

PERPETUAL EMERGENCY:

*A LEGAL ANALYSIS OF ISRAEL'S USE OF
THE BRITISH DEFENCE (EMERGENCY)
REGULATIONS, 1945, IN THE OCCUPIED
TERRITORIES.*

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INTRODUCTION

During the first eighteen months of the Palestinian intifada (popular uprising) in the Israeli-occupied West Bank and Gaza Strip, the Israeli Government, in clear violation of international law, ordered the deportation of 51 Palestinians and totally demolished or sealed over 285 houses belonging to residents of the Occupied Territories.¹ Deportations and house demolitions, as well as various other measures used by the Israeli Government to counter Palestinian resistance to the Israeli occupation of the West Bank and Gaza Strip, are carried out under the authority of extraordinary legislation enacted by the British during their Mandate over Palestine, the British Defence (Emergency) Regulations, 1945.

The British Government revoked the Defence (Emergency) Regulations, 1945, at the end of the Mandate in May 1948, and Jordan did not consider these Regulations to be in effect during its administration of the West Bank from 1948 to 1967. Nevertheless, in 1967, shortly after taking control of the West Bank, the Israeli military authorities began using the British Defence Regulations against the population in the Occupied Territories, and have resorted to them with increasing frequency since the intifada began on December 9, 1987.²

Israel's justification of its continued use of the British Defence Regulations is essentially threefold. First, Israel asserts that the British Defence Regulations were never effectively revoked and thus remain part of the local law of the West Bank. Second, Israel contends that international law allows and even requires a military occupant to continue to apply the local law of the occupied territory. Third, Israel asserts that the measures it carries out under the authority of the British Defence Regulations, including deportation and house demolition, do not in fact violate relevant international law norms.

The purpose of this paper is to examine the validity of these three assertions. Section I discusses the British enactment of the Defence Regulations in 1945. Section II examines the subsequent British revocation of the Defence Regulations in May 1948. Section III reviews the status of the Defence Regulations during the Jordanian administration of the West Bank. Section IV examines Israel's revival of the Defence Regulations in the Occupied Territories beginning in 1967. Section V considers Israel's use of the Defence Regulations in the state of Israel from 1948 to the present. Section VI discusses the deportations and house demolitions carried out by the Israeli military forces in the West Bank and Gaza Strip under the authority of the British Defence Regulations, and considers the application of the Fourth Geneva Convention and the Hague Regulations to these measures. Section VII briefly examines other relevant portions of international human rights law.

The paper concludes that the British Defence Regulations do not constitute a part of the local law in the West Bank today and that the Israeli Government's continued use of these Regulations violates international law.³

I. THE BRITISH DEFENCE REGULATIONS DURING THE BRITISH MANDATE

The British High Commissioner of Palestine enacted the Defence (Emergency) Regulations, 1945, on September 27, 1945 in the exercise of powers vested in him by the Palestine (Defence) Order in Council, 1937. The Palestine (Defence) Order in Council, 1937, was enacted by the King of England in Council and empowered the High Commissioner to

make such regulations ... as appear to him in his unfettered discretion to be necessary or expedient for securing public safety, the defence of Palestine, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.⁴

The Defence Regulations, as enacted, gave the High Commissioner extraordinary powers over the civilian population of Palestine, including the power to deport citizens of Palestine, to demolish houses, to impose curfews and town arrest, to censor newspapers and books, and to administratively detain, all without the necessity of judicial proceedings. These Defence Regulations actually revised and consolidated earlier and equally repressive emergency regulations enacted by the High Commissioner of Palestine into one volume.

The 1945 Regulations and the earlier emergency regulations were enacted in response to the virtual breakdown of civil authority in Palestine as first the Palestinians and then the Jews used violence as a tool to achieve political change.⁵ At the height of the Arab Rebellion in 1938, for example, the British recorded 5,708 incidents of violence involving an estimated 16,000 armed Palestinian guerillas.⁶ The British General Officer reported in August 1938 that "the situation was such that civil administration and control of the country was, to all practical purposes, non-existent".⁷ According to official British

figures, between April 1936 and August 1939, 545 Jews, 126 British, and over 2,000 Palestinians were reported killed.⁸

During the period after World War II of Jewish opposition to the British Mandate, Jewish paramilitary organisations reportedly had an estimated strength of over 60,000 men under arms.⁹ According to British statistics, between October 1 and November 18, 1946 alone, 99 British soldiers and policemen were killed.¹⁰ In May 1947, the American Consul in Jerusalem reported that:

with its officials attempting to administrate from behind masses of barbed wire, in heavily defended buildings, and with those same officials (minus wives and children evacuated some time ago) living in pathetic seclusion in 'security zones', one cannot escape the conclusion that the Government of Palestine is a hunted organization with little hope of ever being able to cope with conditions in this country as they exist today.¹¹

The British Government responded to the escalating violence by enacting successive Orders in Council, which gave the British High Commissioner of Palestine broad authority to enact emergency regulations in the attempt to restore order.¹²

In spite of the extremely harsh measures imposed under the authority of these regulations, first during the Arab Rebellion and subsequently in response to Jewish violence, the deportations, house demolitions, mass arrests, curfews, sweeping searches, and collective fines were of questionable success in restoring order. Rather, they embittered the general population and made British rule even more unpopular.¹³ The British progressively lost control of Palestine.¹⁴

On November 29, 1947, the United Nations General Assembly voted to partition Palestine. Almost immediately thereafter, civil war broke out between the Palestinian and Jewish communities.¹⁵ The British Mandate came to an end on May 15, 1948.

II. BRITISH REVOCATION

On May 12, 1948, three days before the end of the British Mandate, the King of England enacted the Palestine (Revocations) Order in Council, 1948 (the "Revocations Order" - original text in Appendix A). The Revocations Order provides in pertinent part:

The Orders in Council specified in the Schedule to this Order are hereby revoked to the extent specified in the second column of the Schedule.¹⁶

The last Order in Council listed in the attached Schedule is the "Palestine (Defence) Order in Council, 1937", under the authority of which the British Defence Regulations, 1945, had been enacted. The corresponding entry in the second column of the Schedule specifies "The whole Order".¹⁷ The effect of the Revocations Order was therefore to revoke the Palestine (Defence) Order in Council, 1937, as well as the British Defence (Emergency) Regulations, 1945.

The Revocations Order was enacted "in exercise of the powers [granted] in this behalf by the Foreign Jurisdiction Act, 1890".¹⁸ The Palestine (Defence) Order in Council, 1937, had also been enacted pursuant to the Foreign Jurisdiction Act, 1890.¹⁹ Section 10 of the Foreign Jurisdiction Act, 1890, provides that:

It shall be lawful for [His Majesty] in Council to revoke or vary any Order in Council made in pursuance of this Act.²⁰

The Revocations Order specifies the day of "Coming into Operation" as "14th May, 1948".²¹ The Interpretation Act of 1889, which was in effect at this time, provides:

Where an Act passed after the commencement of this Act, or any Order in Council ... made, granted, or issued, under a power conferred by any such Act, is expressed to

come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.²²

The Revocations Order therefore became effective at midnight on May 13, 1948.²³

III. THE JORDANIAN ADMINISTRATION: 1948 - 1967

Following the British withdrawal from Palestine at the termination of the Mandate on May 15, 1948, the Trans-Jordanian Army occupied the West Bank of the Jordan River. In April 1950, it was formally annexed by King Abdullah of Jordan. Jordan ruled the West Bank until its defeat by Israel in the 1967 June War.

On May 13, 1948, anticipating the end of the British Mandate two days later, King Abdullah issued an Addendum to the Trans-Jordan Defence Law of 1935. The Addendum provides that the Jordan Defence Law and all Regulations issued thereunder will apply to any country or area in which the Jordanian Arab Army is found or is entrusted with maintaining security and order.²⁴ The effect of the Addendum was to make the Jordanian Defence Law of 1935 and Defence Regulations issued thereunder applicable to the West Bank.

Article 2 of the Jordanian Defence Law provides that whenever there is an emergency necessitating the defence of Jordan or endangering public security or safety, the King may declare the Defence Law to be in effect. Article 4 empowers the King to enact Defence Regulations to ensure public security and the defence of Trans-Jordan.²⁵ On August 29, 1939, King Abdullah declared the Jordanian Defence Law to be in effect and enacted certain Defence Regulations thereunder.²⁶ The Jordanian Defence Law and Regulations provide, inter alia, for administrative detention, censorship, curfews, deportation, and house demolition.²⁷

The Jordanian Defence Law of 1935 and Defence Regulations give the government of Jordan similar emergency powers to those granted to the British High Commissioner under the British Defence Regulations of 1945. However, the specific provisions of the two sets of laws differ in important respects. For example, while both sets of laws provide the power to order deportation and administrative detention, the British Defence Regulations

provide the right to appeal such orders, while the Jordanian Defence Law and Regulations do not. Similarly, both sets of laws specify which courts will have jurisdiction over offences under the laws. However, the British Defence Regulations set up special military courts and provide detailed procedures by which these courts are to be governed. The Jordanian Defence Law relies on existing Jordanian courts and procedures.²⁸

If the British Defence Regulations had still been in effect after the British left Palestine and Jordan took control of the West Bank, these Regulations would have been rendered unnecessary and superfluous by the Addendum of May 13, 1948 making the Jordanian Defence Law and Regulations applicable to the West Bank. There was no need for both sets of laws; moreover, since the provisions of the two sets of laws differ while conferring similar types of powers, to keep both sets of laws in effect would have resulted in inconsistency and confusion.

In fact, the Jordanian government (which was apparently unaware of the British revocation) considered the British Defence Regulations to have been repealed by virtue of the Addendum of May 13, 1948, and also by virtue of the following proclamation, issued by the Jordanian Military Commander in May 1948, making the Jordanian Defence Law and Regulations applicable to the West Bank:

all Laws and Regulations in force in Palestine at the end of the Mandate, on 15 May 1948, shall remain in force ... save where that is inconsistent with any provision of the Defence of Trans-Jordan Law of 1935, or with any Regulations or Orders issued thereunder.²⁹

Since important provisions of the Defence (Emergency) Regulations, 1945, are inconsistent with the Jordanian Defence Law and Regulations, the effect of this proclamation would have been to repeal the British Defence Regulations if they had not already been effectively revoked by the British.

In 1979, in Abu Awad v. Commander of the Judea and Samaria Region,³⁰ the Israel Supreme Court, sitting as the High Court of Justice, rejected a challenge to a deportation order issued under the authority of the British Defence Regulations. Petitioners argued that the Defence Regulations were no longer valid law in the West Bank. The Court considered the proclamation issued by the Jordanian Military Commander in May 1948, quoted above, and stated:

We were not presented with any proof that the [British] Defence Regulations contradict the Jordanian Defence Law of 1935, thus the conclusion is that at the time of the Jordanian occupation of the West Bank in 1948, the above regulations remained valid.

As discussed above, there are important contradictions between the British Defence Regulations and the Jordanian Defence Law and Regulations. This conclusion is buttressed by an expert opinion submitted to the Israel Supreme Court in a different case by Palestinian lawyer Aziz Shehadeh (Appendix B). Advocate Shehadeh stated that "the provisions of [the British and Jordanian] regulations are contradictory", and concluded that "the [British] Defence Regulations ... were repealed and the same powers vested in the Jordanian King and his ministers by virtue of [the Addendum of May 13, 1948]".³¹

IV. ISRAEL'S REVIVAL OF THE DEFENCE
REGULATIONS IN THE OCCUPIED TERRITORIES

On June 7, 1967, after Israel occupied the West Bank and Gaza Strip, the Military Commanders of the West Bank and Gaza Strip issued the following proclamation:

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.³²

Israel contends that by means of this proclamation, the British Defence Regulations have remained in full force and effect in the West Bank and the Gaza Strip to the present day.

Apparently in anticipation of arguments that the Defence Regulations were revoked by the British prior to the end of the Mandate, or by the Jordanians during the Jordanian administration of the West Bank, two Interpretation Orders were issued. These orders will be discussed in turn.

(A) Interpretation Order No. 160

Interpretation Order No. 160 (Appendix C), issued by the Military Commander in 1967, provides:

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

Article 1 of the same Order defines "Hidden Law" 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 custom.³³

The British Revocations Order, by which the British Defence Regulations were repealed prior to the end of the Mandate (see discussion in Section II, supra), was not in fact published in the Palestine Gazette, the official gazette in Palestine during the British Mandate.

In the 1985 Israel Supreme Court case of Nazzal et al. v. the IDF Commander of Judea and Samaria,³⁴ a deportation order issued under the authority of the British Defence Regulations was challenged on the grounds, inter alia, that the British Government had revoked the British Defence Regulations prior to the end of the Mandate. The Israel Supreme Court, sitting as the High Court of Justice, rejected this argument on the basis of Interpretation Order No. 160, quoted above, since the Revocations Order was not published in the Palestine Gazette.

In fact, the Palestine Gazette was not published at all after April 1948, due to civil war conditions prevailing in Palestine at that time.³⁵ However, there was no requirement under British law that the Revocations Order be published in the Palestine Gazette in order to be effective. Section 20 of Interpretation Ordinance No. 9 of 1945,³⁶ explains the requirement of publication in the Palestine Gazette as follows:

All regulations having legislative effect shall be published in the Official Gazette and, unless it be otherwise provided, shall take effect and come into operation as law on the date of such publication
[Emphasis added.]

"Regulations" is defined in Section 2 of the same Interpretation Ordinance as:

any regulations, rules, by-laws, proclamations, orders, directions, notifications, notices, or other instruments, made or issued by the High Commissioner ... under the authority of any Act or of any Order by His Majesty in Council ...

The requirement of publication in the Palestine Gazette therefore applied to legislation enacted by the High Commissioner of Palestine. There was no requirement that Acts or Orders in Council issued by the King of England in Council be published in the Palestine Gazette in order to be effective.

Requirements of publication for Orders in Council issued by the King at the time of the Revocations Order are set forth in the Statutory Instruments Act, 1946.³⁷ The Statutory Instruments Act provides that:

Where by any Act passed before the Commencement of this Act power to make statutory rules ... was conferred on any rule-making authority ... any document by which that power is exercised ... shall ... be known as a "statutory instrument" and the provisions of this Act shall apply thereto accordingly.

The Statutory Instruments Act goes on to provide that all such "statutory instruments" are to be published in the Statutory Instruments compilation. In accordance with the requirements of this Act, the Revocations Order was published in the Statutory Instruments compilation.³⁸ Thus the Supreme Court decision in the Nazzal case clearly appears to be in error in rejecting the British revocation on the grounds that it was not published in the Palestine Gazette.³⁹

The British Government has confirmed the validity of the Revocations Order under British law and the fact that this Order effectively revoked the British Defence (Emergency) Regulations, 1945, in an April 22, 1987 letter to al-Haq. In this letter (Appendix C), the British Minister of State, Tim Renton, wrote:

I confirm that, in view of the Palestine (Revocation) Order in Council 1948, the Palestine (Defence) Order in Council 1937 and the Defence Regulations 1945 made under it are, as a matter of English law, no longer in force.

(B) Interpretation Order No. 224

In 1968, the Military Commander issued Interpretation Order No. 224 (Appendix E), which provides:

DEFINITION

1. In this order, "emergency legislation" shall be understood as it is in Regulation No. 3 of the Defence (Emergency) Regulations, 1945.

METHODS TO REVOKE EMERGENCY LEGISLATION

2 (A). So as to remove all doubt, it is hereby clarified that emergency legislation is not rendered null and void by inference from later legislation which is not emergency legislation.

(B). Emergency legislation is rendered null and void solely by legislation which is not emergency legislation and which explicitly repeals it by name:

VALIDITY OF EMERGENCY LEGISLATION

3. Emergency legislation which was

in force in the area after 14 May 1948 shall remain in force from the definitive date 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.⁴⁰

This interpretation order appears to have been enacted to rebut claims that the British Defence Regulations were implicitly revoked by Jordan. The Addendum and Proclamation of May 1948 by means of which the Jordanian government believed the British Defence Regulations to have been repealed (see discussion in Section III, supra) did not "explicitly revoke[]" the British Defence Regulations "by name".

