it has not enabled Israel to address adequately the fundamental question: what to do with the occupied land and with the people living there.

In the final analysis, the power to deport is just one element in the conflict between two people, one claiming to be fighting a struggle of national liberation, the other claiming to be fighting to survive within secure and defensible borders by annexing more land and building new settlements. In such a conflict, where the balance of power is severely skewed in favor of one of the protagonists, basic questions of democracy crumble under the weight of "necessity." In his opening speech at a symposium convened to celebrate International Human Rights Day in 1985, retired Supreme Court Justice Haim Cohn said, referring to the "Iron Fist" policy revived four months earlier:

> One of the most basic principles of the power of law is that punishment should not be imposed only by a court, but should be imposed after a hearing in the court. In this respect, administrative punishment naturally harms human rights. It goes without saying - and every military ruler knows this - that it is impossible to maintain a military rule and at the same time to ensure human rights. The first, or maybe the second human right after the right to live is the right of every human being to elect governors and legislators in his own country.
>
> Administrative punishment is generally seen as the reason behind the success of the military rule. Necessity knows no law, and it is usually argued that it is impossible to defend our lives without resorting to administrative punishment. Nevertheless, each one of you can find out by the end of this discussion whether such an assumption is correct, or whether there is a necessity for using such measures. 2)

In this type of scenario, the role of the military ander assumes proportions unknown in a democratic society. the words of a former official in the IDF Attorney ral's office, Moshe Nigbe:

> Until now, administrative punishment is a punishment which is carried out not by a military court, but by the same military commander or military governor who prosecuted the person in question. In other words, he claims that the person committed the offence, he determines himself whether the offence was committed, he decides for himself which punishment should be imposed for the offence, and he also carries out the punishment. If I want to be picturesque, I would say that the same military person was given the authority to be prosecutor, judge and executioner. 3)

When the rules of democracy have been suspended, power unchecked and arbitrary and unjust policies result. At stroke of a pen, a punishment can be imposed, not ssarily because an offence has been committed but perhaps use internal pressures require an escape valve. In ter IV, we referred to the popular hysteria that arose in el around the trial and conviction of (Jewish) Israeli lers accused of having carried out armed attacks on stinian targets in the Occupied Territories, and the equent - though unrelated - release of 1,150 Palestinians Israeli prisons in an exchange which had been negotiated a number of years. Following these events, the Israeli rnment, after a period of relative calm, reintroduced sures which had not been used for at least half a decade. he process, the rule of law melted away, and violations of c human rights were permitted to occur. In the words of Cohn, who referred to the new policy as a "renaissance" dministrative measures:

> Suddenly, it was as if someone in the Government, in the Ministry of Defence or in the Military Government opened his eyes and began to see a reason for using administrative punishment. It was as if there would be chaos without it, or that it would be impossible to govern without it. In fact, I dare say that this renaissance is a reaction, a lost reaction to Jewish terrorism. Those prejudiced Jews who took up arms did what they did under the pretext that the government was not doing enough to maintain the security of the state in the Territories. In the meantime, [the authorities] remembered the powers given to them according to the Emergency Regulations. They decided to renew the deportations, detentions and demolitions of houses. Is this, ladies and gentlemen, a practical consideration of a licensed authority to impose punishment? Or is this a political consideration, a populist consideration - if I may call it this - to surrender to what people in this country like to call 'public opinion'? Are these the considerations that a judge is faced with when he comes to impose a punishment? The improper matter in administrative punishment is not what has been hinted at here, that the Brigadiers and Colonels, the Military Commanders and the Minister of Defence, and the representatives of the Government Legal Advisor impose the punishment instead of the judges. The improper thing lies in the fact that justice cannot be seen to be done - or: that justice is not done. 4)

As long as the occupation is allowed to continue, the question of the violation of the basic political and economic rights of the Palestinian population in the West Bank and Gaza, and of those who are not permitted to return, will remain unsolved. This is the fundamental question for the Israelis to address, because the answer will in part determine the nature of their own society and their relationships with

·s. As for specific violations of human rights, it must
:lear that the Israeli authorities have it in their power
ıbolish once and for all the unjust laws they have created
·vived. As long as these laws remain in existence, the
·rities can at a moment's notice reintroduce or freeze or
reintroduce a policy of deportations - a policy which
be condemned in the strongest terms as being extreme,
.rary, inhumane and unjust.

