

## Israel Practices Affecting the Human Rights of the Population of the Arab Occupied Territories

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ABSTRACT. After World War II that picture was complicated by various proposals for partitioning the land of Palestine into territory for a Jewish State and territory for an Arab State. Through the League of Nations Mandate System, Britain became the Mandatory power for Palestine, in effect holding Palestine in trust for a future Jewish State since the Balfour Declaration had been incorporated into the Palestine Mandate.

The conclusion of the 1967 war had brought the whole of Palestine under Israel control and Israel immediately took administrative measures to unify the Holy City of Jerusalem. The Jordanian legal system was maintained and Israel publicly stated that its retention of such a system was not necessarily mandated by relevant International Law.

However, autonomy in the legal sense is a question of degree, ranging from a grant of limited municipal control of local government authority conferred in domestic matters to extensive government powers in a federal state. In the situation of the occupied territories, the concept of autonomy has been rejected by Palestinians and their legitimate representative the PLO.

Thus, the UN is under an international legal obligation to intervene effectively to rectify the Palestinian tragedy and when this is done the Arab-Israeli conflict may be settled peacefully.

### Introduction

The problem underlying unrest in the occupied territories has existed for forty years, the extent of the dispute goes back to the end of World War I and the formation of plan to create a Jewish State in the land of Palestine<sup>(1)</sup>. After World War II that

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(1) Great Britain, through the Balfour Declaration of 1917, established its commitment to a future Jewish state in Palestine. In 1922, through the League of Nations Mandate System, Great Britain became the mandatory power for Palestine, in effect holding Palestine in trust for a future Jewish state since the Balfour Declaration had been incorporated into the Palestine Mandate. In 1947 amid increasing Arab-Jewish turmoil Britain turned to the UN to resolve the Mandate problem. In 1948 Israel declared its statehood and the Mandate period ended.

picture was complicated by various proposals for partitioning the land of Palestine into territory for a Jewish state and territory for an Arab state. None of these proposals was universally accepted or implemented, yet confusion over the various partition plans created territorial expectations and fostered hatred sentiments. In 1948 Israel declared its statehood and surrounding Arab nations responded with an all-out grab for territory. The end of the 1948 fighting brought armistice lines that signaled little more than that the shooting had stopped for the time. From 1948 until 1967, except for a brief period in 1958 the Gaza Strip was administered by Egypt and Jordan annexed the West Bank in 1950 and administered it until 1967<sup>(2)</sup>.

Under the pre-1948 partition plan neither Egypt nor Jordan had been designated to move into these territories, yet both countries were equally adamant in wanting to restrict Israel's possession of any Palestinian land<sup>(3)</sup>. The Palestinians meanwhile have never given up their own goal of statehood, therefore, frustration has been mounting for twenty years among the Palestinians in the occupied territories. Following the Six-day War in 1967 Israel forces moved into the Gaza Strip, the West Bank and East Jerusalem and since then the Palestinians in these territories have clashed numerous times with Israeli soldiers and settlers<sup>(4)</sup>.

### **Israel's Administrative Authority and its Legality within the Context of International Law**

The conclusion of the 1967 war had brought the whole of Palestine under Israeli control and Israel immediately took administrative measures to unify the Holy City of Jerusalem.

The rest of the territory was divided into six districts and headed by a military governor, army personnel allowing minimal power of local administration to Arab Mayors and Town Councils.

The Jordanian legal system was maintained and Israel publicly stated that its retention of such a system was not necessarily mandated by relevant International Law. The applicability of such a system was questioned on the grounds that it was only pertinent to conquered enemy territory<sup>(5)</sup>.

Does this claim purport to express existing Customary International Law? It would be assumed that occupation within the sense of this instrument is possible only in a situation where there are a pre-existing territorial sovereignty vested in the adversarial state which will remain intact. In the case of the military occupation of the West Bank, East Jerusalem and Gaza Strip for the purposes of the Hague Regulation of 1907, and the Geneva Conventions of 1949, Israel has violated a number of articles of international instruments on a number of occasions since it has been in control of these territories. There is likewise the view of the UN, expressed in a series of resolutions

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(2) *Stanford Journal of International Law*, **24**, (1988).

(3) **Pitman B. Potter**, The Palestine Problem before the UN, *AJIL*, **42**, (1948), p. 860.

(4) **Morgan, Peter**, Recent Israeli Security Measures under the Fourth Geneva Convention, *Connecticut Journal of Int. Law*, **3**, (1988), pp. 486-487.