In the Nazzal case mentioned above, the petitioners challenged three deportation orders issued against residents of the West Bank on the grounds, inter alia, that the British Defence Regulations were implicitly abolished by the May 1948 proclamation issued by the Jordanian Military Commander. The Court rejected this argument, citing Interpretation Order No. 224, quoted above, and ruled that the British Defence Regulations were still in effect since they had never been explicitly revoked.⁴¹

Of course, the British Defence Regulations were explicitly revoked by name by the British Revocations Order. (See discussion in Section II, supra.) However, even as a matter of Jordanian law, the Court appears to be mistaken. The on-going validity of the British Defence Regulations during the Jordanian administration of the West Bank must be determined as a matter of Jordanian law, not subsequent Israeli legislation.⁴² There is no requirement under Jordanian law that emergency legislation be explicitly revoked by name.

In a letter to al-Haq dated June 25, 1988, the Jordanian Legal Commander in charge of military justice confirms that, as a matter of Jordanian law, the British Defence

Regulations, if still in effect, were repealed by the Addendum of May 13, 1948 and the Jordanian Proclamation of May 1948 (Appendix F). The letter states in pertinent part:

the Jordanian legislator implicitly cancelled the Defence Regulations issued by the British Mandatory authorities in 1945...[citing both the Addendum of May 13, 1948 and the Jordanian Proclamation of May 1948].

Further commentary is provided in the expert opinion of Advocate Aziz Shehadeh, discussed above.⁴³

In fact, during the course of the 19 years of Jordanian rule over the West Bank, the British Defence Regulations were never used by the Jordanian Government. This fact has been confirmed by a number of sources, including interviews with Palestinian lawyers who practiced in the West Bank during the period of Jordanian rule, and with officials of the Jordanian Ministries of Justice and Foreign Affairs.⁴⁴ As is pointed out in the above-quoted letter from the Jordanian Legal Commander:

the Defence Regulations and orders which were issued during Jordanian rule were issued by virtue of the Jordanian Defence Law of 1935, not by virtue of the Defence (Emergency) Regulations of 1945.⁴⁵

V. USE OF THE DEFENCE REGULATIONS
IN ISRAEL: 1948 TO THE PRESENT

While the main focus of this paper is Israel's on-going use of the British Defence Regulations in the Occupied Territories, it is interesting to note that Israel also considers the British Defence Regulations to still be in effect in Israel itself.

Shortly after the British withdrawal from Palestine, the Israel Provisional Council of State passed an ordinance which provided:

The Law which existed in Palestine on the [14th of May 1948] shall remain in force, insofar as there is nothing therein repugnant to this Ordinance or to other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities.⁴⁶

It is on the basis of this ordinance that the British Defence Regulations are thought to have become a part of Israeli domestic law.⁴⁷

Since the British revoked the Defence Regulations effective midnight May 13, 1948 (see discussion in Section II, *supra*), they were not in existence on May 14, 1948 and therefore could not be incorporated into Israeli law by this ordinance. However, while the use of the British Defence Regulations in the Occupied Territories has been challenged on the ground that these Regulations were revoked by the British, this has apparently never been the basis for a challenge to the use of the Defence Regulations in Israel.⁴⁸

The new Israeli government first used the British Defence Regulations to arrest and administratively detain members of Jewish extremist groups.⁴⁹ In 1951, the Defence Regulations were used to arrest and administratively detain Orthodox Jews who protested against the conscription of women into the Army.⁵⁰ In addition, there have been other isolated incidents of the use of these

regulations against Jews in Israel. Their principal use has, however, been against Palestinian citizens of Israel.

Soon after the establishment of the State of Israel, the Israeli authorities created a military government to rule those areas of Israel most densely populated with Palestinians.⁵¹ The Military Governor's authority was based on the British Defence Regulations.⁵² Under the authority of Article 125 of the Regulations,⁵³ the entire area under military government was divided into numerous districts which were proclaimed to be "closed areas". Palestinians living in one closed area were not allowed to travel into another closed area without obtaining a special permit. There were reportedly over fifty such closed areas in the Galilee alone.⁵⁴

The Israeli Government reportedly also used Article 125 as one method of appropriating Palestinian lands. Palestinians who lived in one closed area and owned land in another closed area were prohibited from entering the second closed area to cultivate their land. After several years without cultivation, the land was confiscated by the Israeli Government under the Cultivation of Waste Lands Ordinance.⁵⁵

Other provisions of the British Defence Regulations used by the military government during this time included Article 109 (empowering the military governor to order anyone to remain at his residence and report his movements to the authorities), Article 110 (allowing the military governor to require any person to "reside within the limits of any area" designated by the military governor and remain at his residence from one hour after sunset until sunrise), Article 111 (allowing the administrative detention of any person for a period not exceeding one year (subject to renewal) without charge or trial), and Article 124 (allowing the military governor to place a total or partial curfew on any village or region).⁵⁶

With the exception of administrative detention under Article 111, none of the

above-listed sanctions were subject to any sort of judicial or administrative hearing or any type of appeal process. Moreover, restrictions imposed on entire Arab villages or areas were reportedly not enforced against Jews living in those same areas.⁵⁷

In 1966, the system of military government was dismantled.⁵⁸ However, the British Defence Regulations were left in place and continue to be used today against the Palestinian population living in Israel.⁵⁹

Several unsuccessful attempts have been made over the years to repeal all or part of the British Defence Regulations in Israel. In July 1949, a bill was introduced into the Knesset by the government itself to repeal the Defence Regulations. It did not pass, however.⁶⁰

As the government legal advisor in 1950, Haim Cohn, later Justice of the Israel Supreme Court, suggested to the Knesset that the British Defence Regulations be abolished. According to Cohn, the Law Committee of the Knesset concluded that if there were to be such Regulations in effect in Israel, it was better that they be British.⁶¹

Repeal was again proposed in 1951. During the course of the debate, the Knesset passed a resolution declaring:

the Defence (Emergency) Regulations, 1945, which have been effective since the time of the British Mandate, are incompatible with the principles of a democratic state...⁶²

The Knesset delegated to its Constitution and Law Committee the responsibility of drafting a bill to repeal the Defence Regulations. However, the bill did not pass.⁶³

In 1954, Meir Vilner of the Israeli Communist Party proposed that Article 125 of the Defence Regulations be abolished. He stated:

[T]he Military Governors have lately

made a habit of declaring whole villages and stretches of land 'closed areas' ... in order to prevent Arab peasants from working their land.

Vilner's proposal was crossed off the agenda.⁶⁴

According to Israeli legal scholar Baruch Bracha, there are two main reasons that these efforts to repeal the British Defence Regulations in Israel have failed. The first is that:

the special security situation in Israel had necessitated the giving of special powers which curb the personal freedom of persons who may endanger the State, although such persons might possibly not be convicted in the Courts on the basis of the regular laws of evidence.

The second is that:

it was convenient for the Government to attribute the blame for these Regulations adversely affecting individual liberties on the doorstep of Mandatory legislation and thus declare itself innocent.⁶⁵

VI. THE DEFENCE REGULATIONS UNDER INTERNATIONAL LAW

(A) Application of International Humanitarian Law to the Occupied Territories

For centuries it was assumed that a military occupant was the absolute owner of the occupied territory and could do whatever it wished with the inhabitants. It is only relatively recently, beginning in the late nineteenth century, that it has come to be generally recognized that civilians under military occupation should be protected under international law.⁶⁶

The two principal international conventions which set forth humanitarian law applicable to military occupations are the Convention (IV) Respecting the Laws and Customs of War on Land and appended Regulations ("1907 Hague Regulations"), particularly Articles 42 to 56, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 ("Fourth Geneva Convention").⁶⁷ Neither of these conventions sets forth lofty idealistic standards, impossible of application in the real world. Rather, both conventions balance humanitarian concerns with the military needs of the occupant.⁶⁸

The 1907 Hague Regulations have achieved the status of customary international law; they set forth norms of conduct applicable to all nations whether or not they have become parties to the convention.⁶⁹ It is not yet clear whether the Fourth Geneva Convention, in its entirety, reflects customary international law,⁷⁰ although many provisions of it certainly do. However, nearly all states are today parties to the Fourth Geneva Convention, including Israel, Jordan, and Egypt.⁷¹

Although as a party to the Fourth Geneva Convention Israel is bound to comply with its terms, Israel has not recognized the applicability of the Fourth Geneva Convention to its occupation of the West Bank and Gaza Strip.⁷² This position is based at least in

part upon Israel's contention that the Fourth Geneva Convention applies only where a legitimate sovereign power was ousted from the occupied territory.⁷³ Israel has never recognized that the West Bank was lawfully under the sovereignty of Jordan or that the Gaza Strip was lawfully under the sovereignty of Egypt prior to its occupation of these territories.⁷⁴

In support of its position, Israel argues that the rules of belligerent occupation were created to protect the reversionary rights of the legitimate sovereign to the occupied territory.⁷⁵ Where no legitimate sovereign was ousted, the argument goes, the reasons for application of the Fourth Geneva Convention do not come into play, and, therefore, the Fourth Geneva Convention does not govern the occupation.⁷⁶

It is correct that the rules of belligerent occupation were intended to protect the reversionary rights of the legitimate sovereign. However, these rules were also intended to protect the civilian population within the occupied territory.⁷⁷ In fact, it has been convincingly maintained that protection of the civilian population is the primary purpose behind the Fourth Geneva Convention.⁷⁸ In any event, to conclude that because there is no legitimate sovereign (assuming arguendo that this is true) the civilian population is entitled to no protection under international law, is unsupportable. As noted by Jean Pictet of the International Committee of the Red Cross ("ICRC"): "[Humanitarian law] must be invoked to ensure at least a minimum of safeguards and of humanity to all men, in times of peace and in times of war alike".⁷⁹

The reluctance of Israel to admit the applicability of the Fourth Geneva Convention to the Occupied Territories apparently stems, at least in part, from its concern that such an admission would be interpreted as a recognition of the sovereignty of Jordan over the West Bank, and of Egypt over the Gaza Strip.⁸⁰ The ICRC, which was responsible in large part for the drafting of the Fourth Geneva Convention, and which is charged with

assisting the parties to the Convention in carrying out their obligations under the Convention, takes the position that the Fourth Geneva Convention applies where "territory under the authority of one of the parties passes under the authority of an opposing party", without regard to the question of sovereignty.⁸¹

And, indeed, Article 3 of the Fourth Geneva Convention provides: "The application of humanitarian law shall not affect the legal status of the parties to the conflict", thus indicating that Israel's recognition of the applicability of the Fourth Geneva Convention would not, under the terms of the Convention, constitute an admission of sovereignty. In addition, Article 2 of the Convention provides that the provisions of the Convention shall apply "to all cases of partial or total occupation of the territory of a High Contracting Party..." Article 47 further states:

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

"Protected persons" are defined in Article 4 as

those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a party to the conflict or Occupying Power of which they are not nationals.

It seems then, that the clear intention was to have the widest possible application of the Convention, without regard for political considerations.

The International Committee of the Red Cross has from the outset maintained that the Fourth Geneva Convention does apply to Israel's occupation of the West Bank and Gaza Strip.⁸² The United Nations Security Council, as well as most governments including that of the United States, have also asserted unequivocally the application of the Fourth Geneva Convention to Israel's occupation of the West Bank and the Gaza Strip.⁸³

While continuing to maintain that Israel is not de jure bound to apply the provisions of the Fourth Geneva Convention to the Occupied Territories, Israel nevertheless has declared that it voluntarily complies with the humanitarian provisions of the Fourth Geneva Convention.⁸⁴ The former Attorney-General of Israel, Meir Shamgar (currently President of the Israel Supreme Court) has stated:

By General Staff Orders of the Israeli Army, every soldier is bound to act according to the Fourth Geneva Convention which has been published as part of these Orders. Every soldier is obliged to respect the person, honor, family rights, religious convictions and practices, and manners and customs of the inhabitants of the Territories, and any action against these rules of behavior is punishable by virtue of the Israeli Military Justice Law.⁸⁵

Israel also allows the ICRC access to detained prisoners within 14 days of arrest.⁸⁶

The Israel Supreme Court has not ruled on the applicability of the Fourth Geneva Convention to the Occupied Territories. It has held that the Convention is non-justiciable since, as conventional rather than customary international law, it does not form a part of the municipal law of Israel, and could only become a part of this law if legislation to this effect were adopted by the Knesset.⁸⁷ The

Supreme Court has held, however, that the Hague Regulations, as customary international law, are binding on the military government in the Occupied Territories.⁸⁸

As Israeli legal scholar Theodore Meron has aptly noted in this regard:

If Israel is considered an occupying power for the purposes of the Hague Regulations, surely it must be an occupying power for the purposes of the Fourth Geneva Convention as well.⁸⁹

Both treaties concern the application of humanitarian law to military occupation. Moreover, Israel's concern that recognition of the applicability of the Fourth Geneva Convention will be viewed as an admission of the legitimacy of Jordan's and Egypt's sovereignty over the Occupied Territories should apply equally to the Hague Regulations, since Article 43 of the Hague Regulations states as its premise: "The authority of the legitimate power having in fact passed into the hands of the occupant"⁹⁰ Finally, Israel's refusal to recognize the applicability of any portion of the Fourth Geneva Convention to the Occupied Territories while at the same time admitting the applicability of the Hague Regulations is illogical since certain provisions of the Fourth Geneva Convention merely restate provisions of the Hague Regulations.⁹¹

The Government of Israel has allowed various measures taken by the military government in the Occupied Territories to be tested in the Israel Supreme Court sitting as the High Court of Justice under the standards set forth in the Fourth Geneva Convention as well as under the Hague Regulations.⁹² For this reason, and since the international community does consider the Fourth Geneva Convention to be binding on Israel, this paper will next consider Israel's conduct in making extensive use of the British Defence Regulations in the Occupied Territories under the standards set forth in both the 1907 Hague Regulations and the Fourth Geneva Convention.

(B) Application of International Humanitarian Law To Israel's Use of Deportation and House Demolition Under the Authority of the British Defence Regulations

This section will examine two of the extrajudicial sanctions which the Israeli Government has imposed in the West Bank and Gaza Strip under the authority of the British Defence Regulations (deportation and house demolition), and will consider the application of international humanitarian law to these sanctions.

1. Deportation

a. Israeli Practice

Articles 108 and 112 of the British Defence Regulations empower the Military Commander "to issue an order ... for the deportation of any person in Palestine" if the Military Commander "is of the 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".⁹³ Since deportation is an administrative and not a judicial sanction, deportees are not formally charged with any crime nor afforded a trial prior to being expelled.

Under guidelines issued by the Israeli Government in 1977, prospective deportees have 48 hours to appeal the deportation order to a Military Advisory Committee and an additional 48 hours to appeal the Advisory Committee's decision to the Israel Supreme Court.⁹⁴ However, these rights of appeal are of limited value since deportation orders are typically made on the basis of secret evidence to which neither the prospective deportee nor his lawyer has access.⁹⁵

In view of the very broad discretionary authority given to the Military Commander by the Defence Regulations to issue deportation orders, Supreme Court review of the Military

Commander's use of this discretion is necessarily limited. As the Supreme Court, sitting as the High Court of Justice, explained in Alyubi v. Minister of Defence:

The jurisdiction of this Court, in scrutinizing the competent authority's exercise of its power emanating from the Defence (Emergency) Regulations, 1945, is very limited. When the given Regulation empowers the competent authority to act against an individual in any case in which it 'thinks' or 'it seems to it' that there are conditions that require this, then that same Authority is the final Arbiter in determining the existence of these conditions. In such situations this Court's function is limited to examining whether the authority exceeded its power under the law by virtue of which it was empowered to act, if the said authority paid attention to the factors stated in the same law, and whether the authority acted in good faith. Since it is restricted to this limited jurisdiction, this Court is not to scrutinize the reasons encouraging the competent authority to issue the given Order.⁹⁶

It is thus not surprising that the Supreme Court has never overturned a deportation order.