APPENDIX 1

LIST OF PALESTINIANS DEPORTED FROM THE OCCUPIED TERRITORIES IN 1985 AND 1986

NO.	NAME	TOWN	ORDER	APP	DATE OF DEPORT.
01.	'Abed al-'Aziz 'Ali Shahin	Rafah	M.O.	YES	17/02/85
02.	Khalil Abu Ziyad (3 years)	'Izariye	DefRg	Y/N	28/08/85
03.	Mohamed Hasan Hasan Gharir	Dheisheh	FP/MO	NO	15/09/85
04.	Walid Mohamed Zhiab Kasravi	Jenin	FP/MO	YES	15/09/85
05.	Salem 'Ahmed 'Amer Breiwesh	Hebron	FP/MO	YES	15/09/85
06.	Khaled Mahmud Sliman Dalul	Nablus	FP/MO	YES	15/09/85
07.	'Issa Mohamed 'Abdallah Shahin	Bethleh.	FP/MO	YES	15/09/85
08.	Bader Darwish Mohamed al-Qawasmi	Hebron	FP/MO	YES	15/09/85
09.	Mahmud 'Abdallah 'Abed Hamdan	Bethleh.	FP/MO	YES	15/09/85
10.	Jum'eh 'Awad Salem Abu Hamed	Qalqilya	FP/MO	YES	15/09/85
11.	Mohamed Hamdan Hasan Ismail Abu 'Asabeh	Tulkarem	FP/MO	YES	15/09/85
12.	'Abed al-Qader Mohamed Hussein al-Wahesh	Bethleh.	FP/MO	YES	15/09/85
13.	'Abed al-Ghaffar 'Ahmed Abu 'Asabeh	Tulkarem	FP/MO	YES	15/09/85
14.	Mohamed Mrawweh Mahmud Hanini	B. Dajan	FP/MO	YES	15/09/85
15.	'Eidallah al-'Awneh	Nablus	FP/MO	NO	15/09/85
16.	'Adnan Mohamed Mahmud Baladi	Tulkarem	FP/MO	NO	15/09/85

17.	Nathmi Hussein 'Abed al-Rahim Hamdan	Beit Iba	FP/MO	NO	15/09/85
18.	Saleh Khader Abu Murtada	B. Dajan	FP/MO	NO	15/09/85
19.	Khalil 'Abed al-Hamid 'Ahmed Salameh	Gaza	FP/MO	NO	15/09/85
20.	Mohamed 'Ahmed Hasan Beiruti	Hebron	FP/MO	NO	15/09/85
21.	Walid 'Ahmed Mahmud Nazzal	Qabatiya	DefRg	YES	01/10/85
22.	'Amin Ramzi Darwish Maqbul	Nablus	DefRg	YES	01/10/85
23.	Bahjat Mustafa Hasan al-Jayusi	Jayus	DefRg	YES	01/10/85
24.	Khamis Hussein Hasan Naserallah	B. Furiq	FP/MO	YES	27/11/85
25.	Yunis Salem Jaber al-Rujub	Dura	FP/DR	NO	09/12/85
26.	Mahmud 'Abdallah 'Abed al-Hafez Da'is	BeniNaim	DefRg	NO	09/12/85
27.	Khaled Mohamed Tantash	Jerusal.	FP/MO	Y/N	17/12/85
28.	'Azmi Salah Mohamed al-Shu'aibi	Al-Bireh	DefRg	Y/N	31/01/86
29.	'Ali 'Abdallah Mohamed Abu Hilal	Abu Dis	DefRg	Y/N	31/01/86
30.	Hasan Mahmud 'Abed al-Jawad Fararjeh	Dheisheh	DefRg	Y/N	31/01/86
31.	Mahmud Fa'nun	Nahalin	DefRg	NO	05/02/86
32.	Hasan Mohamed 'Ahmed al-'Amudi	Bureij	FP/DR	Y/N	05/02/86
33.	Jalal Hafez Hashem 'Azizeh	Bureij	FP/DR	Y/N	05/02/86
34.	'Adnan Mahmud Ghanem	Tulkarem	FP/DR	NO	10/02/86
35.	'Ahmed 'Abed al-Majed Mahmud Radad	Tulkarem	FP/MO	YES	12/02/86
36.	Zaki Abu Steiteh	Jabalya	FP/DR	Y/N	28/04/86

LEGEND

Abbreviations: FP = Palestinians freed during the prisoner exchange on 20 May 1985.

MO = Deported by Military Order, either M.O. 329 for the West Bank, or M.O. 290 for Gaza.

DR or DefRg = Deported by the British Defence (Emergency) Regulations of 1945.

APP = Appealed (YES, NO, or Y/N - see below).

Note 1: This list does not include those Palestinians who have been deported following the expiry of their prison term, and who at the time of their conviction supposedly agreed to be deported in order to receive a reduced term in jail, nor Palestinian residents of the Occupied Territories who were not allowed to re-enter the area following a stay abroad.