(5) **Gerson Allan**, *Israel, the West Bank & International Law*, Frank Cass Co. Ltd., (1973), pp. 111.

adopted almost unanimously stating that Israel is occupying the West Bank, East Jerusalem and Gaza Strip and violating the restraints imposed upon it as an occupant<sup>(6)</sup>. Law and Administrative Ordinance Law proposed and passed by the Israeli Government allowed her to extend the law, jurisdiction and administration of the State of Israel to any area occupied in 1967<sup>(7)</sup>. The authority of such laws thereafter invoked to extend Israel Civil Jurisdiction to East Jerusalem and her immediate measures to unify the Holy City on 30 July 1980.

It was never invoked to extend Israel's Civil Jurisdiction to the West Bank and Gaza Strip despite the authority of such laws remaining a possibility. On 22 October 1967, a provision in the military proclamation specifying that the Geneva Conventions would have superiority over Security Legislation was deleted. On 29 February 1968, the former term the "West Bank" was officially abandoned in favour of "Judea and Samaria", the alleged historical designation of the area. Moreover, on 29 February 1968, Israel promulgated a regulation whereby the Arab occupied territories would no longer be considered as enemy territory. Therefore, Israeli nationals were allowed to enter the territories freely without committing the offence of entering enemy territory<sup>(8)</sup>. This regulation simply recognizes the fact that Israelis attempting to lay the groundwork for future annexation of the area concerned.

### **Occupation and Annexation within the Context of International Law**

The distinction between military occupation and annexation of territory became part of the Customary International Law of War. The concept of military occupation is temporary and military one. It occurs when a territory has actually been placed under the authority of a hostile army<sup>(9)</sup>.

It is obviously common ground between the conflicting parties that the West Bank, East Jerusalem and Gaza Strip were not terra nullius<sup>(10)</sup> at any time the territorial sovereignty had been relinquished since 1920 by the Ottoman Empire, but from then it was destined for the inhabitants of Palestine. In 1948-49, both Jordan and Israel gained effective control and authority in their separate parts of the Mandate Territory of Palestine. As a result of armed conflict, the state of Israel emerged as a fact, and latter, obtained recognition and Jordan's title to the West Bank was not recognized<sup>(11)</sup>.

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(6) **Schwartz, Richard**, Summary of Conference on Human Rights and Peace in the M.E., *Syracuse Journal of International Law and Commerce*, **12**, (1987), pp. 542-548.

(7) **Gerson, Allan**, *op. cit.*, p. 111.

(8) **Nahums**, Policies and Practices of Occupation, *New Outlook*, May (1968), p. 35.

(9) **Greig, D.W.**, *International Law*, Butterworth, London (1976), p. 161.

(10) In the case of the terra nullius the state which is in the course of consolidating title is in principle entitled to carry out act of sovereignty. The terra nullius is open to acquisition by any state and is subject to certain rules of law which depend on the two assumptions that such zones are free for the use and exploitation of all and that persons are not deprived of the protection of the law merely because of the absence of state sovereignty. States may exercise jurisdiction in respect of individuals and companies carrying on activities in terra nullius.

(11) **Brownlie, Ian**, *Principles of Public International Law*, Clarendon Press, Oxford, (1973), p. 141.

Under present principles of international law conquest does not confer title and occupation is not annexation. The opinion of the overwhelming majority of states as expressed repeatedly in the UN Resolutions is that Israelis in military occupation of the territories, namely, the West Bank, East Jerusalem and the Gaza Strip where the sovereignty remains vested in the Palestinians<sup>(12)</sup>.

Articles 49 of the Geneva Convention of 1949 precludes an occupant from transferring parts of its own population into the territory it occupies. This prohibition of transfer was designed to prevent any attempt by an occupant to integrate the economy of the occupied territory with that of the occupant, and to prevent the annexation of the occupied territory, by the infusion or settlement of population of the occupant<sup>(13)</sup>. This is precisely the complaint that has been made against Israel in relation to its economic policies and settlements in the West Bank, and Gaza Strip, having been the subject of repeated condemnation by the UN since 1967.

Israel established a number of civilian settlements immediately after the 1967 war. Security considerations were, at first, the predominant motive. Nonetheless, Israel has no right to believe in its alleged or claimed destiny to rule all Palestine. It has campaigned on the slogan that settlement is a national right of the Jews and is dictated by national security considerations. Nonetheless, settlement policy ran the risk of deteriorating relationships within the UN, which showed blunt opposition to Israeli settlements in the occupied territories. Israel has, therefore, a terrible image in world community by not honoring the Geneva Convention in which Article 49 thereof, expressly provides that the occupying power shall not deport or transfer part of its own civilian population into the territory it occupies<sup>(14)</sup>.

The UN Security Council Resolution 242 of 1967 provided an answer, both legal and political, to Israel's security anxieties. It envisages Israel's withdrawal from the occupied territories in return for peace with its Arab neighbors and recognition by them of Israel's statehood and frontiers. An Arab state emerging in the West Bank, East Jerusalem and Gaza Strip will take up the territorial sovereignty in the areas, and would be required by guarantees and other devices to recognize Israel and live in peace with it<sup>(15)</sup>.