According to a report compiled for the American Friends Service Committee, Israel deported 1,156 Palestinians between 1967 and 1978.⁹⁷ There were few deportations between 1978 and 1984. In August 1985, Israel announced it would again begin using deportation and other administrative punishment measures.⁹⁸ In 1985, Israel deported 35 Palestinians; in 1986, 10; and in 1987, 8. Since the start of the intifada, Israel has ordered the deportation of 60 Palestinians.⁹⁹

In 1971, Meir Shamgar (then Attorney

General of Israel and currently President of the Supreme Court) described the Palestinians deported by Israel as "[s]aboteurs, members of terrorist organizations, and persons actively engaged on behalf of the Arab Governments in actions against security and public order". He went on to state:

Most of the persons deported had been in administrative detention until their deportation; they were in detention for a long time prior to their deportation, and it would have been impossible to release them because of imperative reasons of security.¹⁰⁰

More recently, Attorney-General Itzhak Zamir described Israel's criteria for deportation as follows:

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.¹⁰¹

b. International Law

Article 49 of the Fourth Geneva Convention states with respect to deportations that:

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 motive.

The Commentary of the International Committee of the Red Cross ("ICRC Commentary") notes that this prohibition against deportation

is absolute and allows of no exceptions, apart from those stipulated in paragraph 2 [regarding

the evacuation of given areas for security or military reasons].¹⁰²

Article 76 of the Geneva Convention further provides that:

protected persons accused of offences shall be detained in the occupied country and, if convicted, they shall serve their sentences therein.

The ICRC Commentary emphasizes:

...as we are dealing with occupied territory, the protected persons concerned will benefit by the provisions of Article 49 and cannot be deported; they can therefore only be interned, or placed in assigned residence, within the frontiers of the occupied country itself.¹⁰³

Israel justifies its deportations of Palestinians under international law on two grounds. First, it argues that deportations of the nature carried out by Israel do not, in fact, violate the Fourth Geneva Convention. Second, Israel argues that both the Fourth Geneva Convention and the Hague Regulations allow and even require an occupying country to continue to apply the local law of the occupied territory. Israel maintains that the Defence Regulations under the authority of which deportation and house demolition are carried out, continue to remain a part of the local law of the Occupied Territories.

The first of these arguments will be considered here; the second will be taken up below after the discussion of house demolitions in the next section, since the analysis applies to both measures.

In an article published in 1971, Meir Shamgar set forth two reasons why the deportations carried out by Israel do not violate the Fourth Geneva Convention. These two reasons were subsequently adopted and developed by the Israel Supreme Court in decisions upholding Israel's use of deportation under the Fourth Geneva Convention.

The first reason, according to Shamgar, is that

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 the 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.¹⁰⁴

The Palestinians here being referred to, however, are not Palestinians who have entered the Occupied Territories illegally. Where "enemy agents" or "terrorist infiltrators" have, in fact, crossed the border of the Occupied Territories illegally, they may be deported under the authority of Military Orders Nos. 329 (West Bank) and 290 (Gaza Strip), which allow the deportation of individuals who have entered the Occupied Territories illegally. Rather, the Palestinians here referred to are legitimate residents of the West Bank and the Gaza Strip. Israel's characterization of the deportations of these individuals as "a kind of return or exchange of a prisoner to the power which sent him and gave him its blessing and orders to act" ignores the realities of the Palestinian conflict, particularly since the start of the Palestinian uprising in December 1987. In view of the spontaneous character of the early phases of the uprising, the Palestinians' insistence on their right of self-determination, their rejection of Jordanian representation, Jordan's announcement that it will not represent the Palestinians at any upcoming peace conference and the break between the PLO and Jordan, it cannot be maintained that Palestinians who resist Israeli occupation are agents of Jordan. This argument also ignores the many recent deportations to Lebanon. Most important, this argument ignores the unequivocal language of the Fourth Geneva Convention which prohibits deportations "regardless of motive" and allows no exceptions.

The second reason set forth by Meir Shamgar is that: "[Article 49] was included in the Convention against the background of the specific and terrible experiences of World War II". Shamgar cites the ICRC Commentary, which includes this paragraph:

There is doubtless no need to give an account here of the painful recollections called forth by the "deportations" of the Second World War, for they are still present in everyone's memory. It will suffice to mention that millions of human beings were torn from their homes, separated from their families and deported from their country, usually under inhumane conditions....¹⁰⁵

Shamgar concludes:

I venture to say 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.¹⁰⁶

In the Abu Awad case, mentioned above, the Supreme Court of Israel, sitting as the High Court of Justice, upheld a deportation order against a challenge under Article 49 of the Fourth Geneva Convention. The Court stated that Article 49:

is designed to protect civilians from arbitrary action of the occupying army, and its purpose is to prevent actions such as the horrors perpetrated by the Germans in the Second World War, in the course of which millions of civilians were deported from their homes for various reasons ... This matter has nothing in common with the deportations executed in the Second World War for the purpose of forced labor, torture and extermination.¹⁰⁷

In Kawasma v. Minister of Defense, the Court quoted Professor Stone approvingly:

It seems reasonable to limit the sweeping literal words of Article 49 to situations at least remotely similar to those contemplated by the draftsman, namely the Nazi World War II practices of large-scale transfers of populations ...¹⁰⁸

As noted above, however, the language of the Fourth Geneva Convention could not be clearer or more absolute when it states that deportations "are prohibited, regardless of motive". The ICRC Commentary likewise leaves no room for doubt on this point. In light of the unequivocal language of the Convention, the Supreme Court's reading of Article 49 can only be viewed as an attempt to rewrite the Convention. As Justice Bach pointed out in a dissenting opinion in Nasser, Aziz, Affo v. The Commander of Forces in the West Bank:

The Court should not depart from the clear and unambiguous meaning of the words where they do not contradict the purpose of the draftsman, and the literal meaning does not lead to unreasonable or absurd results.¹⁰⁹

The United Nations, the International Committee of the Red Cross, the United States and others in the international community have consistently denounced Israel's deportations as clear violations of international law.¹¹⁰

2. House Demolition

a. Israeli Practice

Article 119 of the British Defence Regulations empowers the Military Commander to order the demolition of:

(1) any house, structure or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb or incendiary article illegally thrown; or

(2) any house, structure or land

situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants or some inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of any offence against these Regulations involving violence or intimidation or any Military Court offence;

It is important to note that under the second criterion, a house may be demolished if the Military Commander is satisfied that residents of the village in which the house is located (not necessarily inhabitants of that particular house) have committed an offence against the Regulations.

House demolition, like deportation, is an administrative punishment. There are thus no judicial proceedings prior to issuance of a demolition order. Typically, houses of security suspects are demolished after their arrest but before they have been charged or tried.¹¹¹

Unlike deportation, there is no formalized appeal procedure available to the residents of a house targeted for demolition. A petition challenging a house demolition order may be brought before the Israel Supreme Court sitting as the High Court of Justice.¹¹² However, in most cases there is no realistic possibility of appeal to the Court since residents are generally given no more than one half to two hours notice before the demolition takes place.¹¹³ Recently, in response to a petition by the Association for Civil Rights in Israel, the Supreme Court ordered the Israel Defence Forces (IDF) to give residents of the West Bank Palestinian village of Beita 48 hours notice before demolishing additional houses. This was reportedly the first time that the Army committed to providing Palestinian families with a specific period of time to allow an appeal to the Supreme Court. The Court's order was, however, limited to residents of Beita and did not extend to the IDF's demolition of houses elsewhere in the Occupied Territories.¹¹⁴

Of those cases in which house demolition orders have been challenged in the Supreme Court and have reached a final decision, not one has been overturned by the Court.¹¹⁵ This is not surprising in view of the standards by which the Supreme Court is governed in reviewing orders of this kind. (See the discussion in connection with the appeal of deportation orders, supra).

According to the West Bank Data Base Project, between 1967 and 1978 Israel demolished or sealed 1,224 homes in the West Bank.¹¹⁶ Official Israeli government figures reflect that during the first 15 years of the occupation, 1,265 houses were demolished.¹¹⁷ In the late 1970's and early 1980's, the Israeli government used this practice less frequently. In 1979, 9 homes were demolished and 9 sealed; in 1980, 19 were demolished and 11 sealed; in 1981, 17 were demolished and 17 sealed; in 1982, 32 were destroyed or sealed.¹¹⁸ According to the records of al-Haq, which are admittedly incomplete, in 1983, six homes were demolished and in 1984 four houses were demolished.

In 1985, the Israeli Government announced that it would revive the use of administrative punishments in the West Bank¹¹⁹ and from May to December 1985, 55 homes were demolished or sealed; in 1986, 48 were demolished or sealed; in 1987, 36 homes were demolished or sealed. From the beginning of the intifada until May 31, 1989, over 285 homes were totally demolished or sealed, and over 71 houses were partially demolished or sealed. These figures do not include houses which were demolished because their owners lacked the required building permit.¹²⁰

In the past, Palestinians whose homes were demolished were suspected (not formally charged or tried) of having committed a political offence involving the use of weapons or explosives.¹²¹ However, in January 1989, Israel Defence Minister Yitzhak Rabin announced that the homes of suspected stonethrowers would be demolished.¹²²

b. International Law

Article 23(g) of the Hague Regulations provides:

[I]t is especially forbidden - ...
(g) To destroy or seize the enemies' property, unless such destruction or seizure be imperatively demanded by the necessities of war;...¹²³

Article 53 of the Fourth Geneva Convention specifically applies this general provision to military occupation:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons ... is prohibited except where such destruction is rendered absolutely necessary by military operations.¹²⁴

The ICRC Commentary states with respect to this section that "it will be for the Occupying Power to judge the importance of such military requirements".¹²⁵

Meir Shamgar maintains that the demolition of houses is "rendered absolutely necessary by military operations" in two situations: (1) where the house is being used as a physical base for military action, as where a hand grenade is thrown from the house; and (2) to create effective military reaction: "The measure... is of utmost deterrent importance..."¹²⁶ The International Committee of the Red Cross has taken the position that demolition of property as a punishment or deterrent is not allowed by Article 53 of the Fourth Geneva Convention. The ICRC has interpreted the term "military operations" in this article to mean "the movements, manoeuvres and other action taken by the armed forces with a view to fighting." (Emphasis in original.) The interpretation continues:

Destruction of property as mentioned in Article 53 cannot be justified under the terms of that article unless such destruction is absolutely necessary - i.e.

materially indispensable - for the armed forces to engage in action, such as making way for them. This exception to the prohibition cannot justify destruction as a punishment or deterrent since to preclude this type of destruction is an essential aim of the article.¹²⁷

Demolition of homes creates an additional problem under international law. House demolitions inevitably affect not only individuals suspected of illegal activity, but their families, relatives, landlords and/or neighbors. Rarely do suspects in the West Bank and Gaza live alone; and it is common for extended families to live together. Demolition of the house of a suspect who does not live alone inflicts a cruel punishment on the other residents of his house, who are not suspected of wrongdoing.

Article 33 of the Fourth Geneva Convention specifically forbids collective punishments. It provides:

No protected person may be punished for an offence he or she has not committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited....Reprisals against protected persons and their property are prohibited.

The ICRC Commentary defines the term "collective penalties" as:

penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts these persons have not committed.

The ICRC Commentary explains:

During past conflicts, the infliction of collective penalties has been intended to forestall breaches of the law rather than to repress them; in resorting to intimidatory measures to terrorise

the population, the belligerents hoped to prevent hostile acts. Far from achieving the desired effect, however, such practices, by reason of their excessive severity and cruelty kept alive and strengthened the spirit of resistance. They strike at guilty and innocent alike. They are opposed to all principles based on humanity and justice and it is for that reason that the prohibition of collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons, whatever they may be.

Meir Shamgar has stated that:

Demolitions have been applied as personal punitive measures against a person in whose house acts of terrorism against the Army or the civilian population have been prepared or committed, or arms caches found.¹²⁸

Colonel Dov Shefi, formerly Senior Staff Officer, Military Advocate General of the Israeli Defence Forces has stated that: "Demolition is never carried out as a collective punishment, but only and solely as a punishment of the individual involved".¹²⁹ However, these assertions ignore the realities of this particular form of punishment.

3. Local Law

In addition to asserting that the individual measures it carries out under the authority of the British Defence Regulations do not violate the Fourth Geneva Convention, Israel also points to provisions of the Fourth Geneva Convention and the Hague Regulations requiring the occupying power to continue to apply the law which was in existence in the occupied territory before the occupation began. Claiming that the Defence Regulations formed a part of the local law prior to the occupation, Israel contends that under

international law it is entitled and perhaps even required to continue to apply them.¹³⁰

Of course, the British Defence Regulations do not continue to form a part of the local law of the Occupied Territories since they were effectively revoked by the British. However, assuming arguendo that they were still in force, this section will consider whether or not international law entitles or requires Israel to continue to apply them.

Article 43 of the 1907 Hague Regulations requires the Occupying Power to respect the laws of the occupied territory "unless absolutely prevented".¹³¹

Oppenheim comments with respect to this article:

[I]n exceptional cases in which the law of the occupied State is such as to flout and shock elementary conceptions of justice and the rule of law, the occupying State must be deemed entitled to disregard it.¹³²

Oppenheim further notes that during the military occupation of Germany by the Allied Powers following World War II, Nazi laws were suspended. He comments:

It may be said without unduly straining the interpretation of Article 43, that the Western Powers were "absolutely prevented" from administering laws and principles the application of which within occupied territory was utterly opposed to modern conceptions of the rule of law.¹³³

Following Oppenheim, the British Defence Regulations can certainly be said to be opposed to "modern conceptions of the rule of law". This is particularly so since portions of the British Defence Regulations clearly violate provisions of the Fourth Geneva Convention. Article 43 of the Hague Regulations cannot be read to require the occupying power to continue to apply local law

which violates the Fourth Geneva Convention.

Moreover, Article 64 of the Fourth Geneva Convention provides:

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 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 fulfill its obligations under the present Convention, ...¹³⁴

This provision has been interpreted to apply to civil as well as penal legislation.¹³⁵ Continuing to apply provisions of the British Defence Regulations which are prohibited by the Fourth Geneva Convention would certainly be "an obstacle to the application of the present Convention" and would prevent Israel from "fulfill[ing] its obligations under the present Convention". The ICRC Commentary notes concerning Article 64:

the occupation authorities have the right to suspend or abrogate any penal provisions contrary to the Convention...¹³⁶

Alan Gerson notes with respect to this commentary that "the occupant's right, [is] now expressly recognized to abrogate any legislation incompatible with humanitarian requirements".¹³⁷

Thus, it cannot be said that the Fourth Geneva Convention or the Hague Regulations either entitle or require Israel to continue to apply the British Defence Regulations.

VII. INTERNATIONAL HUMAN RIGHTS
LAW AND THE BRITISH DEFENCE REGULATIONS

An examination of Israel's use of the British Defence Regulations would not be complete without reference to international human rights law and the ongoing state of emergency in both the Israel and the Occupied Territories. This subject will not be treated in any depth here. Rather, an attempt will be made to alert the reader to the fact that Israel's ongoing use of the British Defence Regulations raises serious questions about violations of basic human rights and fundamental freedoms recognized under international law.

The body of law concerning international human rights is distinct from the body of humanitarian law applicable to military occupations, which has been discussed above. A.H. Robertson explains:

Human rights law relates to the basic rights of all human beings everywhere, at all times; humanitarian law relates to the rights of particular categories of human beings - principally, the sick, the wounded, prisoners of war - in particular circumstances, *i.e.*, during periods of armed conflict.¹³⁸

Human rights law and humanitarian law overlap at some points.¹³⁹ Nevertheless, the law of international human rights, taken by itself, continues to apply, although in modified form, even in times of military occupation or armed conflict.¹⁴⁰ Thus a military occupant must concern itself with both humanitarian law and international human rights law.

Numerous provisions of the British Defence Regulations infringe upon the human rights and fundamental freedoms recognized under international law. Thus, for example, the provisions of the Defence Regulations allowing administrative punishment, such as deportation and house demolition without formal charge or trial, appear to violate

Articles 9, 10, and 17 of the Universal Declaration of Human Rights ("UDHR"), and similar provisions of other major human rights treaties. Article 9 of the UDHR provides:

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 provides:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 17 provides:

No one shall be arbitrarily deprived of his property.¹⁴¹

The broad censorship authority granted by the Defence Regulations violates Article 19 of the UDHR, which provides:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹⁴²

The observance of the full panoply of human rights is conditioned upon the existence of a peaceful state of society.¹⁴³ Nevertheless, even in times of public emergency a state is not free to completely abrogate all human rights. Rather, such abrogation must be necessary and proportional to the danger presented. Thus the International Covenant of Civil and Political Rights ("ICCPR") provides:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures

derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.¹⁴⁴

Three cases before the European Court of Human Rights challenging a nation's declaration of a state of emergency are informative on what constitutes a public emergency sufficient to justify some derogation from human rights. In the Cyprus case¹⁴⁵ the European Commission established that while a Government is entitled to "some margin of appreciation" in determining whether or not a state of emergency exists, nevertheless, the Commission has "the competence and the duty" to review the Government's decision and make an objective determination of whether or not such an emergency exists.