Note 2: In the appeal category, some deportees are listed as Y/N. In cases 2 and 27, this means that the deportee appealed to the Supreme Court, but that an agreement was reached before the Court convened, and that the appeal was subsequently withdrawn. In cases 28, 29, 30 and 36, this means that the deportees appealed to the Supreme Court, but then withdrew their appeal in protest. In cases 32 and 33, this means that the deportees only appealed to the Advisory Committee.

Note 3: Numbers 3-20, 24, 27 and 35 are all Palestinians freed during the prisoner exchange on 20 May 1985, who were told later that they were being considered as infiltrators and that a deportation order had been issued against them, based on either M.O. 329 (West Bank) or M.O. 290 (Gaza Strip). Numbers 25, 32, 33, 34 and 36 are also Palestinians freed in the exchange, but they were deported for "security" reasons, and henceforth according to the British Defence Regulations of 1945.

APPENDIX 2

TEXT OF MILITARY ORDER 329 (WEST BANK)

el Defence Forces

r No. 329

r Concerning the Prevention of Infiltration

rding to the powers delegated to me as Commander of the , I hereby issue the following order:

nition

In this Order:

per Procedures": according to a permit issued by the ander of the Area, or someone delegated by him;

iltrator": a person who knowingly enters the Area contrary Proper Procedures after having resided in the East Bank of Jordan, or in Syria, or in Egypt, or in Lebanon, after the rmining Date;

ident of the Area": a person whose permanent residence is he Area;

Armed Person": anyone who is armed with an instrument or a tance which can kill a person or cause serious or erous damage to him, even if it was not a fire-arm, an osive, or a combustible material.

shment for an Infiltrator

An Infiltrator shall be punished by imprisonment for een years or pay a fine of I.L. 10,000, or both shments.

Deportation

(3)-a Any Military Commander may order in writing the deportation of any Infiltrator from the Area, whether he was accused of an offence under this Order or not, and the deportation order shall constitute a document for keeping the above-mentioned Infiltrator in detention until he is deported.

(3)-b If a deportation order was issued according to sub-paragraph (a) and the person against whom it was issued was detained or imprisoned for any reason whatsoever, his detention or imprisonment shall be terminated in order to carry out the order, even if the period of detention or imprisonment had not been completed.

Punishment for Armed Infiltrator

(4) Any person who infiltrates while being armed, or in the company of an armed person, or assisted by an armed person, shall be imprisoned for life.

Evidence

(5) Any person, during any proceeding undertaken under this Order, who is found to be in the Area without a document proving his identity as a resident of the Area, must prove that he did not infiltrate after the beginning of the operation of this Order.

Remaining after the Expiry of the Permit

(6) Any person who enters the Area after the Determining Date according to a Permit and who remains in the Area contrary to due procedures after the expiry of the Permit or contrary to its conditions shall be considered for the purposes of Article (3) as an Infiltrator.

aining a Permit Through Deception

Any person who enters the Area after the Determining Date
a permit obtained through a false declaration shall be
sidered as an Infiltrator.

eal

The Order Against Infiltration (West Bank)(No. 125), 1967,
ereby repealed.

ng Effect

This Order shall be effective as of 15 July 1969.

This Order shall be referred to as "The Order Concerning Prevention of Infiltration (West Bank)(No. 329), 1969."

une 1969
Aluf Rafael Vardi
ander of the West Bank Area

APPENDIX 3

TEXT OF ARTICLE 112 OF THE 1945 DEFENCE REGULATIONS

Article 112

(1) The High Commisioner shall have power to make an order, under his hand (hereinafter in these regulations referred to as "a Deportation Order") for the deportation of any person from Palestine. A person in respect of whom a Deportation Order has been made shall remain out of Palestine so long as the Order remains in force.

(2) The High Commissioner shall have power to make an order under his hand (hereinafter in these regulations referred to as "an Exclusion Order") requiring any person who is out of Palestine to remain out of Palestine. A person in respect of whom an Exclusion Order has been made shall remain out of Palestine so long as the Order remains in force.

(3) A Deportation Order or an Exclusion Order may be made subject to such terms and conditions as the High Commissioner may think fit.

(4) Any person in respect of whom a Deportation Order or an Exclusion Order has been made and is in force may be arrested without warrant by any member of His Majesty's forces or any police officer.

(5) A person in respect of whom a Deportation Order is made shall be liable, whilst awaiting deportation and whilst being deported, to be kept in custody in such manner as the High Commissioner may by the Deportation Order or otherwise direct, and all such custody shall be lawful custody.

The master of a ship or the pilot of an aircraft about to .l at any port or place outside Palestine shall, if so ·ected by the High Commissioner, receive a person in respect whom a Deportation Order is made on board the ship or ·craft and afford him a passage to that port or place, and ›per accomodation and maintenance during that passage.