By definition if these political aspirations are met, Israel's security will then stand in the same condition as that of any other state. Security may be a political bargaining counter but it is not a legal basis for Israel's continued presence in the occupied territories<sup>(16)</sup>.

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(12) Geneva Convention in Time of War of August 12, 1949 6 U.S.T. 3516 T.I.A. S. No. 3365, 75 U.N.T.S. 287 (Hereinafter Geneva Convention).

(13) *Ibid.*, Geneva Convention Supra Note 12.

(14) *UN Doc. S/747*, Resolution 2672 (XXV) December 8, 1970, the vote was in favour 47, against 22, and abstained 50. Resolution 2787 (XXVI) December 6, 1971, the vote was in favour 76, against 10 and abstained 33.

(15) **Bin-Talal, Hassan**, *Palestinian Self-Determination* (A Study of West Bank and Gaza Strip) Quartet Books, London, (1981), p. 96.

(16) **Sureda, Rigo**, *The Evolution of Self-Determination* (A Study of UN Practice), Smithoff, Nether land, (1978), pp. 17-25.

In contemporary international law, belligerent occupation of the territory of a state resulting from the use of force in contravention of the provisions of the UN Charter and considered unlawful under the terms of the UN Declaration of Principles of International Law adopted in 1970 by the UN General Assembly without vote. This Declaration is now considered as establishing an accepted interpretation of the UN Charter in that respect<sup>(17)</sup>.

The question of whether conquest or aggression can create or confer a valid title to territory has, in modern international law, to be answered in the negative. The 1974 Declaration of Principles of International Law which was adopted by the UN General Assembly provides that the territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. Article (5) paragraph (3) goes on to provide for no territorial acquisition or special advantage resulting from aggression or shall be recognized as lawful<sup>(18)</sup>.

### **Autonomy and Self-Determination within the Context of International Law**

Autonomy and self-determination as legal terms are not identical and might embody conflicting views because they differ in a number of respects. Legally, autonomy derives from the converse proposition that territory determines the destiny of the people in it. The right of self-determination derives from the general principle that a people determines the destiny of the territory.

Autonomy in the legal sense is a question of degree, ranging from a grant of limited municipal control of local government authority conferred in domestic matters, to extensive governmental powers in a federal state. The right of self-determination of people arises independently, conferring upon them a legal right to determine their own destiny without subjection to any state.

Before the establishment of the UN, the principle of self-determination was probably a political one and was not within the principles of customary international law<sup>(19)</sup>. However, development in international law have prevailed since the foundation of the UN in 1945 in which the principle of self-determination being applied on the process of decolonization in non-self governing territories. Therefore, the principle of self-determination may have generated a rule of international law through which the political future of a colony in non-independent territory should be determined in accordance with the wishes of inhabitants<sup>(20)</sup>.

Subsequently, the principle of self-determination has prevailed not only as a rule of international law but as a fundamental human right. As such, it has been enshrined in two UN Conventions on Human Rights, established in 1966<sup>(21)</sup>. Thus, Article (1) of the UN Covenant on Civil and Political Rights states that:

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(17) **Starke, J. G.**, *An Introduction to International Law*, Butterworths, London, (1977), pp. 568-569.

(18) *UN Juridical Yearbook*, (1974), pp. 79, 83, 97, 98.

(19) **Beuchheit, Lee**, *Secession, the Legitimacy of Self-Determination*, Yale University Press, New Haven (1978), pp. 12-18.

(20) **Sureda, Rigo**, *Op Cit.*, pp. 18-24.

(21) *UN Doc. A/811 (International Covenant on Economic, Social, and Political Rights*, adopted in the Resolution of December 16, 1966).

1. "All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural developments".

2. "The states parties to the present covenant, including those having responsibility for the administration of non self-governing and trust territories, shall promote the realization of the right of self-determination and shall respect the right in conformity with the provisions of the Charter of the UN"<sup>(22)</sup>.

An identical Article is to be found in the UN Covenant on Economic, Social and Cultural Rights and it was subsequently formulated in the UN Declaration on Principles of International Law of 1970 which states that "... All people have the right, freely, to determine without external interference their political status; the establishment of a sovereign and independent state, their free association or integration with an independent state or its emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination by the people"<sup>(23)</sup>.

In the situation of the West Bank, Gaza Strip and East Jerusalem the concept of autonomy has been rejected by the Palestinians and their legitimate representative the PLO and by the Arab States on a number of occasions. At the moment the degree of autonomy exercised by municipal mayors and town councils in the occupied territories is minimal and is dependent upon concessions from the Israeli military authority. Its content is at the discretion of Israeli authority, therefore, the latter can revoke such degrees at any time.