In the Lawless case, in which a state of emergency declared in Northern Ireland was challenged by an individual, the European Commission defined a public emergency as "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed."¹⁴⁶

In the Greek case,¹⁴⁷ Denmark, Norway, Sweden and the Netherlands challenged the declaration of a state of emergency by the Greek government, and suspension of various human rights, including the detention of large numbers of people without trial and censorship of the press.¹⁴⁸ The Commission held that a "public emergency" must:

- (1) be actual or imminent;
- (2) its effects must involve the whole nation;

(3) the continuance of the organized life of the community must be threatened; and

(4) the crisis must be exceptional, in that the normal measures or restrictions ... are plainly inadequate.¹⁴⁹

The Commission found that the burden was on the Government, allowing for a "margin of appreciation", to justify the state of emergency.

Even if a public emergency is found to exist, a state is not free to simply suspend the observance of human rights until the danger passes; rather, each derogation measure which is taken must be "strictly required by the exigencies of the situation," a limitation which appears in each of the general human rights treaties. This limitation means that any derogation measures must be: (1) proportional to the particular danger; (2) temporary; and (3) necessary, in the sense that no less restrictive alternative exists.¹⁵⁰ In addition, each of the treaties provides that derogation measures must be consistent with a nation's other obligations under international law, and both the American Convention on Human Rights and the ICCPR provide that derogation measures must not involve discrimination.¹⁵¹

In short, derogation is the exception rather than the rule; derogation is justifiable only in the most extreme and unusual circumstances of public emergency; and even where such extreme and unusual circumstances exist, wholesale derogation is not permissible. Instead, derogation is justifiable only as a last resort, and only to the degree and for the period of time which is absolutely necessary in order to return the country to a more stable condition.

Emergency legislation, in the form of the British Defence (Emergency) Regulations, 1945, as well as other emergency laws, has been in effect in Israel since 1948 and in the Occupied Territories since 1967. A. Rubinstein has noted:

[A] state of permanent emergency has become a feature of the Israeli situation and mentality. ... We have not followed the usual pattern of moving away from peacetime legislation to a short emergency-power period, and back again to peacetime law. We have had to live with both emergency and emergency laws ever since our creation.¹⁵²

Whether or not the on-going state of emergency in Israel for the past 41 years and the Occupied Territories for the past 22 years has been fully justified is beyond the scope of this paper. Nevertheless, even if such a state of emergency were justified, every measure taken in derogation of the human rights of the Palestinians must be "strictly required by the exigencies of the situation". It seems doubtful that many of the measures taken by the Israelis under the authority of the British Defence Regulations could withstand scrutiny under this standard.

CONCLUSION

The British Defence Regulations, 1945, were enacted by the British during the Mandate in response to civil-war-like conditions in Palestine. In spite of the British military's extensive use of such administrative sanctions as deportations, house demolitions, and wide-ranging searches, the success of the British military forces in restoring order was very limited. Instead, use of these measures embittered the population and increased opposition to the Mandatory regime.

The British Government revoked the Defence Regulations prior to leaving Palestine in 1948. The effectiveness of this revocation was recently confirmed by the British Minister of State.

During its administration of the West Bank from 1948 to 1967, the Jordanian government never used the British Defence Regulations. A proclamation enacted by the Jordanian military commander in 1948 made Jordan's own Defence Law and Regulations applicable to the West Bank and simultaneously revoked the British Defence Regulations (which the Jordanians apparently did not realize had already been revoked by the British).

In spite of this rather clear history, the Israeli government today relies on the British Defence Regulations to justify the imposition of a number of administrative sanctions on residents of the West Bank, including deportation and house demolition.

Since the enactment of the Defence Regulations by the British in 1945, the Fourth Geneva Convention of 1949 was drafted. This Convention has been ratified by most nations in the world including Israel. The Fourth Geneva Convention sets forth standards of international law applicable to military occupations. Provisions of the Defence Regulations appear to clearly violate the standards set forth in the Fourth Geneva Convention as well as other applicable international law standards.

When the British Defence Regulations were enacted in 1945, Jews in Palestine strongly denounced them. The Jewish Bar Association, for example, passed the following resolutions:

(1) The powers granted the authorities under the Defence (emergency) regulations deprive the Palestinian citizen of the fundamental rights of man. (2) These regulations undermine law and justice, and constitute a grave danger to the life and liberty of the individual, establishing a rule of arbitrariness without any judicial control. [The conference] demands the repeal of these laws
...¹⁵³

In 1948, in Herzel Cook and Ziborah Wienerski v. the Minister of Defence et al., the Tel Aviv District Court sitting as the High Court of Justice heard the first appeal concerning the use of the British Defence Regulations in Israel. The appeal concerned the administrative arrest of members of a Jewish paramilitary organization. Justice Shalom Kassin, expressing a minority view, stated:

Everyone knows that the Jewish settlement in Palestine, and the Jewish people in exile, have protested violently against the defence regulations and have submitted petitions against them in the strongest possible language on every possible occasion... These laws and their aims are well known... Believing as I do that these laws are essentially invalid, I should not be asked to act against my conscience merely because the present government has not yet officially repealed them, though its members declared them illegal as soon as they were passed... If the court of the British Mandate did not cross these laws off the statute book, this court is honor bound to do so and to utterly eradicate them.¹⁵⁴

The time is long overdue for the Israeli government to recognize that the British Defence Regulations no longer constitute valid law and to bring its occupation of the West Bank and Gaza Strip into compliance with international law.

ENDNOTES

1. These figures, which come from the files of al-Haq, are as of May 31, 1989. According to al-Haq, during this same period over 71 houses were partially demolished or sealed, and many houses were structurally damaged because they were near houses which were demolished.

2. For example, restrictions on the press, forced closure of shops, closure of professional organizations, outlawing of popular committees, and the imposition of curfews, are all based upon these Defence Regulations.

3. This paper will not examine the status of the British Defence Regulations in the Gaza Strip since repeated attempts to contact the Egyptian Government concerning their administration of the Gaza Strip from 1948 to 1967 have not been successful. However, the examination of the history of the Defence Regulations during the British Mandate, the British revocation of the Regulations prior to the end of the Mandate, the Israeli Government's use of the Defence Regulations in the Occupied Territories after 1967, as well as the application of international law to the use of these Regulations applies equally to the Gaza Strip.

4. Palestine Gazette No. 675, Supp. No. 2 (March 24, 1937), p. 267.

5. From the outset of British rule in Palestine, tensions between the Arab and Jewish populations were high as Jews immigrated to and settled in Palestine. There were major Palestinian insurrections and/or disturbances in 1920, 1921, 1929, 1933, and from 1936 to 1939, the last of which is known as the Arab Rebellion. A.M. Lesch, Arab Politics in Palestine, 1917-1939: The Frustration of a Nationalist Movement (Ithaca: Cornell University Press, 1979), p. 199; H. Cattani, Palestine and International Law: The Legal Aspects of the Arab-Israeli Conflict (London: Longman, 1973), p. 17, and footnote 32.

Beginning in 1942 and 1943, Jewish extremist groups embraced violence as the only way to end the British Mandate in Palestine and replace it with a Jewish state. H. Sachar, A History of Israel: From the Rise of Zionism to Our Time (New York: Alfred A. Knopf, 1979), pp. 246-247.

6. Palestine and Transjordan (London: Naval Intelligence Division Geographical Handbook Series, December 1943), p. 130.

7. Lesch, Arab Politics in Palestine, p. 223; Y. Porath, The Palestinian Arab National Movement, 1929-1939: From Riots to Rebellion (London: Frank Cass, 1977), p. 238. During the Arab Rebellion, the Palestinian guerillas forced the British Civil Authorities out of many town and country districts, destroying police stations and government offices in Hebron, Jericho, Beersheba, Bethlehem, and Ramallah. British White Paper of 1939 reprinted in W. Khalidi, From Haven to Conquest: Readings in Zionism and the Palestine Problem Until 1948 (Beirut: Institute for Palestine Studies, 1971), p. 461. By October 1938, the rebels had also gained control of the Old City of Jerusalem. A.W. Kayyali, Palestine, A Modern History (London: Croom Helm, 1978), p. 217.

8. Cited in Khalidi, From Haven to Conquest, pp. 846-849.

9. Ibid., pp. 596-598 (citing the official text of the Anglo-American Commission of Enquiry Report).

10. M. Cohen, Palestine and the Great Powers, 1945 to 1948 (Princeton: Princeton University Press, 1982), p. 230. By the end of 1946, one Jewish paramilitary organisation claimed it had killed 373 people in Palestine, including 300 civilians. See C. Sykes, Crossroads to Israel (Bloomington: Indiana University Press, 1973), p. 307.

11. Cited in Cohen, Palestine and the Great Powers, p. 250.

12. The Orders in Council were enacted by the King of England in Council and defined the

scope of the High Commissioner of Palestine's powers to enact regulations to deal with the unrest. The first such order, Palestine Order in Council, 1922, (effective September 1, 1922) vested authority in the British High Commissioner of Palestine to execute his authority according to the Orders in Council relating to Palestine. The Laws of Palestine, (Revised Edition) Vol. III (London: Waterlow, 1934), p. 2569. Palestine (Defence) Order in Council, 1931, gave the High Commissioner the authority "in case of any public emergency, touching the public safety and defence of His Majesty's Empire or of Palestine on being proclaimed by the High Commissioner" to enact "Regulations for securing the public safety and the defence of Palestine". The Order in Council specifically authorized the regulations to include censorship, arrest, detention, and deportation. The Laws of Palestine pp. 2619, 2620. Following an outbreak of violent Palestinian demonstrations against the British in October 1933, the British High Commissioner proclaimed the Palestine (Defence) Order in Council, 1931, to be in effect and enacted Emergency Regulations. Palestine Gazette No. 399 (October 30, 1933), p. 1598. In February 1934, when the disturbances had come to an end, the High Commissioner withdrew the 1931 Order in Council and Emergency Regulations. Palestine Gazette No. 423, Supp. No. 2 (February 22, 1934), p. 143. Following new episodes of violence in 1936 the High Commissioner again declared the 1931 Order in Council to be in effect and enacted the Emergency Regulations, 1936, which contained similar powers to impose curfews, censorship, deportation, arrest without warrant, and gave broad powers of entry and search. Palestine Gazette No. 584, Supp. No. 2 (April 19, 1936), p. 259. On September 30, 1936, the Palestine Martial Law (Defence) Order in Council, 1936, was proclaimed which amended the 1931 Order by giving the High Commissioner the authority to enact regulations providing for "infliction of fines upon bodies of persons or upon corporations and the forfeiture and destruction of property as punitive measures whether actual offenders can or cannot be identified". Palestine Gazette No. 634 (September 30, 1936), p. 1070.

On March 24, 1937, the British Government enacted the Palestine (Defence) Order in Council, 1937, which revoked the 1931 and 1936 Orders in Council but retained the Emergency Regulations, 1936. This Order in Council broadened the High Commissioner's authority to enact emergency regulations. Palestine Gazette No. 675, Supp. No. 2 (March 24, 1937), p. 267. The High Commissioner thereafter amended and added to the Defence Regulations, 1936, until the enactment of the 1945 Regulations.

13. Sachar, A History of Israel, pp. 212-213, 218-219, 225-226. See also Kayyali, Palestine, A Modern History, pp. 195-202 and Lesch, Arab Politics in Palestine, p. 218.

14. Cohen, Palestine and the Great Powers, p. 229.

15. Ibid., pp. 301-302.

16. Statutory Instruments, 1948, Vol. 1, Part 1, No. 1004, p. 1350. Full text in Appendix A.

17. Ibid., p. 1351.

18. Ibid., p. 1350.

19. Palestine Gazette No. 675, Supp. No. 2 (March 24, 1937), p. 267.

20. Halsbury's Statutes of England, Vol. 5 (53 & 54 Vict. c. 37) (London: Butterworth, 1929), p. 794. Section 3 of the Foreign Jurisdiction Act, 1890, further provides: "Every act and thing done in pursuance of any jurisdiction of [His Majesty] in a foreign country shall be valid as if it had been done according to the local law then in force in that country".

21. Statutory Instruments, p. 1350.

22. Halsbury's Statutes of England, Vol. 18 (52 & 53 Vict. c. 63), p. 992. This provision of the Interpretations Act applies to the Revocations Order since the Revocations Order is an Order in Council issued under a power conferred by an Act passed after the Interpretation Act, namely, the Foreign

Jurisdiction Act of 1890. Statutory Instruments, p. 1350.

23. See also A. Rosenthal, "The 1945 Defence Regulations: Valid Law in the West Bank?" (unpublished paper, 1986).

24. Addendum No. 20 of 1948, Jordanian Official Gazette No. 945 (May 16, 1948), p. 183.

25. Jordanian Official Gazette No. 473 (March 19, 1935), p. 158.

26. Jordanian Official Gazette No. 644 (August 29, 1939), p. 514.

27. Article 4 provides that without limiting the King's powers, the Defence Regulations may provide for censorship, arrest, detention, deportation, search and seizure. Article 5 gives the King the authority (without the necessity of enacting Regulations) to deport anyone, to confiscate land and property, and to order the demolition of any structure. The Defence Regulations enacted under the authority of the Defence Law enable the Prime Minister, inter alia, to order the demolition of any building, impose curfews, and order administrative detention. Jordanian Official Gazette No. 473 (March 19, 1935), p. 158, and No. 644 (August 29, 1939), p. 514.

28. Jordanian Official Gazette No. 473 (March 19, 1935), p. 158 and No. 644 (August 29, 1939), p. 514.

29. Compilation of Laws and Regulations Issued and in Force in the Hashemite Kingdom of Jordan until 1960, Vol 3, p. 606 (in Arabic, 1961). Excerpted in English in the Israel Yearbook of Human Rights ("IYHR") vol. 9 (1979), p. 343.

30. H.C. 97/79, 33 (3) P.D. 309; excerpted in English in IYHR vol. 9 (1979), pp. 343-345.

31. The opinion was submitted in the case of Kawasma v. Minister of Defence (H.C. 698/80, 35 (1) P.D. 617).

32. "Law and Administration Proclamation",

reprinted in English in "Territories Administered by Israel: Military Proclamations, Orders and Judicial Decisions: Extracts", IYHR vol. 1 (1971), p.419.

33. Interpretation Order (Additional Orders)(No.1)(No.160), 1967 (in Hebrew and Arabic). Original text and English translation in Appendix C.

34. H.C. 513/85, 39 (3) P.D. 645; excerpted in English in IYHR vol. 16 (1986), p. 329.

35. See Government of Palestine, Legislation Enacted and Notices Issued Which Have Not Been Gazetted, 29th April-14th May 1948.

36. Enacted by the High Commissioner, Palestine Gazette No. 1400, Supp. No. 1 (April 2, 1945), p. 48.

37. 39 Statutes 783 (9 & 10 Geo. 6, c. 36).

38. Statutory Instruments, p. 1350.

39. It is interesting to note that the Palestine Order in Council, 1948, enacted by the High Commissioner on April 29, 1948, dispensed with the requirement that Regulations passed by the High Commissioner be published in the Palestine Gazette in order to be effective, and left the manner of publication to the discretion of the High Commissioner. See Government of Palestine, Legislation Enacted and Notices Issued Which Have Not Been Gazetted, 29th April-14th May 1948. Thus, as a matter of British law, the previous requirement of publication in the Palestine Gazette was no longer in effect.

40. Interpretation Order (Additional Provisions)(No.5)(Judea and Samaria)(No.224), 1968 (in Hebrew and Arabic). Original text and English translation in Appendix E.