For the avoidance of doubt it is hereby declared that an er under this Regulation may be made to relate to one ·son or to two or more persons and that it shall not be ·essary to state in an Order under this Regulation the name names of the person or persons to whom the Order relates.

Any Advisory Committee appointed under subsection (4) of ulation 111 of the principal regulations may, if asked to so by any person against whom a Deportation Order has been ·ued under this regulation, peruse any such Deportation er and submit recommendations to the government concerning ' such Deportation Order.

·icle 112A

' member of His Majesty's forces and any police officer may ·est without warrant any person in respect of whom a ›ortation Order has been made under the Immigration ·inance, 1941.

·icle 112B

· member of His Majesty's forces and any police officer may ·est without a warrant any person in respect of whom he has ·son to believe that there are grounds which would justify detention under regulation 111 or his deportation under ·ulation 112. Any such person may be detained for a period : exceeding seven days pending a decision as to whether any ·h order should be made and any such detention may be in ·h places and subject to such directions as may be ·scribed by order of a Military Commander.

APPENDIX 4

TEXT OF ARTICLE 49 OF THE IV GENEVA CONVENTION

Article 49. - Deportations, Transfers, Evacuations

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.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. 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. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accomodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

FOOTNOTES

NOTES TO THE INTRODUCTION

erusalem Post, 5 August 1985.

National Lawyers Guild, Treatment of Palestinians in the eli Occupied West Bank and Gaza: Report of the NLG, 1977 le East Mission (New York: 1978), p.78.

bid.

lack's Law Dictionary, (St. Paul, Minn.: West Publishing 1979), pp. 131 and 394.

NOTES TO CHAPTER I

f., Noam Chomsky, The Fateful Triangle: The United States, el & the Palestinians (Boston: South End Press, 1983); i Jiryis, The Arabs in Israel (Beirut: Institute for stine Studies, 1968); and Janet Abu Lughod, "Demographic equences of the Occupation", MERIP Reports, No. 115 (June), pp. 13-7, among others.

nn M. Lesch, "Israeli Deportation of Palestinians from the Bank and the Gaza Strip, 1967 - 1978," Journal of stine Studies, Vol. 8, No. 2 (Winter 1979), pp. 101-31; No. 3 (Spring 1979), pp. 80-112.

Fahed Qawasmi and Mohamed Milhem were given the chance to al their deportation six months after they had been lled. The hearings took place at the Allenby Bridge on border with Jordan. Both the military Advisory Committee the Israeli Supreme Court upheld the deportation orders, the two mayors were subsequently re-deported in the middle ovember 1980. Cf., Raja Shehadeh, Samed: Journal of a Bank Palestinian (New York: Adama Books, 1984), pp. 101, 109-11.

NOTES TO CHAPTER II

1) Cited by Nitza Shapiro-Libai, "Territories Administered by Israel - Military Proclamations, Orders and Judicial Decisions: Extracts," Israel Yearbook on Human Rights, Vol. 1 (1971), p. 419. The power of the occupying authorities in applying the laws extant in the areas they have occupied is clearly defined and limited by the IV Geneva Convention of 1949, which was designed to rule the conduct of an occupying power. Article 64 of the Convention 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 ... The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them." Cf., Article 64, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949). In the authoritative Red Cross commentary on the Geneva Conventions, Jean S. Pictet remarked with regard to the legislative power of the occupant referred to in Article 64: "(a) It may promulgate provisions required for the application of the Convention in accordance with the obligations imposed on it by the latter in a number of spheres: child welfare, labour, food, hygiene and public health etc.; (b) It will have the right to enact provisions to maintain the 'orderly government of the territory' in its capacity as the Power responsible for public law and order; and (c) It is, lastly, authorized to promulgate penal provisions for its own protection ... It will be seen that the powers which the Occupying Power is recognized to have are very extensive and complex, but these varied measures must not under any circumstances serve as a means of oppressing the population." Cf., Jean S. Pictet, General Editor, Commentary to the IV Geneva Convention

:ive to the Protection of Civilian Persons in Time of War
:va: ICRC, 1958), p. 337.

Government of Palestine, The Defence (Emergency) .ations, 1945 (As Amended Until 2nd March, 1945) :salem: Government Printing Press, 1945), p. 41.

)id., p. 44.

'HCJ 97/79, Abu 'Awad vs. the IDF Commander of Judea and -ia", excerpted in Israel Yearbook on Human Rights, Vol. 9)), p. 343.

)id., p. 344.

ted in ibid., p. 343. The Egyptian authorities continued :pply the 1945 Defence Regulations in a similar way in according to the Israeli point of view.

)id., pp. 343-4.

Attorney General's Directives Re:Application of British ce (Emergency) Regulations, 1945, to Judea and Samaria." blished document in Hebrew, 1969).

.ffidavit submitted to the Israeli Supreme Court by ney 'Aziz Shehadeh in 1980 (in the case against Qawasmi ilhem).

bid.

bid.

bid.

HCJ 513/85, Nazzal et al. vs. the IDF Commander of Judea amaria, and HCJ 514/85, Jayusi vs. the IDF Commander of . and Samaria." (In Hebrew).

ndre Rosenthal, "The 1945 Defence Regulations: Valid Law e West Bank?" (Unpublished paper, 1986).

Interpretation Order (Additional Orders)(No. 1)(The West Area)(No. 160), 1967." (In Hebrew and Arabic).

ited by Rosenthal, op. cit.

overnment of Palestine, op. cit., p. 3. Section 3(2) : "The provisions of the Interpretation Ordinance, 1945, than those of paragraphs (b) and (d) of section 19 and of sections 20, 35, 36 and 37 thereof, shall apply, save herwise provided, to all emergency legislation and, for urposes of such application, Regulations made under the in Council shall be deemed to be Ordinances."

Interpretation Order (Additional Provisions)(No. 5)(Judea amaria)(No. 224), 1968." (In Hebrew and Arabic).

19) Rosenthal, op. cit.

20) "The issue of whether legislative enactments by the military government enjoy the status of primary law, which are unchallengeable, or can be viewed as secondary by-laws and administrative action, which are reviewable, has never been decided by the High Court and has only been the subject of obiter dicta." Cf., Raja Shehadeh, Occupier's Law: Israel and the West Bank (Washington, D.C.: Institute for Palestine Studies, 1985), p. 96.

21) Before 1970, the Israeli authorities employed the 1945 Defence Regulations if they wanted to administratively detain somebody. In 1970, specific provision was made for administrative detention in M.O. 378. Finally, in 1980, M.O. 815 was issued, amending M.O. 378 to the extent that it reflected legislation newly enacted in Israel itself. Cf., Emma Playfair, Administrative Detention in the Occupied West Bank (Ramallah: Law in the Service of Man, 1986), p. 11.

22) Al-'Awdah Weekly (Jerusalem), 22 December 1985.

23) Supreme Court Justice Haim Cohn advanced the argument in the Qawasmi case that the 1945 Defence Regulations could only be interpreted as being applicable to the deportation of aliens, since the deportation of nationals is strictly forbidden in international customary law. Cf., "HCJ 698/80", op. cit., p. 353.

24) Cf., Raja Shehadeh, Occupier's Law, passim.

25) The exact number of family reunion applications is not known. Thomas Friedman of the New York Times reported that in 1985 only 300 family reunion applications of Palestinians wishing to rejoin their families in the West Bank had been granted, as compared with 900-1200 on average in previous years. (New York Times, 5 January 1986). Cf. also: Shehadeh, Occupier's Law, pp. 113-5.

26) Article 3 of "The Order Concerning Prohibition of Infiltration (West Bank)(No. 329) of 1969." (In Hebrew and Arabic). Note that M.O. 329 replaces M.O. 125 (West Bank) of 1967, and M.O. 290 replaces M.O. 82 (Gaza Strip) of 1967.

27) Ibid., Article 5.

28) Ibid., Article 6.

29) "HCJ 159/84, Shahin vs. the IDF Commander in the Gaza Strip." (In Hebrew).

bid.

HCJ 454/85, Kasrawi et al. vs. the Minister of Defence, CJ 456/85, Hanini et al. vs. the IDF Commander of Judea amaria." (In Hebrew).

bid.

bid.

bid.

Information obtained by al-Haq (formerly Law in the ce of Man).

l-Fajr Palestinian Weekly (Jerusalem), 10 January 1986.

Jerusalem Post, 10 March 1986.

The United States Department of State, Country Reports on Rights Practices for 1985 (Washington, D.C.: U.S. nment Printing Office, 1986), p. 1270. The State tment is incorrect in saying that the ICRC helped iate the prisoner exchange: it merely agreed to supervise

Article 43, Section III, "Annex to The Hague Regulations Respecting the Laws and Customs of War on Land." In Adam ts and Richard Guelff, Editors, Documents on the Laws of (Oxford: Clarendon Press, 1982), pp. 55-6.