41. See also the Abu Awad case, cited above (footnote 30), in which the Supreme Court held that no implicit abolition could ever take place due to Interpretation Order No. 224.

42. Of course, Israel could enact its own Defence Regulations and use the British

Regulations as a model. However, it could no longer claim that this legislation was inherited from the British Mandate. In addition, it would have to satisfy the requirements of the Hague Regulations and the Fourth Geneva Convention concerning the enactment of new legislation by an occupying power in occupied territory. Article 43 of the Hague Regulations requires the occupying power "to respect[], unless absolutely prevented, the laws in force" in the occupied territory. Article 64 of the Fourth Geneva 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". Cited in A. Roberts and R. Guelff, ed., Documents on the Laws of War (Oxford: Clarendon Press, 1982), pp. 55-56, 293.

43. Advocate Shehadeh states: "the Palestine Defence Regulations ... were repealed and the same powers vested in the Jordanian King and his ministers by virtue of [the Addendum of May 13, 1948]". See also, United Nations Special Committee Report, Doc. A8089 (1970), pp. 57-60, reprinted in W. Khadduri, International Documents on Palestine, 1970 (Beirut: The Institute for Palestine Studies, 1973), pp. 581-617, particularly p. 597, in which the Jordanian Government, in response to questions put to it by a United Nations Special Committee in 1970, stated that the British Defence Regulations were "abolished" by the Addendum of May 13, 1948, making the Jordanian Defence Law and Regulations applicable to the West Bank.

44. May 7, 1988 interview with 'Awni Khasawneh, Director of Legal Department for the Jordanian Ministry of Foreign Affairs in Amman; May 7, 1988 interview with Attorney Majed Ranma at the Jordanian Ministry of Justice in Amman; May 2, 1988 interview with Attorney Dr. Hanna Naddy in Amman; May 1, 1988 interview with Attorney Ibrahim Bakr in Amman; several interviews in May and June 1988 with Attorney Fuad Shehadeh in Ramallah, West Bank.

(Austin, Texas: University of Texas Press, 1980), p. 124.

55. Lustick, Arabs in the Jewish State, pp. 177-178. See also the discussion in H. D. Nakkara, "Israeli Land Seizure Under Various Defense and Emergency Regulations", Journal of Palestine Studies No. 54 (Winter 1985), pp. 13, 15-16.

56. Jiryis, The Arabs in Israel, pp. 18-19.

57. Ibid., pp. 26-27. See also Davar, 28 March, 1969 (Interview with Eliahu Sasson, then-Minister of Police).

58. Lustick, Arabs in the Jewish State, p. 126.

59. The Defence Regulations are used not only in the areas which came under Israeli control in 1948, but also in East Jerusalem, which was annexed by Israel in 1967 and is subject to Israeli law. During the popular uprising, they were, for example, used to force East Jerusalem merchants to open their shops. The Jerusalem Post, April 26, 1988.

60. Knesset Debates (July 12, 1949), Vol. II, pp. 975-978, 998.

61. Remarks of H. Cohn made at the Symposium of the Association For Civil Rights on Administrative Punishment in the Administered Territories, December 10, 1985, Jerusalem.

62. Knesset Debates (May 22, 1951), Vol. 9, p. 1828.

63. Knesset Debates (June 6, 1951), Vol. 9, pp. 1966-1968, 1975-1976, 1978.

64. Knesset Debates (December 1, 1954), Vol. 17, pp. 241, 242, 243.

65. B. Bracha, "Restrictions of Personal Freedom", p. 318.

66. See for example L. Oppenheim, International Law: A Treatise, Vol. II (London: Longman, Green and Co., 1952), p. 432; D. Graber, The Development of the Law of

Belligerent Occupation, 1863-1914: A Historical Survey (New York: Columbia University Press, 1949), p. 13.

67. Reprinted in Roberts and Guelff, Documents on the Laws of War, pp. 44-59, 272-337.

68. See for example M. McDougal and F. Feliciano, Law and Minimum World Public Order: The Legal Regulation of International Coercion (New Haven: Yale University Press, 1961), p. 75; Graber, The Development of the Law of Belligerent Occupation, p. 290: "The motive power for the changes which took place in the 1907 Hague Convention was the need for a law which would give the maximum protection from the rigors of war to the population of occupied regions without hindering the military objectives of the occupant".

69. Oppenheim, International Law, pp. 234-235; G. Von Glahn, "The Protection of Human Rights in Time of Armed Conflicts", IYHR vol.1 (1971), pp. 208, 211; T. Meron, Human Rights in Internal Strife: Their International Protection (Cambridge: Grotius Publications, 1987), pp. 4-5.

70. Oppenheim, International Law, p. 451; G. Schwarzenberger, International Law as Applied by International Courts and Tribunals, Vol.II (London: Stevens & Sons, 1968), pp. 165-166. T. Meron, Human Rights in Internal Strife, p. 6.

71. Roberts and Guelff, Documents on the Laws of War, pp. 326-330.

72. See for example M. Shamgar, "The Observance of International Law in the Administered Territories", IYHR vol. 1 (1971), pp. 262, 263.

73. M. Shamgar, ed., Military Government in the Territories Administered by Israel, 1967-1980: The Legal Aspects (Jerusalem: Alpha Press, 1982), p. 37.

74. See for example Shamgar, "The Observance of International Law", p. 263.

75. See for example Y. Blum, "The Missing Reversioner: Reflections on the Status of Judea and Samaria", Israel Law Review vol. 3 No. 1 (January 1968), pp. 279, 293-294.

76. Ibid., p. 293.

77. Oppenheim, International Law, p. 434; T. Kuttner, "Israel and the West Bank: Aspects of the Law of Belligerent Occupation", IYHR vol. 7 (1977), pp. 166, 169.

78. See for example S. Boyd, "The Applicability of International Law to the Occupied Territories", IYHR vol. 1 (1971), pp. 258, 260; T. Meron, "The West Bank and Gaza: Human Rights and Humanitarian Law in the Period of Transition", IYHR vol. 9 (1979), pp. 106, 109.

79. J. Pictet, Development and Principles of International Humanitarian Law (Dordrecht, The Netherlands: Martinus Nijhoff, 1985), p. 61.

80. See for example Shamgar, Military Government, p. 64; Meron, Human Rights in Internal Strife, p. 109.

81. Boyd, "The Applicability of International Law", p. 260, citing International Review of the Red Cross.

82. See Kuttner, "Israel and the West Bank", pp. 169-170.

83. United Nations Security Council Resolution 446 of March 22, 1979, for example, states: "Affirming once more that the Fourth Geneva Convention ... is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem". See also Boyd, "The Applicability of International Law", p. 259.

84. Israel has never made clear which of the provisions of the Fourth Geneva Convention it considers to be "humanitarian" in nature. Jean Pictet, who apparently coined the phrase "humanitarian law", considers the entire Fourth Geneva Convention to be international humanitarian law. Pictet, Development and Principles of International Humanitarian Law,

pp. 1-2.

85. Shamgar, "The Observance of International Law", p. 271.

86. Meron, "The West Bank and Gaza", p. 108.

87. See for example The Military Prosecutor v. Zuhadi Saleh Hussein Zohar, 1 S.J.M.C. 545 (1968), excerpted in English in IYHR vol. 1 (1971), p. 453; the Beth El case, Ayoub v. Minister of Defence and Matweh v. Minister of Defence, H.C. 606/78 and 610/78 (1979) 33 (2) P.D. 113 (reprinted in English in Shamgar, Military Government, pp. 371-397, particularly pp. 379-381); and the Elon Moreh case, Izzat Muhamed Mustafa Dwaikat, et al. v. Government of Israel, et al., H.C. 390/79 (1980), 34 (1) P.D. 1 (reprinted in English in Shamgar, Military Government, pp. 404-441, particularly pp. 418-419).

Meron has noted: "[T]he failure of [Israel] to enact the necessary legislation [to make the Geneva Conventions part of Israeli domestic law] cannot affect its internal obligation to implement the Geneva Conventions ..." Meron, Human Rights in Internal Strife, p. 6.

88. See the Beth El and Elon Moreh cases, cited in Shamgar, Military Government, pp. 379-381, 419.

89. Meron, "The West Bank and Gaza", p. 111.

90. Roberts and Guelff, Documents on the Laws of War, pp. 55-56 (emphasis added).

91. J. Pictet, ed., Commentary ... IV Geneva Convention (Geneva: International Committee of the Red Cross, 1958) (hereafter "ICRC Commentary"), p. 615; Oppenheim, International Law, pp. 451-452.

92. Meron, "The West Bank and Gaza", p. 110.

93. British Defence (Emergency) Regulations, 1945, Articles 108 and 112, Palestine Gazette No. 1442, Supp. No. 2 (September 27, 1945), pp. 1055-1098.

94. Article 112B of the British Defence Regulations provides prospective deportees with a right of appeal. However, in 1976, the Israeli Government was criticized for not allowing two deportees the appeal rights provided in the Defence Regulations. In 1977 the Government issued its own guidelines concerning the appeal rights of prospective deportees. J. Hiltermann, Israel's Deportation Policy in the Occupied West Bank and Gaza (Ramallah: Al-Haq, 1986), pp. 46-47.

The Advisory Committee, to whom a prospective deportee may appeal, is set up by the Military Government and consists of three military officers. The Committee may but does not have to inform the prospective deportee of the place and time of the meeting so that he and his lawyer can attend. Even if allowed to attend the meeting, however, the prospective deportee and his lawyer are not allowed to see the secret evidence provided by the Israeli intelligence service, Shin Bet.

95. Hiltermann, Israel's Deportation Policy, pp. 46-55, 60-61.

96. H.C. 46/50, 4 P.D. 220, 227. Cited in Bracha, "Restrictions on Personal Freedom", p. 313. See also Haddad et al. v. Minister of Defence et al., H.C. 17/71, 25 (1) P.D. 141 (excerpted in English in IYHR vol. 8 (1978), p.315) in which the Supreme Court decided it did not have the power to examine the motivations behind the decision to deport.

97. This figure does not include two beduin tribes deported en masse in December 1967 and May 1969. A. Lesch, "Israeli Deportation of Palestinians from the West Bank and the Gaza Strip, 1967-1978", Journal of Palestine Studies No. 30 (Winter 1979), pp. 101-131, and No. 31 (Spring 1979), pp. 81-112.

98. Hiltermann, Israel's Deportation policy, p. 1; The Jerusalem Post, August 5, 1985.

99. The figure was supplied by al-Haq. The list compiled by al-Haq does not include detainees who have agreed to be deported in exchange for a reduction in their prison sentence.

100. Shamgar, "The Observance of International Law", pp. 273-274.
101. I. Zamir, "Deportation Orders in the Administrated Areas", (Jerusalem: Attorney General's Office, 1986).
102. Pictet, ICRC Commentary, p. 279.
103. Ibid., p. 368.
104. Shamgar, "The Observance of International Law", p. 274.
105. Pictet, ICRC Commentary, p. 278.
106. Shamgar, "The Observance of International Law", pp. 262-282, 275; see also D. Shefi, "The Reports of the UN Special Committees on Israeli Practices in the Territories, A Survey and Evaluation", in Shamgar, Military Government, pp. 285-334, particularly pp. 304-306.
107. H.C. 97/79, 33 (3) P.D. 309.
108. H.C. 698/80 35 (1) P.D. 617, quoting J. Stone, No Peace - No Law in the Middle East (Sydney, 1969), p. 17.
109. H.C. 785/87; H.C. 845/87; H.C. 27/88.
110. See for example United Nations Security Council Resolutions 468 of May 8, 1980 and 469 of May 20 1980.
111. According to al-Haq, in several cases the homes of suspects have been demolished before they are arrested.
112. E. Playfair, Demolition and Sealing of Houses as a Punitive Measure in the Israeli-Occupied West Bank (Ramallah: Al-Haq, 1987), p. 25.
113. Ibid. See also the remarks made by Moshe Negbi, former head of the international law section of the IDF Military Advocate-General's office, at a Seminar held by the Association for Civil Rights in Israel on December 10, 1985: "at least in the case of demolition of

houses we cannot talk about an effective possibility of appealing to the High Court of Justice". Ibid., p. 25.

114. The Jerusalem Post, April 2, 1988. The Association for Civil Rights has filed a petition with the Supreme Court to extend the Beita ruling to all residents of the Occupied Territories.

115. E. Playfair, Demolition and Sealing of Houses, p. 26.

116. M. Benvenisti (with Z. Abu-Zayed and D. Rubinstein), The West Bank Handbook: A Political Lexicon (Jerusalem: The Jerusalem Post, 1986), p. 86.

117. Playfair, Demolition and Sealing of Houses, p. 1; The Jerusalem Post, November 23, 1981.

118. Benvenisti, The West Bank Handbook, p. 86.

119. The Jerusalem Post, August 5, 1985.

120. Information supplied by al-Haq. Al-Haq's records to date on demolitions and sealings in the Gaza Strip are incomplete.

121. Playfair, Demolition and Sealing of Houses, p. 24.

122. This policy is not entirely new. In the Beita incident in which an Israeli settler killed 2 Palestinians and 1 Israeli during a settler hike near the village of Beita, 13 houses of the Beita villagers suspected, though not formally charged, tried, or convicted, of throwing stones or "incitement" were demolished. An additional house was demolished at the same time for lack of a building permit. The residents were given one half to two hours notice. The Jerusalem Post, April 12, 1988 and April 20, 1988.

123. Roberts and Guelff, Documents on the Laws of War, pp. 52-53.

124. Ibid., p. 290.

125. Pictet, ICRC Commentary, p. 302.
126. Shamgar, "The Observance of International Law", p. 276.
127. From a November 25, 1981 Interpretation of Article 53 of the Fourth Geneva Convention signed by Jacques Moreillon and approved by Jean Pictet. Cited in Playfair, Demolition and Sealing of Houses, pp. 11-12.
128. Shamgar, "The Observance of International Law", p. 275.
129. D. Shefi, "The Protection of Human Rights in the Areas Administered by Israel: United Nations Findings and Reality", IYHR vol. 3 (1973) pp. 337, 346.
130. See, for example, D. Shefi, "The Reports of the U.N. Special Committees on Israeli Practices in the Territories", reprinted in Shamgar, Military Government, p. 285.
131. The full text of the Article provides:
- The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public safety, while respecting, unless absolutely prevented, the laws in force in the country.
- (Cited in Roberts and Guelff, Documents on the Laws of War, pp. 44-59).
132. Oppenheim, International Law, p. 446.
133. Ibid., p. 447.
134. Cited in Roberts and Guelff, Documents on the Laws of War, p. 293. Emphasis added.
135. See also A. Gerson, Israel, The West Bank and International Law (London: Frank Cass, 1978), p. 122.
136. Pictet, ICRC Commentary, p. 336.

137. Gerson, Israel, The West Bank and International Law, pp. 122-123. See also Justice Cohn's dissenting opinion in the High Court case of Christian Society for the Protection of Holy Places v. The Minister of Defence, et al. (H.C. 337/71, 26 (1) P.D. 481), in which he states that laws violative of the most fundamental human rights may be changed (discussed in Gerson, Israel, the West Bank, and International Law, p. 131). It should also be noted that Israel's argument on this point is inconsistent with the many new military orders which have been issued regulating and controlling economic life, land and water, tourism, etc. See, for example, R. Shehadeh, Occupier's Law: Israel and the West Bank (Washington, D.C.: Institute for Palestine Studies, 1988), pp. 72-73.

138. A.H. Robertson, Human Rights in the World (London: Manchester University Press, 1972), p. 175; see also Pictet, Development of Principles of International Humanitarian Law, p. 3.

139. See, for example, Meron, Humanitarian Rights in Internal Strife, pp. 14-28; Robertson, Human Rights, pp. 178-179.

140. Robertson, Human Rights, p. 175;

141. Cited in the Appendix to B.G. Ramcharan, ed., Human Rights: Thirty Years After the Universal Declaration (The Hague, The Netherlands: Martinus Nijhoff, 1979), p. 267.