Georg Schwarzenberger, International Law as Applied by rnational Conventions and Tribunals, Vol. II: The Law of d Conflict (London: Stevens & Sons, Ltd., 1968), pp. 227-Schwarzenberger also remarked: "To argue in this case that is not prohibited is allowed would mean to ignore the ral prohibitory rule taken for granted by all parties to Hague Conventions and interdicting deportation even on nds of necessities of war. This is one of the rare cases complete silence on a subject in the preparatory material the Hague Peace Conferences can be confidently adduced as ence of a self-understood rule." Ibid.

Ibid., pp. 164-5.

"1946 Judgment of the International Military Tribunal at mberg: Extracts on Crime Against International Law." In rts and Guelff, op. cit., p. 155.

The Tribunal also defined the role of the Charter in rnational law: "The Charter is not an arbitrary exercise power on the part of the victorious Nations, but in the w of the Tribunal, as will be shown, it is the expression

of international law existing at the time of its creation; and to that extent is itself a contribution to international law." Cited by Covey Oliver, "Jurisdiction of Israel to Try Eichmann: International Law in Relationship to the Israeli Nazi Collaborators (Punishment) Law," American Journal of International Law, Vol. 56 (1962), p. 819.

44) Ibid. See also, "Brief of the National Lawyers Guild and the National Conference of Black Lawyers as Amicus Curiae in the Matter of the Deportation Order Against 'Ali Abu Hilal et al.," 1986.

45) "Universal Declaration of Human Rights (1948)." In Ian Brownlie, Editor, Basic Documents on Human Rights (Oxford: Clarendon Press, 1981), p. 23.

46) "International Covenant on Civil and Political Rights (1966)." In Brownlie, op. cit., p. 132. Israel has not yet ratified this convention.

47) Article 49 (1), IV Geneva Convention.

48) Pictet, op. cit., p. 279.

49) Meir Shamgar, "The Observance of International Law in the Administered Territories," Israel Yearbook on Human Rights, Vol. 1 (1971), pp. 263 and 266.

50) Ibid., pp. 266-7.

51) Ibid., p. 274.

52) Ibid., p. 275.

53) "HCJ 513/85 and HCJ 514/85."

54) "HCJ 97/79", op. cit., p. 345.

55) "HCJ 698/80, Qawasmi et al. vs. the Minister of Defence et al.", excerpted in Israel Yearbook on Human Rights, Vol. 11 (1981), pp. 350-1.

56) Ibid., p. 351.

57) The Supreme Court might argue in response, in Shamgar's footsteps, that West Bank residents consider themselves to be Jordanian citizens. West Bank Palestinians generally do not make such a claim, however, even though all apply for and obtain sooner or later a Jordanian passport which enables them to travel.

58) Cited by Felicia Langer, Zu HaDerekh, 26 February 1986. (Translated and distributed in English by Israel Shahak).

59) "HCJ 698/80", op. cit., p. 352.

60) Al-'Awdah Weekly (Jerusalem), 22 December 1985.

United Nations Security Council Resolution No. 446, 1979.

See for example, U.S. State Department, op. cit., p. 1267.

Cited in "Brief of the National Lawyers Guild", op. cit.

Oliver, op. cit., p. 818.

Ibid., pp. 807-8.

Raja Shehadeh and Jonathan Kuttab, The West Bank and the e of Law (Geneva: International Commission of Jurists, 0), p. 105.

Article 1, IV Geneva Convention. Pictet clarified in the C commentary: "By undertaking at the very outset to respect clauses of the Convention, the Contracting Parties drew ention to the special character of that instrument. It is an engagement concluded on the basis of reciprocity, ding each party to the contract only in so far as the other ty observes its obligations. It is rather a series of lateral engagements solemnly contracted before the world as resented by the other Contracting Parties ... [I]t is clear t Article 1 is no mere empty form of words, but has been iberately invested with imperative force. It must be taken its literal meaning." Op. Cit., pp. 16-7.

Article 68, IV Geneva Convention. The Article reads: otected persons who commit an offence which is solely ended to harm the Occupying Power, but which does not stitute an attempt on life or limb of members of the upying forces or administration, nor a grave collective ger, nor seriously damage [sic] the property of the upying forces or administration or the installations used them, shall be liable to internment or simple imprisonment, vided the duration of such internment or imprisonment is portionate to the offence committed. Furthermore, ernment or imprisonment shall, for such offences, be the y measure adopted for depriving protected persons of erty."

National Lawyers Guild, op. cit. (1978), pp. 76 and 78.

Jerusalem Post, 18 September 1985.

Jerusalem Post, 6 February 1986.

"Arbitrary Award in the Matter of the Claim of Madame vreau Against the United Kingdom", American Journal of ernational Law, Vol. 27, No. 1 (January 1933), pp. 153-83.

Zu HaDerekh, 26 February 1986 (Shahak).

NOTES TO CHAPTER III

1) Al-Fajr Palestinian Weekly (Jerusalem), 22 February 1985.
2) Ibid., 9 August 1985.
3) Jerusalem Post, 2 September 1985.
4) Ibid., 13 September 1985.
5) "HCJ 454/85, Kasrawi et al. vs. the Minister of Defence, and HCJ 456/85, Hanini et al. vs. the IDF Commander of Judea and Samaria." (In Hebrew).
6) Conversation with Andre Rosenthal (Lea Tsemel's office).
7) Conversation with Ibrahim Abu 'Ata.
8) Article 112B of the Regulations states: "Any member of His Majesty's forces and any police officer may arrest without a warrant any person in respect of whom he has reason to believe that there are grounds which would justify his detention under regulation 111 or his deportation under regulation 112. Any such person may be detained for a period not exceeding seven days pending a decision as to whether any such order should be made and any such detention may be in such places and subject to such directions as may be prescribed by order of a Military Commander." Cf., Government of Palestine, The Defence (Emergency) Regulations, 1945 (As Amended Until 2nd March, 1945) (Jerusalem: Government Printing Press, 1945), p. 45. After the order has been issued, the prospective detainee can be kept in detention until the moment of deportation. The deportee does have the right to appeal. Article 111 (4) of the Regulations (which deals with administrative detention) stipulates: "For the purposes of this regulation, there shall be one or more advisory committees composed of persons appointed by the High Commissioner, and each such committee shall be chaired by a person who either holds or has held judicial office or who either is or was a senior government official. The task of each such committee shall be to consider any objections to any order issued under this regulation - where these are properly submitted to the committee by the person whom the order concerns - and to make relevant recommendations to him and to the army commander." Ibid., p. 43. And Article 112 (8) reads: "Any advisory committee appointed under subsection (4) of Regulation 111 of the principal regulations may, if asked to do so by any person

gainst whom an expulsion order has been issued under this egulation, peruse any such expulsion order and submit ecommendations to the government concerning any such xpulsion order." Cf., "Defence (Emergency) Regulations, 945." (In Hebrew).

) National Lawyers Guild, Treatment of Palestinians in the sraeli Occupied West Bank and Gaza: Report of the NLG, 1977 iddle East Delegation (New York, 1978), pp. 75-6.

0) Reuven Pedhazour, Ha'Aretz, 19 September 1985.

1) Conversation with Lea Tsemel.

2) Conversation with 'Ahmed Nazzal (Felicia Langer's office).

3) Ibid.

4) Ibid.

5) Conversation with Lea Tsemel.

6) Jerusalem Post, 12 August 1985.

7) Asher Wallfish, Jerusalem Post, 27 April 1986.

8) Raja Shehadeh, Occupier's Law: Israel and the West Bank Jashington, D.C.: Institute for Palestine Studies, 1985), . 95.

9) Israeli National Section of the International Commission f Jurists, The Rule of Law in the Areas Administered by sraeł (Tel Aviv, 1981), p. x.

0) "HCJ 698/80, Qawasmi et al. vs. the Minister of Defence et l.", Israel Yearbook on Human Rights, Vol. 11 (1981), p. 352. n the case of the eleven released prisoners who were given a eportation order in 1985, the Supreme Court held, inter alia: There is no need for us here to discuss the implementation of n order given at some time in the past, an order whose egality ought, of course, to have been tested according to ıe legal situation with regard to that action at the time it as carried out in the past, and according to the regulations oncerning the relevant legislation which apply to its mplementation now, but rather by the authority invested by ne legislation as it is now in effect and which it is now esired to exercise. [sic]" Cf., "HCJ 454/85 and HCJ 456/85", p. cit. And in the case against Walid Nazzal, 'Amin Maqbul nd Bahjat Jayusi, the Supreme Court argued that "in light of ll the information submitted to us, we conclude that there is o cause to put in doubt the veracity and credibility of the espondent's arguments. That is to say, we have clear,

convincing and explicit information ... and [we feel that] the plaintiffs have indeed benefited from all the conditions mentioned in Article 108 of the Defence Regulations." Cf., "HCJ 513/85, Nazzal et al. vs. the IDF Commander of Judea and Samaria, and HCJ 514/85, Jayusi vs. the IDF Commander of Judea and Samaria." (In Hebrew).

21) Shehadeh, op. cit., p. 96.

22) Moshe Nigbe, "Symposium on 'Administrative Punishment in the Administered Territories'." Jerusalem, 10 December 1985. (In Hebrew).

23) Ibid.

24) Conversation with 'Ahmed Nazzal (Felicia Langer's office).

25) Ibid.

26) Affidavit of Siham Barghuti, 15 May 1986. (Files of al-Haq, formerly Law in the Service of Man, Ramallah).