142. Ibid., p. 267.

143. See for example von Glahn, "The Protection of Human Rights", pp. 213-214.

144. International Covenant of Civil and Political Rights, Article 4(1). reprinted in P. Sieghart, The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights (Oxford: Oxford University Press, 1985), p. . The European Convention on Human Rights and Protocols, Article 15(1); the European Social Charter, Article 30(1), and the American Convention on Human Rights, Article 27(1) all contain nearly identical provisions.

145. Yearbook of the European Convention on Human Rights, 1958-1959 (the Cyprus case), issued by the European Commission and European Court of Human Rights (The Hague: Martinus Nijhof, 1960).
146. Yearbook of the European Convention on Human Rights, 1961 (the Lawless case), pp. 430-489, 472-473. See also the opinion of Messrs. Waldock, Berg, Faber, Crosbie, and Erim ("a situation of exceptional and imminent danger or crisis affecting the general public, as distinct from particular groups") in the Report of the European Commission and European Court on Human Rights, Series B, p. 82.
147. Yearbook of the European Convention on Human Rights, 1969 (the Greek case).
148. Ibid., p. 17.
149. Ibid., p. 72.
150. See for example C. Grossman, "A Framework for the Examination of States of Emergency Under the American Convention on Human Rights", The American University Journal of Law and Politics, Vo. 1 (1966), pp. 35, 50-53.
151. International Covenant on Civil and Political Rights, Article 4(1); American Convention on Human Rights, Article 27(1).
152. A. Rubinstein, "War and Rule of Law: The Israeli Experience", IYHR vol. 1 (1971), p. 322.
153. Hapraklit ("The Lawyer"), Vol. 3, No. 2 (February 1946), p. 62 (in Hebrew).
154. Hamishpat ("Justice"), 3 (1948/49): pp. 307, 321-326.

STATUTORY INSTRUMENTS

OTHER THAN THOSE OF A LOCAL, PERSONAL
OR TEMPORARY CHARACTER
FOR THE YEAR

1948

Volume I

(IN THREE PARTS)

comprising

PREFACE AND ALL TITLES
EXCEPT EMERGENCY LAWS AND
SUPPLIES AND SERVICES

together with

A NUMERICAL LIST OF ALL GENERAL AND
OF LOCAL PRINTED INSTRUMENTS, AN
APPENDIX OF PREROGATIVE ORDERS, ETC.,
A CLASSIFIED LIST OF LOCAL INSTRUMENTS,
TABLES SHOWING EFFECT OF LEGISLATION;
AND INDEX TO VOLUME I

PART I

Published by Authority



EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

Under the provisions of the British Nationality Act, 1948, the Governor of Northern Rhodesia will be able to grant Imperial Certificates of Naturalization to aliens resident in the Territory. Hitherto, such persons were only eligible for the grant of local Certificates of Naturalization which were granted under the Northern Rhodesia Naturalization Orders in Council of 1914 and 1928. As no further local Certificates of Naturalization will now be granted in Northern Rhodesia it is desirable that these Orders in Council should be revoked.

6. PALESTINE

[See also PALESTINE, p. 3180 below.]

The Palestine (Revocations) Order in Council, 1948

1948 No. 1004

Made - - - - -	12th May, 1948
Laid before Parliament	12th May, 1948
Coming into Operation	14th May, 1948

At the Court at Buckingham Palace, the 12th day of May, 1948

Present,

The King's Most Excellent Majesty in Council

11 & 12
Geo. 6. c. 27. Whereas under section one of the Palestine Act, 1948, all jurisdiction of His Majesty in Palestine will, subject to the provisions of the Act, determine on the fifteenth day of May, 1948 (in that Act and in this Order referred to as the appointed day), and it is accordingly desirable to revoke certain provisions in Orders in Council relating to Palestine:

53 & 54
Vict. c. 37. Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Palestine (Revocations) Order in Council, 1948, and shall come into force immediately before the appointed day.

2.—(1) References in the Palestine Orders in Council 1922 to 1947, to a Secretary of State, to the High Commissioner, and to instructions of His Majesty shall cease to have effect.

(2) The Orders in Council specified in the Schedule to this Order are hereby revoked to the extent specified in the second column of the Schedule.

(3) The Admiralty Offences (Colonial) Act, 1849, the Admiralty Offences (Colonial) Act, 1860, and Part XIII of the Merchant Shipping Act, 1894 (which were applied to Palestine by Article 35 of the Palestine Order in Council, 1922)(a) shall cease to apply to Palestine.

12 & 13
Vict. c. 96.
23 & 24
Vict. c. 122.
57 & 58
Vict. c. 60.

3. Sub-section (2) of section 38 of the Interpretation Act, 1889, shall have effect in relation to any provision which is revoked or ceases to apply to or have effect in Palestine by or under this Order, as if such provision were an enactment repealed by Act of Parliament.

52 & 53
Vict. c. 63.

E. C. E. Leadbitter.

SCHEDULE

PROVISIONS OF ORDERS IN COUNCIL REVOKED

<i>Order in Council</i>	<i>Extent of Revocation</i>
Palestine Order in Council, 1922 (as amended by the Palestine (Amendment) Order in Council, 1923(b), the Palestine (Amendment) Order in Council, 1933(c), the Palestine (Amendment) Order in Council, 1935(d), the Palestine (Amendment) Order in Council, 1939(e), the Palestine (Amendment) Order in Council, 1940(f), and the Palestine (Amendment) Order in Council, 1947)(g).	Articles 4 to 10 inclusive ; Article 14 ; Part III ; Article 35, para. (ii) ; Article 36 ; Article 44 ; Part VI ; Article 85 and Article 89.
Palestine Order in Council, 1948(h).	The whole Order.
Palestine (Appeal to Privy Council) Order in Council, 1924(i).	The whole Order.
Palestine (Admiralty Jurisdiction) Order in Council, 1937(j).	The whole Order.
Palestine (Defence) Order in Council, 1937(k).	The whole Order.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order in Council made under the Foreign Jurisdiction Act, 1890, revokes certain provisions of Orders in Council relating to Palestine. Another Order in Council, the Termination of Jurisdiction in Palestine (Transitional Provisions) Order in Council, 1948, has been made under the Palestine Act, 1948.

- (a) S.R. & O. 1922 (No. 1282) p. 362. (b) S.R. & O. 1923 (No. 619) p. 339.
(c) S.R. & O. 1933 (No. 312) p. 841. (d) S.R. & O. 1935 (No. 151) p. 520.
(e) S.R. & O. 1939 (No. 603) II, p. 1651. (f) S.R. & O. 1940 (No. 2112) I, p. 403.
(g) S.R. & O. 1947 (No. 2770) I, p. 801. (h) S.I. 1948 No. 100.
(i) S.R. & O. 1924 (No. 1243) p. 614. (j) S.R. & O. 1937 (No. 739) p. 817.
(k) S.R. & O. 1937 (No. 225) p. 812.

APPENDIX B:

TEXT OF AFFIDAVIT SUBMITTED TO THE ISRAELI SUPREME
COURT
BY ADVOCATE AZIZ SHEHADEH (1980)

I advocate Aziz Shehadeh make oath and say as follows:

I. When I was asked by Advocate Felicia Langer to submit a legal opinion on the subject of the deportation from Jordan it was my understanding that the intention was merely to state the contents of Article 9 (1) of the Jordanian Constitution without going into any detailed discussion thereof. Consequently in my affidavit I merely cited the said Article 9 (1) and added that Article 112 of the Defence (Emergency) Regulations of 1945 was repealed by Article 128 of the Jordanian Constitution. Upon reading the last affidavit of Dr. Meron, however, I noticed that he considers the brevity of my affidavit as an indication of the weakness of my argument. I also noticed that he commented negatively on my argument that the applicability or non-applicability of the Defence (Emergency) Regulations of 1945 is irrelevant since there is an article in the Jordanian Constitution which prohibits the deportation of any Jordanian citizen and considers any decision to carry out such an action null and void. Furthermore, Dr. Meron has commented on the fact that I did not refer to any Jordanian precedents to substantiate my statement that the Jordanian High Court of Justice followed the decision of the Council of State sitting as

an administrative tribunal. I apologise for this brevity which was only due to the shortness of time in which I had to prepare the statement and which did not give me the opportunity to make reference to these precedents. I now respond to all these points to the best of my ability, in the circumstances, as follows:

1. With reference to my statement that Article 128 of the Jordanian Constitution has repealed the Defence (Emergency) Regulations of 1945 (to which I shall hereinafter refer as the Palestine Defence Regulations) I hereby assert that these regulations were put into force by the High Commissioner in Palestine in accordance with Article 6 of the Palestine Order in Council (Defence) 1937, published in the Palestine Gazette, Vol. II, page 268 on 24/3/1937 and "by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise, in his Majesty Vested,... by and with the advice of His Privy Council". This Emergency Regulation and all the Palestine Defence Regulations and the Order in Council which give the powers to His Majesty or to the High Commissioner were repealed and the same powers were vested in the Jordanian King and his ministers by virtue of the following:

a. On 13/5/1948 i.e. two days before the termination of the mandate, King Abdullah issued an addendum to the Trans-Jordan Defence Regulations 1935- No. 20/48 (page 183 of the Jordanian Gazette No.945, dated 16/5/1948) which stated that the provisions of the Trans-Jordan Defence Regulations 1935 and all orders and regulations issued in accordance

therewith shall apply to the country or areas in which the Jordanian Arab Army shall be found or shall be entrusted with the security and order therein.

b. After the Jordanian forces entered the West Bank, the Military Governor issued on 24/5/1948 Military Order No. 1 in which he stated that he was appointed Military Governor in accordance with Article 2 of the said addendum to the Jordanian Defence Regulations of 1935 No. 20/48, and that he will proceed to exercise his powers in accordance with the said law and orders and regulations issued by virtue thereof. The same day, i.e. 24/5/1948, he issued Military Order No. 2 which stated that all ordinances and regulations made thereunder that were in force in Palestine upon the termination of the mandate on 15/5/1948 shall remain in force in all the areas where the Jordanian Arab Army shall be found or shall be entrusted with the preservation of the safety and the security of the area with the exception of those provisions that are repugnant to any provisions of the Jordanian Defence Regulations 1935 or any order or provision issued by virtue thereof. In Cassation appeal No. 98/52 (page 157 Jordanian Law Reports Vol. 1) it was decided that these orders have the power of law and they are enforceable by virtue of Section 6 of the law amending the Law of Civil Administration in Palestine which I shall discuss hereafter. This judgement was followed in Cassation appeal No. 6/45 published on page 331 - Jordanian Law Reports Vol. 2.

c. On 1/2/1949 the law amending the Law of Civil Administration in Palestine No. 48/49 (Jordanian Gazette No.

1002) was passed. Article 5 of the said law provides that all laws, regulations, and orders issued by virtue of the ordinances that were in force on the termination of the mandate over Palestine shall remain in force until they are amended or repealed. King Abdullah was granted by virtue of Article 2 of the said law the same powers that were vested in the King of Britain and the High Commissioner in Palestine by virtue of the Palestine Order in Council 1922 and all amendments thereto. It should be noted in this respect that the 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. It should also be noted, that the vesting in King Abdullah of the powers previously enjoyed by the King of Britain was to enable him to issue legislation over areas that were under the control of the Jordanian Arab Army, making it possible for him to achieve similar purposes for which the Palestine Order in Council (Defence) 1937 was put into force. According to Section 6 of Law No. 43/49 referred to above, the orders issued by the Jordanian Military Governor became enforceable and the Military Governor enjoyed the right to issue same by virtue of the powers from the Jordanian Law and not from the Orders in Council that were issued by the King of Britain.

d. On 16/9/1950 the law dealing with the laws and regulations in force in Palestine No. 28/50 - published on page 52 of the collection of Jordanian laws and regulations, vol. 1 was passed. Section 2 of said law provided that despite the unification of

both Banks of the Kingdom, the laws and regulations in force in each Bank shall remain in force until unified laws applicable to both Banks shall be passed. It should be noted in this respect that the reference was to 'laws' and not to 'Orders in Council'. The reference to regulations however refers to regulations that were in force on the eve of the passing of this law, i.e. on 16/9/1950, and these are the regulations that were passed in accordance with the Palestine Ordinances and not in accordance with Orders in Council, as is evident from order No. 2 issued by the Jordanian Military Governor to whom I referred earlier, with the reservation namely that these regulations shall not be repugnant to the Jordanian Defence Regulations of 1935 or any order issued in accordance therewith.

e. On 6/1/1952 the Jordanian Constitution was published in the Jordanian Gazette No. 1093 and came into force on the date of its publication. Section 123 of the Constitution provides that all laws and regulations and all other laws that were in force in the Hashemite Kingdom of Jordan on the eve of coming into force of the said Constitution shall remain in force until they are amended or repealed by legislation passed by virtue thereof. It is to be noted that the said provision confined the laws to those in force on the eve of the passing of the Constitution referred to and does not include all Palestinian legislation in general as indicated hereinbefore.

f. 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. To support this argument I hereby append a list of the Defence Regulations that were issued by virtue of the 1935 Jordanian Defence Law published in Vol. 13 of the Collection of Jordanian Laws [not included here]. None of the regulations referred to in this list were issued by virtue of the Palestine Defence Regulations 1945. Had these regulations been in force, it is obvious that all Defence Regulations would have been passed by virtue thereof.

g. In conclusion I hereby submit that by virtue of the argument referred to above, the Palestine Defence Regulations were not in force in the West Bank during the Jordanian Regime.

II. There are numerous precedents of the Jordanian High Court of Justice relying on Egyptian precedents and I herebelow refer to but a few of them.

1. H.C. 72/55 published in the Jordanian Law Reports, 1956, on page 273.

2. H.C. 30/56 published in Jordanian Law Reports, 1956, on pages 474 and 475.

3. H.C. 3/1957 published in Jordanian Law Reports, 1957, page 325.

4. H.C. 108/1956 published in Jordanian Law Reports, 1957, page 403.

5. H.C. 36/1958 published in Jordanian Law Reports, 1958, page 560.

6. H.C. 6/1959 published in Jordanian Law Reports, 1958, page 864.

7. H.C. 57/1953 published in Jordanian Law Reports, 1954, pages 141 and 142.

I am ready to supply the court with the volumes in which these reports were published or photocopies of them if so requested.

III. As to the prohibition against issuing any legislation contravening any of the provisions of the Constitution, I wish to refer to an article by the scholar Abd El Razak Ahmad Sanhuri, the former president of the Egyptian Council of State, which was published in the publication of the Council of State Journal of 1952.

On page 55 he says that:

"Article 7 of the Egyptian Constitution states as follows:

"If a legislation is passed making it permissible to deport an

Egyptian from Egypt then such legislation shall be considered null and void for being repugnant to the Constitution. Deportation of an Egyptian and prohibiting him of his right of return after he leaves Egypt is also void for the same reason." It is to be noted that the Jordanian Courts do not enjoy the power of annulling any legislation for whatever reason because the Jordanian Courts have no sovereignty over the constitutionality of laws. For this reason the Jordanian legislator granted the High Court of Justice in sections (10) (3) (g) of the Constitution of the Regular Courts of 1952, which was referred to in my previous affidavit, the power of annulling any action taken by virtue of a regulation that is repugnant to the Constitution or to any law. They had no power to annul the Regulation or the law itself. I refer to a relevant decision delivered by the Jordanian High Court of Justice under No. 44/67, published on page 47 of the Jordanian Law reports for 1967. The court decided that if the legislative power passed an unconstitutional law, then it cannot force the judicial power to implement it nor can it apply any other legislation passed by any authorised body or passed contrary to the Constitution or the spirit of the Constitution. The court when faced with two conflicting legislations will apply the legislation passed by the higher body. That is to say that the Constitution is above all other laws and binds the Judge and the Legislator equally.

Furthermore, it does not seem reasonable to accept Dr. Meron's interpretation because that would mean that the Jordanian Constitution would allow deportation by virtue of laws passed previous to its promulgation, which allow

deportation of a Jordanian while at the same time forbidding deportation in Article 9 (1) of the Constitution. In the decision of the Council of State which I have referred to above and which is published in the reports of the Council, Vol. 5, No. 357, on page 1099, it was decided that whenever an action is taken contrary to the Constitution such as deportation, the Egyptian Court may not only annul the action but can directly declare the law on the basis of which it was taken as null and void on the grounds that it is contrary to the provisions of the Constitution. This is not the case, however, in Jordan where the High Court of Justice may only annul the action but has no jurisdiction to declare any regulation unconstitutional. The practical outcome is the same whether the court nullifies the law or regulation which is contrary to the Constitution or nullifies the set that was issued in accordance with such law or regulation.

The important principle is that in both cases the Constitution is considered as the highest legislation in the country. Despite the changes that occurred after the Socialist Revolution of 1952 in Egypt, the legal principles which the Council of State has applied and which the Jordanian High Court of Justice has followed have remained unchanged and are not affected by the decisions which the Egyptian Government took to remove Jews from Egyptian lands, which I consider to be outside the scope of our discussion. It is my suspicion that Dr. Meron's intention in bringing up this point is to win indirectly the sympathy of the Court. It may be worthwhile to mention here that there is no provision in Jordanian Law which obliges the Jordanian

Courts to follow Egyptian precedents. [The Courts are] merely guided by them. When it is remembered that the establishment of the High Court of Justice and the whole Corpus of Administrative Law was a novelty in Jordan at the time of the passing of the Jordanian Constitution and the Law of the Constitution of Regular Courts of 1952, it will be easy to appreciate the importance for the Jordanian Court of the decisions of the Egyptian Courts as guidelines. Similarly the High Court of Justice in Jordan also relied in arriving at its decisions on the principles adopted by the High Court of Justice in Palestine.

With respect to Dr. Meron's opinion that judgement No. 100/75 is not binding in the West Bank because it was passed in the East Bank eight years after the 1967 War, I submit that the date of the judgement is of no relevance. This is because the decision applies and explains legal principles which were in force prior to the 1967 War, which are that the Constitution is the highest legislation and that no decision can be taken contrary to it.

Aziz Shehadeh

* [This is the text of an affidavit submitted by Advocate Aziz Shehadeh to the Israeli High Court of Justice in 1980. Minor spelling and typing errors in the original text have here been corrected. Additionally, 12 appendices and all references thereto have been deleted.]



מנשרים, צווים ומינוריים

מפקדת בוחות צה"ל באזור הגדה המערבית

مناشير، أوامر وتعيينات

سادة من

قيادة قوات جيش الدفاع الاسرائيلي في منطقة الضفة الغربية

כ"ו בכסלו תשכ"ח (29 בדצמבר 1967) מס' 8 - המד 8 27 כליף 0728 (29 كانون الاول 1967)

מסד	התוכן	المحتويات	صفحة
	צווים	אמרים	
299	צו בדבר הגבלת העברת סוכין - שכם (ביסול) (צו מס' 137)	אמר بشأن تنفيذ نقل بضائع - نابلس (الغاء) (أمر رقم 137)	299
299	צו בדבר תיקון הצו בדבר סמכות שימוש בעבירות הפליליות (צו מס' 140)	אמר بتعديل الأمر بشأن صلاحية الحكم في الجرائم الجزائية (أمر رقم 140)	299
300	צו בדבר שיטת הליצה (תיקון מס' 3) (צו מס' 142)	אמר بشأن ساعات منع التجول (تعديل رقم 3) (أمر رقم 142)	300
300	צו בדבר פניגוריה בביטוי צבאי (צו מס' 143)	אמר بشأن الدفاع امام محكمة عسكرية (أمر رقم 143)	300
303	צו בדבר הוראות בטחון (תיקון מס' 9) (צו מס' 144)	אמר بشأن تعليمات الأمن (تعديل رقم 9) (أمر رقم 144)	303
306	צו בדבר שורכידין ישראלים בבתי-המשפט (הוראת שיטה) (צו מס' 145)	אמר بشأن المحامين الاسرائيليين امام المحاكم (حكم مؤقت) (أمر رقم 145)	306
307	צו בדבר שטחים מטורים (שפה יוד) (צו מס' 146)	אמר بشأن مساحات مغلقة (مساحة رقم 146)	307
308	צו בדבר נביית התוספת למס הבולים (צו מס' 147)	אמר بشأن تحصيل الاضافة على ضريبة الطابع (أمر رقم 147)	308
309	צו בדבר דימון למשפט על עבירות שנעברו מחוץ לאזור (צו מס' 148)	אמר بشأن الدعوى الى المحاكمة عن الجرائم المرتكبة خارج المنطقة (أمر رقم 148)	309
310	צו בדבר סימון סוכין (צו מס' 149)	אמר بشأن وضع علامة على البضائع (أمر رقم 149)	310
311	צו בדבר נכסים נטושים (רכוש הפרט) (הוראות נוספות) (מס' 1) (צו מס' 150)	אמר بشأن الأموال المتركبة (الممتلكات الشخصية) (تعليمات اضافية) (رقم 1) (أمر رقم 150)	311

Israel Defence Forces

Order No. 160

Explanatory Order
(Additional Instructions) (No. 1)

In accordance with the authority vested in me as Commander of the Israel Defence Forces in the Region, I issue the following Order:-

DEFINITIONS

1. In this Order:-

"Official Gazette" - As defined in the Explanatory Law of 1945.

"Hidden Law"- 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 the period that period whether by necessity or custom.

HIDDEN LAW

2. In order to prevent any misunderstanding, it is hereby decided that Hidden Laws do not have nor ever had any force of law whatsoever.

TITLE

3. This Order will bear the title "Explanatory Order (Additional Instructions) (No. 1) (West Bank Region) of 1967.

5 November 1967

'Uzi Narkiss

Commander of the Central Region and Commander of the Israel Defence Forces in the West Bank Region

[TRANSLATION BY AL-HAQ]

התוכן

المحتويات

314	צו בדבר סגירת שטח - בקעת הירדן (צו מס' 151)	314	أمر بشأن اغلاق مساحة - غور الاردن (أمر رقم 151)
316	צו בדבר עתור - בקעת הירדן (צו מס' 152)	316	أمر بشأن منع التجول -- غور الاردن (أمر رقم 152)
317	צו בדבר רישום מתאכסנים חייזרים (צו מס' 153)	317	أمر بشأن تسجيل نزلاء وساكنين (أمر رقم 153)
320	צו לחיקוק הצו בדבר סמכות שיפוט בעבירות הפליליות (צו מס' 154)	320	أمر بتعديل الأمر بشأن صلاحية المحكم في الجرائم الجزائية (أمر رقم 154)
320	צו לחיקוק הצו בדבר העברת תוצרת חקלאית (צו מס' 155)	320	أمر بتعديل الأمر بشأن نقل المنتوج الزراعي (أمر رقم 155)
322	צו בדבר איסור קבלת טובת הנאה מרשות ארוב (צו מס' 156)	322	أمر بشأن حظر الحصول على منفعة من سلطة معادية (أمر رقم 156)
324	צו בדבר הארכת פקודת מעצר (הוראת שעה) (צו מס' 157)	324	أمر بشأن تمديد أمر التوقيف (حكم مؤقت) (أمر رقم 157)
325	צו לחיקוק חוק הפיקוח על המים (צו מס' 158)	325	أمر بتعديل قانون الاشراف على المياه (أمر رقم 158)
328	צו בדבר חוק רשות המשלל הירדנית (מס' 21) לשנת 1967 (צו מס' 159)	328	أمر بشأن قانون سلطة الكهرباء الاردنية (رقم 21) لسنة 1967 (أمر رقم 159)
329	צו בדבר פרשנות (הוראות נוספות) (מס' 1) (צו מס' 160)	329	أمر بشأن تفاسير (تعليمات اضافية) (رقم 1) (أمر رقم 160)
330	צו בדבר פרשנות (הוראות נוספות) (מס' 2) (צו מס' 161)	330	أمر بشأن تفاسير (تعليمات اضافية) (رقم 2) (أمر رقم 161)
331	צו בדבר קביעת מקום מעצר ומאסר (חיקוק מס' 1) (צו מס' 162)	331	أمر بشأن تعيين مكان للتوقيف والحبس (تعديل رقم 1) (أمر رقم 162)
332	צו בדבר סטיית תוצרת על נפגעים (צו מס' 163)	332	أمر بشأن تقديم بلاغ عن مصابين (أمر رقم 163)
333	צו בדבר בתי משפט מקומיים (מעמד רשויות צה"ל) (צו מס' 164)	333	أمر بشأن المحاكم المحلية (مقام سلطات جيش الدفاع الاسرائيلي) (أمر رقم 164)
	מ י י י י י		تعيينات
	רשימת מינויים שניתנה אלוף עוזי גרמיר, אלוף פיקוד המרכז ומפקד כוחות צה"ל באזור הגדה המערבית	336	قائمة بالتعيينات الصادرة عن ألوف عوزي تركيس ألوف القيادة الوسطى وقائد قوات جيش الدفاع الاسرائيلي في منطقة الضفة الغربية

ג'י'ש' ה'ד'פ'א'ג' ה'א'ס'ר'א'י'ל'י

א'מ'ר' ר'ק'מ' 160

א'מ'ר' ב'ש'א'ן' ת'פ'א'ס'יר' (ת'ע'ל'י'מ'א'ת' א'ז'א'פ'י'ה) (ר'ק'מ' 1)
א'ס'ת'א'ד'א' א'ל' ה'ס'ל'א'ח'י'א'ת' ה'ח'ז'ל'ה' ל'י' ב'ט'פ'ט'י' ק'א'ל'ד' ק'ו'א'ת'
ג'י'ש' ה'ד'פ'א'ג' ה'א'ס'ר'א'י'ל'י' ל'י' ה'מ'נ'ט'ק'ה' ; א'ס'ל'ד' ה'א'מ'ר' ה'ת'א'ל'י' ;
ת'ע'א'ר'י'פ'

1. - ל'י' ה'ל'א' ה'א'מ'ר' :-

ו'א'ב'ר'י'ד'ה' ה'ר'ס'מ'י'ה' - ח'ס'ב' מ'ד'ל'ו'ל'א' ל'י' ק'א'נ'ו'ן'
ה'ת'פ'א'ס'יר' , ל'ס'נ'ה' 1945 .

ו'ק'א'נ'ו'ן' ח'פ'י' - א'י' ע'ל' ת'ש'ר'י'ע'י' ק'א'ן' , ת'ח'י'ל'ר'א'
ס'נ'ה' ב'ס'ד'ד' ה'מ'נ'ט'ק'ה' ל'י' ה'מ'ל'ד'ה' ה'ר'א'ע'ה' ב'י'ן' 16
ק'ס'ל'י'פ' 5708 (29 ת'ש'ר'י'ן' ה'ש'א'נ'י' 1947)
ו'ב'י'ן' 6 א'י'א'ר' 5708 (15 א'י'א'ר' 1948) ו'ל'מ'
י'נ'ש'ר' ל'י' א'ב'ר'י'ד'ה' ה'ר'ס'מ'י'ה' , ב'א'ר'ז'מ' מ'ן' ק'ו'נ'ת'
ע'ס'ו'ב'א' ע'ל' נ'ו'ע' ה'א'ע'מ'א'ל' ה'ת'ש'ר'י'ע'י'ה' ה'א'י' ק'א'ן'
נ'ש'ר'ת'א' ל'י' א'ב'ר'י'ד'ה' ה'ר'ס'מ'י'ה' , י'ת'ח'ו'ל' א'ל' ת'ל'א'ת'
ה'מ'ל'ד'ה' , מ'ן' ת'י'ב'יל' ה'ו'א'ב'ב' א'ו' ה'ע'א'ד'ה' .

ק'א'נ'ו'ן' ח'פ'י'

2. - מ'נ'מ'א' ל'כ'ל' ה'ת'ב'א'ס' י'ב'ק'ר'ר' ב'ה'ל'א' א'ן' כ'ל' ק'א'נ'ו'ן' ח'פ'י'
ל'י'ס' ל'ה' ו'ל'מ' י'כ'נ' ל'ה' א'פ'ל'א'ק'א' א'י' מ'פ'ע'ו'ל' .

ה'א'ס'מ'

3. - י'פ'ל'ק' ע'ל' ה'ל'א' ה'א'מ'ר' א'ס'מ' ו'א'מ'ר' ב'ש'א'ן' ת'פ'א'ס'יר'
(ת'ע'ל'י'מ'א'ת' א'ז'א'פ'י'ה) (ר'ק'מ' 1) (מ'נ'ט'ק'ה' ה'ז'פ'י'ה' ה'נ'ר'י'ה'
(ר'ק'מ' 160) , ל'ס'נ'ה' 5728 - 1967 .

2 ח'ש'ו'א'ן' 5728 (5 ת'ש'ר'י'ן' ה'ש'א'נ'י' 1967)

ה'ר'ו'ף' ה'ע'ז'ר'י' ת'ר'כ'י'ס'

ה'ר'ו'ף' ה'ק'י'א'ד'ה' ה'ו'ס'ט'ר'י'

ו'ק'א'נ'ד' ק'ו'א'ת' ג'י'ש' ה'ד'פ'א'ג' ה'א'ס'ר'א'י'ל'י'

ל'י' מ'נ'ט'ק'ה' ה'ז'פ'י'ה' ה'נ'ר'י'ה'

צ'ב'א' ה'ג'נ'ת' ל'י'ש'ר'א'ל'

צ'ו' מ'ס'י' 160

צ'ו' ב'ד'ב'ר' מ'ר'ש'נ'ו'ת' (ה'ו'ר'א'ו'ת' נ'ו'ס'ס'ו'ת') (מ'ס'י' 1)

ב'ת'ו'ק'ף' ס'מ'כ'ו'ח'י' כ'מ'ס'ק'ד' כ'ו'ח'ו'ת' צ'ה"ל' ב'א'ז'ו'ר' , א'ני' מ'צ'ו'ו'ת' ב'ז'ו'ה'
ל'א'ס'ו'ר' :-

ה'נ'ר'ו'ת'

1. - צ'ו' ז'ו' -

"ה'ע'ת'ו'ן' ה'ר'ס'מ'י' - כ'מ'ש'מ'ע'ו'ת'ו' ב'מ'ק'ו'ד'ת' ה'מ'יר'ו'ש'י'ם' , 1945 .
"ח'ו'ק' נ'ס'ת'ר" - מ'ע'ש'ה' ח'ק'י'ק'ה' כ'ל' ש'ה'נ'א' , ש'ד'י'ט'ו' ל'ח'ו'ק'ק'ו'
ל'ג'ב'י' ה'א'ז'ו'ר' ב'ת'ק'ו'ס'ה' ש'ב'י'ן' ט"ו' ב'כ'ס'לו' ת'ש"ח' (29 ב'נ'ו'ב'מ'ב'ר'
1947) ו'ב'י'ן' ר' כ'א'י'יר' ת'ש"ח' (15 כ'מ'א'י' 1948) ו'ש'ל'א' מ'ו'ר'ס'ם'
כ'ע'ת'ו'ן' ה'ר'ס'מ'י' , ל'מ'ר'ו'ת' ח'י'ז'ת'ו' נ'מ'נ'ה' ע'ם' ס'ו'ג' מ'ע'ש'י' ה'ח'ק'י'ק'ה'
ש'פ'ר'ט'ו'מ'ם' כ'ע'ת'ו'ן' ה'ר'ס'מ'י' ה'י'ת' , ע'ו'ב'ר' ל'א'ו'ת'ת' ח'ק'ו'ס'ת' , ח'ו'ב'ה'
ז'ו' מ'נ'ה'ג' .

ח'ו'ק' נ'ס'ת'ר'

2. כ'ד'י' ל'ה'ס'יר' ס'פ'ק' , נ'א'מ'ר' ב'ז'ו'ת' כ'י' ח'ו'ק' נ'ס'ת'ר' א'י'ן' ל'ו' ו'מ'ע'ו'ל'ת'
ל'א' ה'י'ת' ל'ו' כ'ל' ח'ו'ק'ף' .

ה'ש'ם'

3. צ'ו' ז'ו' י'י'ק'ר'א' "צ'ו' ב'ד'ב'ר' מ'ר'ש'נ'ו'ת' (ה'ו'ר'א'ו'ת' נ'ו'ס'ס'ו'ת') (מ'ס'י' 1)
(א'ז'ו'ר' ה'ג'ד'ה' ה'מ'ע'ר'ב'י'ת') (מ'ס'י' 160) , ת'ש"ח' - 1967 .