27) Ibid. The Jerusalem Post reported on her case as follows: "The wife of a deported West Bank trade unionist has begun a public campaign to visit her husband in Jordan after being told she could see him only if she stayed out of the territories for three years. Siham Barghuti has charged that the Israeli condition is meant to effectively deport her from the territories ... Barghuti said that no explanation was given for the demand that she make a written commitment to stay away for three years. She charged that the condition violates humanitarian principles and international conventions, and plans to appeal to international legal groups and to Israeli MKs." Jerusalem Post, 16 June 1986.

28) Al-Fajr Palestinian Weekly (Jerusalem), 31 January 1986.

29) Pamphlet signed by Shu'aibi, Abu Hilal and 'Abed al-Jawad, and distributed at the Israeli Supreme Court on the day of the hearing, 30 January 1986.

30) From a statement read by advocate Lea Tsemel at a press conference in Jerusalem. Al-'Awdah Weekly (Jerusalem), 15 December 1985.

31) "HCJ 698/80", op. cit.

32) Cf., "HCJ 513/85 and HCJ 514/85."

33) Joel Singer, "Symposium", 10 December 1985. (In Hebrew).

34) Ibid.

35) Zu HaDerekh, 19 February 1986. (Translated and distributed in English by Israel Shahak).

6) Haim Cohn, "Symposium", 10 December 1985. (In Hebrew).
7) "HCJ 513/85 and HCJ 514/85."
8) Ibid.
9) Ibid.
0) Itzhak Zamir, "Deportation Orders in the Administered reas." (Jerusalem: Attorney General's Office, 1986).
1) Al-Fajr Palestinian Weekly (Jerusalem), 29 November 1985.
2) Joel Singer, "Symposium."
3) Zamir, op. cit.
4) Al-'Awdah Weekly (Jerusalem), 15 December 1985.
5) Paraphrased, ibid.

NOTES TO CHAPTER IV

) Cf., Jerusalem Post of 22 May 1985, 23 May, 24 May, 27 May Editorial), 28 May, 29 May, 30 May (Editorial), and 31 May 985, among others.
) Ibid., 17 June 1985.
) Ibid., 30 June 1985.
) Ibid., 25 July 1985.
) Ibid.
) Ibid., 26 July 1985.
) Ibid.
) Ibid., 31 July 1985.
) Ibid.
)) Ibid., 28 July 1985. (Emphasis added).
l) Ibid., 1 August 1985.
:) Ibid., 29 July 1985.
3) Ibid., 25 July 1985.
1) Ibid., 7 August 1985.
5) Cf., "HCJ 698/80, Qawasmi et al. vs. the Minister of :fence et al.", Israel Yearbook on Human Rights, Vol. 11 1981), pp. 352-4.
5) Ibid., 30 July 1985.
7) Ibid., 5 August 1985.
3) The Guardian (London), 8 February 1986.
)) Amnesty International, Town Arrest Orders in Israel and

the Occupied Territories (London: Amnesty International Publications, 1984).

20) Al-Fajr Palestinian Weekly (Jerusalem), 29 November 1985.

21) Al-'Awdah Weekly (Jerusalem), 4 May 1986.

22) Amnesty International, AI Report 1985 (London: Amnesty International Publications, 1985), p. 317.

23) Rami G. Khouri, "Potential Leaders Expelled: Israel's Deportation Policy." MERIP Reports, No. 65 (March 1978), p. 24.

24) Ibid., p. 23.

25) Ann M. Lesch, "Israeli Deportation of Palestinians from the West Bank and the Gaza Strip, 1967 - 1978." Journal of Palestine Studies, Vol. 8, No. 2 (Winter 1979), pp. 101-31; and No. 3 (Spring 1979), pp. 80-112.

26) The Guardian (London), 8 February 1986.

27) Jerusalem Post, 30 August 1985.

28) The Middle East (London), No. 139 (May 1986), p. 13.

29) Interviewed in al-Fajr Palestinian Weekly (Jerusalem), 29 November 1985.

30) The organizations here referred to (labor unions, women's committees, student groups, professional associations, cultural committees, voluntary work committees, charitable societies, etc.) are all legal, or - if they are not - at least aspire to be legal, i.e. they applied for a permit but so far they have not been granted one - a common phenomenon under Israel's occupation.

31) Ibid.

NOTES TO THE CONCLUSION

1) Jerusalem Post, 23 August 1985.

2) Haim Cohn, "Symposium on 'Administrative Punishment in the Administered Territories'." Jerusalem: 10 December 1985. (In Hebrew).

3) Moshe Nigbe, "Symposium."

4) Haim Cohn, "Symposium."