כ'י' כ'ח'ש'ו'ן' ת'ש"ח' (5 ב'נ'ו'ב'מ'ב'ר' 1967)

ע'ז'ר'י' נ'ר'ק'י'ס' , א'לו'ף'

א'לו'ף' ס'י'ק'ו'ד' ה'מ'ר'כ'ו'

ו'מ'ס'ק'ד' כ'ו'ח'ו'ת' צ'ה"ל'

ב'א'ז'ו'ר' ה'ג'ד'ה' ה'מ'ע'ר'ב'י'ת'

ENGLISH TRANSLATION OF APPENDIX C1

Israel Defence Forces

Order No. 160

Explanatory Order
(Additional Instructions) (No. 1)

In accordance with the authority vested in me as Commander of the Israel Defence Forces in the Region, I issue the following Order:-

DEFINITIONS

1. In this Order:-

"Official Gazette" - As defined in the Explanatory Law of 1945.

"Hidden Law"- 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 the period that period whether by necessity or custom.

HIDDEN LAW

2. In order to prevent any misunderstanding, it is hereby decided that Hidden Laws do not have nor ever had any force of law whatsoever.

TITLE

3. This Order will bear the title "Explanatory Order (Additional Instructions) (No. 1) (West Bank Region) of 1967.

5 November 1967

'Uzi Narkiss

Commander of the Central Region and Commander of the Israel Defence Forces in the West Bank Region

[TRANSLATION BY AL-HAQ]

LETTER TO AL-HAQ FROM THE BRITISH FOREIGN OFFICE OF 22

APRIL 1987



Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State

22 April 1987

Dear Mr. Shalal,

Thank you for your letter of 23 March concerning the validity of the British Emergency Powers (Defence) Regulations 1945.

I confirm that, in view of the Palestine (Revocation) Order in Council 1948, the Palestine (Defence) Order in Council 1937 and the Defence Regulations 1945 made under it are, as a matter of English law, no longer in force.

The status of the Defence Regulations under the law of any other State is a matter to be determined by the law of that State, and is therefore not one on which I would wish to express a view. In your letter, you take up the reference, in my letter of 2 January to Lord McNair, to the status of the Defence Regulations under Israeli law. This was in no way intended to imply acceptance (or otherwise) by us of the applicability of Israeli law to the Occupied Territories. By the same token, I cannot respond to your point about the status of the Regulations under Jordanian law. That law may be relevant, but it is our view that the matter cannot in any case be treated solely as a question of Jordanian law.

For these reasons, we have not raised with any other country the matter of the applicability of the Defence Regulations under the law of that country.

Nevertheless, I assure you that we share your concern about Israeli practices in the Occupied Territories, including deportation and house demolitions, which we regard as an obstacle to peace. We call for the withdrawal of the Israelis from territories occupied in 1967 and, pending this, urge them to fulfil their obligations as occupying power under the Fourth Geneva

/Convention.



Convention. We will continue to make our views very clear in our regular contacts with the Israeli authorities both here and through our Embassy in Tel Aviv.

Yours sincerely
Tim Renton

Tim Renton

Mr Raja Shehadeh
Al Haq
PO Box 1413
Ramallah
Via Israel



מנשרים, צווים ומינויים

מפקדת אזור יהודה והשומרון

מנשרים, אומרים ותעיינות

סאדורה מן

קיאדה קואת גישה האסראילי פי מנطقة الصفة الغربية

כ בסיון תשכ"ח (16 ביולי 1968) ט"ז - 12 20 סבטן 2028 (16 חזירן 1968)

החוקים	החוקים	החוקים
10 דבר סכסכת החימה לגבי ליסקת (10 ס"ס 216)	457	אומרים אמר בשאן סלחיה التوقيع بصدد صفات (אמר رقم 216)
10 דבר קבועה סקום סעדר ומסמר סוכבי (חיקון ס"ס 1) (10 ס"ס 217)	458	אמר בשאן תעיין מסיאן מרכזי للتوقيف والحبس (תعدیل رقم 3) (אמר رقم 217)
10 דבר סימן בחי-ספסוף סוכרים (חיקון ס"ס 1) (10 ס"ס 218)	458	אמר בשאן אנشاء محاكم عسكرية (תعدیل رقم 1) (אמר رقم 218)
10 דבר רישום וכדיקה זייד סכבי החטיבה (10 ס"ס 219)	459	אמר בשאן تسجيل وتفحص المتاد الميكانيكي والمنسقي (אמר رقم 219)
10 ס"ס 220 - 221 - 222 - 223	462	אמר رقم 220 - 221 - 222 - 223
10 דבר פיקוח על סוכס. זיידות סרד וזייד (חיקון ס"ס 1) (10 ס"ס 221)	462	אמר בשאן الرقابة على العملة ، الاوراق المالية والذهب (תعدیل رقم 4) (אמר رقم 221)
10 דבר ספחים סוכרים (חיקון ס"ס 1) (10 ס"ס 222)	462	אמר בשאן المساحات المنلقة (حظر نقل البضائع) (תعدیل رقم 2) (אמר رقم 222)
10 דבר וטריות בסומן (חיקון ס"ס 1) (10 ס"ס 223)	463	אמר בשאן تعليمات الأمن (تعدیل رقم 12) (אמר رقم 223)
10 דבר פישנות (הוראות נוספות) (ס"ס 1) (10 ס"ס 224)	466	الأمر التضييري (تعليمات اضافية) (رقم 5) (אמר رقم 224)
10 דבר כללי החוקיות לעכניה (10 ס"ס 225)	467	אמר בשאן قواعد المسؤولية عن الجرائم (אמר رقم 225)
10 דבר זרכי ענישה (אסירים ששוחזרו כרשיון כישור) (10 ס"ס 226)	474	אמר בשאן طرق المعاقبة (السجناء المفرج عنهم) بترخيص في اسرائيل (אמר رقم 226)
10 דבר חיסור שימוש בבוליה-סוכס. ירדניים (10 ס"ס 227)	475	אמר בשאן حظر استعمال طواع الواردات الاردنية (אמר رقم 227)
10 דבר פיקוח סעדר (חיקון ס"ס 1) (10 ס"ס 228)	476	אמר בשאן ساعات منع التجول (تعدیل رقم 1) (אמר رقم 228)

ג'י'ש הדפ'ע אלסרלני

אמר رقم 224

الأمر التفسيري (تعليمات إضافية) (رقم 5)
استناداً الى الصلاحية المخولة لي بصفتي قائد المنطقة
اصدر الأمر التالي :

تعميرف

1. في هذا الأمر -
«تشریح الطوارئ» - حسب مدلوله في المادة 3 من نظام
الدفاع (الطوارئ) - لسنة 1945 .

طريق الناء تشریح الطوارئ.

2. (أ) منأ لحدوث اي التباس بوضع بهذا ان تشریح
الطوارئ لا يلغى تلقائياً بواسطة تشریح لاحق لیس بتشریح
الطوارئ .

(ب) لا يلغى تشریح الطوارئ الا بواسطة تشریح
يحدد صراحة التشریح الملغى مع التنويه باسمه .

مفعول تشریح الطوارئ.

3. ان تشریح الطوارئ الذي كان ساري المفعول في
المنطقة بعد تاريخ 5 ايار 5708 (14 ايار 1948) يستمر
ساري المفعول اعتباراً من اليوم المحدد (بالكسر) فصاعداً ،
وكأنه سن كتشریح الأمن ، الا اذا التي صراحة مع التنويه
باسمه كما ذكر في المادة 2 (ب) ، قبل اليوم المحدد
(بالكسر) او بعده .

الاسم

4. يطلق عل هذا الأمر اسم «الأمر التفسيري (تعليمات

اضافية) (رقم 5) (الصفة الغريبة) (أمر رقم 224) .
لسنة 5728 - 1968 .

21 شباط 5728 (20 شباط 1968)

الوف ميشه زائيل فاردي
قائد منطقة الضفة الغربية

צבא הגנה לישראל

צו מס' 224

צו בדבר טרשנות (הוראות נוספות) (מס' 5)
בתוקף סמכותי כמפקד האזור, הגני פודה בזה לאמור :

הנדרה

1. בצו זה -

«חוקת שעת חירום» - כמשמעותה בחקנה 3 לחקנות
ההגנה (שעת חירום). 1945.

דרכים לכיפול חוקת שעת חירום

2. (א) לשם הטרת ספק מוכרר בזה, כי חוקת שעת חירום
איננה מתבטלת מכללא על-ידי חוקת מאוחרת שאיננה
חוקת שעת חירום.

(ב) חוקת שעת חירום מתבטלת רק על-ידי חוקת
הקובעת מטורשות, ותוך אזכור שמה, את דבר ביטולה.

חוקמה של חוקת שעת חירום

3. חוקת שעת חירום אשר היתה בתוקף כאזור אחרי יום
ה' באייר תשי"ח (14 במאי 1948) תמשיך לעמוד בחוקמה
מן היום הקובע ואילך, נאלו חוקמה כתחוקת בסחון, אלא
אם בוטלה מטורשות ותוך אזכור שמה כאמור בסעיף 2 (ב).
לפני היום הקובע או אחרי.

השם

4. צו זה ייקרא «צו בדבר טרשנות (הוראות נוספות) (מס'

5) (יורה והשומרון) (מס' 224), תשכ"ח-1968.

כ"א בשבט תשכ"ח (20 בפברואר 1968)

רסאל ררדי, אלוף-משנה
מפקד אזור
יורה והשומרון

ENGLISH TRANSLATION OF APPENDIX E1

Israel Defence Forces

Order No. 224

Explanatory Order
(Additional Instructions) (No. 5)

In accordance with the authority invested in me as the commander of the region, I issue the following order:-

DEFINITION

1. In this order, "emergency legislation" shall be understood as it is in Regulation No. 3 of the Defence (Emergency) Regulations, 1945.

METHODS TO REVOKE EMERGENCY LEGISLATION

2 (A). So as to remove all doubt, it is hereby clarified that emergency legislation is not rendered null and void by inference from later legislation which is not emergency legislation.

(B). Emergency legislation is rendered null and void solely by legislation which is not emergency legislation and which explicitly repeals it by name.

VALIDITY OF EMERGENCY LEGISLATION

3. Emergency legislation which was in force in the region after 14 May 1948 shall remain in force from the definitive date 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.

TITLE

4. This Order shall be entitled
Explanatory Order (Additional
Instructions) (No. 5) (West Bank) for
the year 1968.

20 February 1968
Rafael Vardi
Commander of the West Bank Region

[TRANSLATION BY AL-HAQ]

LETTER TO AL-HAQ FROM THE JORDANIAN DEPARTMENT OF
MILITARY JUSTICE OF 25 JUNE 1968 (IN ARABIC)

بسم الله الرحمن الرحيم

القيادة العامة للقوات المسلحة الاردنيه

مديرية القضاء العسكري

الرقم / م ع ١١٠١١ / ٤٠١٦ <

التاريخ / ذو القعدة ١٤٠٨

> حزيران / ١٩٨٨

الساده لجنة القانون من أجل الانسان (الحق)
فرع لجنة الحقوقين الدوليه - جنيف -
الموضوع / أنظمة الدفاع التي أصدرتها سلطات
الانتداب البريطاني سنة / ١٩٤٥

أشير الى مذكرتكم رقم ٢٠٠٢ تاريخ ١٩٨٧/٧٦م

إن النقاط التي تضمنتها مذكرتكم المشار اليها اعلاه تمثل فعلاً الوضع في ظل
القانون الاردني ، فالشرح الاردني قيد ألفي ضمناً أنظمة الدفاع التي أصدرتها
سلطات الانتداب البريطاني سنة ١٩٤٥ للأسباب التاليه :-

أولاً : في ١٣ مايو عام ١٩٤٨ . صدر قانون يقضي بمرمان قانون الدفاع
الاردني لعام ١٩٢٥ . على جميع المناطق التي تخضع للجيش الاردني
وذلك من أجل حفظ الأمن والنظام .
ثانياً : في ١٥ مايو عام ١٩٤٨ . أعلن القائد العسكري الاردني بأن السلطات
الاردنيه ستتم في تطبيق جميع المراسيم واللائح التي كانت
سارية المفعول في فلسطين أبان الانتداب البريطاني . وذلك
فيما عدا تلك التي تتناقض مع أي بلد من بلدو قانون الدفاع
الاردني لعام ١٩٢٥م .

ثالثاً : نتيجة لعدم تطبيق أنظمة الدفاع . الطواريء . لعام ١٩٤٥ . وذلك
منذ عام ١٩٤٨ . فإن الدستور الاردني الصادر سنة ١٩٥٢ لم
يشتر اليها إطلاقاً بما يهدد إلغائها حتماً .

رابعاً : هناك مؤثران مؤديان الى أن أنظمة الدفاع لعام ١٩٤٥ لم تعد
سارية المفعول في الضفة الغربية وذلك بعد ممرمان لوائح
الدفاع الاردنيه :-

الاول : إن بنود أنظمة الدفاع لعام ١٩٢٥ ، متناقضة مع لوائح
الدفاع الاردنيـــــــــــــــــه .

الثاني : إن لوائح الدفاع والامر التي صدرت في عهد النظام الاردني
صدرت وفقاً لقانون الدفاع الاردني لعام ١٩٣٥ ، وليس وفقاً
لانظمة الدفاع ، الطواريء ، لعام ١٩٢٥م .

كذلك فإن أنظمة وأوامر الدفاع التي صدرت في عهد النظام الاردني
صدرت استناداً الى قانون الدفاع الاردني لسنة ١٩٣٥ وليس استناداً الى أنظمة الدفاع
(الطواريء) لسنة ١٩٢٥ .

ومن ثم فإنه ليس لسلطات الاحتلال الاسرائيلي قانوناً حق تطبيق
أنظمة الدفاع (الطواريء) لسنة ١٩٢٥ والتي صدرت عن سلطات الانتداب البريطاني
في فلسطين .

يرجى العلم .

وتفضلوا بقبول وافر الاحترام .

اللواء الحقوقي
مدير القضاء العسكري
تيسير تفتاح

In the Name of God, Most Gracious,
Most Compassionate

General Command of the Jordanian Armed Forces
Department of Military Justice
Number Ma-1-10-24016
Date: 25 June 1988

Messrs. Law in the Service of Man (Al-Haq)
Affiliate of the International Commission of
Jurists - Geneva
Subject: Defence Regulations Issued by the
British Mandatory Authorities in 1945

I refer to your letter #2003 dated 6-6-1987.

The points mentioned in your letter do in fact represent the present state of the Jordanian law. It is true that the Jordanian legislator implicitly cancelled the Defence Regulations issued by the British Mandatory authorities in 1945, and for the following reasons:

1- On May 13, 1948, a law was issued applying the Jordanian Defence Law of 1935 over all the areas which fall under the control of the Jordanian army, for the purpose of maintaining security and order.

2- On May 15, 1948, the Jordanian military commander declared that the Jordanian authorities would continue to apply all laws and orders which were in effect in Palestine during the British Mandate, except for those which contradicted or conflicted with any of the provisions of the Jordanian Defence Law of 1935.

3- As a result of the cessation of the operation of the Defence (Emergency) Regulations of 1945, as of 1948, the Jordanian constitution which was issued in 1952 did not refer at all to those Regulations, indicating absolutely that they had been cancelled.

4- There are two indicators which show that the Defence Regulations of 1945 were no longer operative in the West Bank after the application of the Jordanian Defence Law: firstly, that the provisions of the Defence Regulations of 1945 were in conflict with the Jordanian Defence Laws; and secondly, that the Defence Laws and orders which were issued during the period of Jordanian rule were issued in accordance with the Jordanian Defence Law of 1935, and not in accordance with the Defence (Emergency) Regulations of 1945.

Similarly the Defence Regulations and orders which were issued during Jordanian rule were issued by virtue of the Jordanian Defence Law of 1935, not by virtue of the Defence (Emergency) Regulations of 1945.

Therefore, it follows that the Israeli occupation authorities have no legal rights to apply the Defence (Emergency) Regulations of 1945 which were issued by the British mandatory authorities in Palestine.

We wish to bring the above to your attention.

Respectfully,

(Signature)

The Legal Commander in Charge of Military
Justice
Taysir Na'na'

[TRANSLATION BY AL-HAQ]