Israel's conduct in the occupied territories is very difficult to justify in terms of international law in which the latter is bound by the principles of such law having attained statehood and became a member of the UN. In this context Article (1) of the UN Charter sets out the purposes of the organization. They include "... to bring about by peaceful means and in conformity with the principles of justice and international law adjustments or settlements of international disputes in situations which might lead to a breach of the peace..."<sup>(24)</sup>

Until now Israel has done nothing to carry out these purposes and at present the situation in the occupied territories is worsened by the revolts of Arab nationals against Israel's continued military occupation. These areas are not part of Israel's territory and the absence of defined Israel borders does not make them part of Israel's territory.

Resolutions 242 of 1967 and 338 of 1973 of the UN Security Council underline the need to guarantee the Palestinians the right of self-determination. Israel's commitment to the principles of withdrawal from the occupied Arab territories in return for peace with Arab states and recognition of Israel's statehood and frontiers. The exercise by the Palestinians the right of self-determination is the lawful mode of filling the territorial sovereignty in the West Bank, East Jerusalem and Gaza Strip<sup>(25)</sup>.

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(22) **Brownlie, Ian**, *Basic Documents in International Law*, Clarendon Press, Oxford, (1972), p. 162.

(23) *Ibid.*, p. 152.

(24) *Ibid.*, p. 3.

(25) Resolution 242 Article I (11) "...Termination of all claims or states of belligerency and respect for acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their rights to live in peace within secure and recognised boundaries free from threats or acts of force".

Thus, Israel must be prepared to live with a Palestinian state in return for an over all peace settlement and mutual recognition and secured frontiers.

With regard to the Resolutions of the UN organs starting with the UN General Assembly Partition Plan of November, 1947 which envisaged the idea of two states, to the present time, Israel denies the competence of the UN to make dispositive territorial arrangement. Nonetheless, Israel relied upon the Partition Plan of 1947 to found its statehood and to claim admission to the UN<sup>(26)</sup>. Israel ignores the other parts of the Partition Plan which provided for an Arab state and an internationalized Jerusalem. It also stated that Jordan had no right to annex part of the former Mandate Territory of Palestine. Moreover, it argued that Jordan became the Arab state envisaged in the Partition Plan of 1947 and that there is no need for another state<sup>(27)</sup>.

However, Jordan was a sovereign independent state in 1946 as Trans-Jordan, two years before Israel came into existence. Therefore, it was erroneous of Israel to have claimed that the Arab state envisaged in the Partition Plan of 1947 had already emerged in Palestine and there has been no need for another.

However, Israel's political aspirations could be met if she accepted the emergence of a Palestinian Arab state in return for peace with Arab states, then its security will stand in the same conclusion as that of any state in the region. Hence, security is a political bargain, as well as Israel's alleged historical claim to Palestine. Therefore, these claims have no legal basis in international law whereby Israel's continued presence in the occupied territories would not generate to Israel any legal basis for sovereign or territorial right in those areas<sup>(28)</sup>.

Thus, Israel would have to show that its occupation is justified in self-defense of Israel and not in self-defense of its position in the occupied territories. Remaining in the occupied territories, would require to be justified in fact and in law, Israel's reliance upon its security is an attempt to equate a political aspiration with a legal right. The most that Israel might be able to contend in law in the face of the UN Resolutions implementing an agreed interpretation of the principles of the UN Charter, is that its withdrawal from the occupied territories be synchronized with the termination of all conditions of belligerency, and mutual respect for the sovereignty, territorial integrity and independence of all states in the region<sup>(29)</sup>.

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(26) Resolution 338 Article 2 calls upon the parties concerned to start immediately after the ceasefire the implementation of Security Council Resolution 242, 1967 in all of its parts.

(27) Part 17(3) "... Independent Arab and Jewish states and the special International Regime for the City of Jerusalem, set forth in Part III of this Plan shall come into existence in Palestine two months after the evacuation of the armed forces of the Mandatory Power has been completed but in any case not later than 1 October 1947. The boundaries of the Arab State, the Jewish State and the City of Jerusalem shall be as described in Part II and III below".

(28) **Bin-Talal, Hassan**, *Op Cit.*, pp. 40-41.

(29) **La Fayette, Lovise de**, *Reviews of Books*, Vienna, Manz Verlag (1983), 1, pp. 394-396.

## **Human Rights within the Context of International Law**

Before the foundation of the UN in 1945, international law had shown more concern for the rights of states than the rights of individuals. Subsequently, a number of international instruments have consecrated principles of respect and protection of human rights, thus becoming a definite legal obligation, recognized by international law.

However, the UN Charter did not define specific human rights as did the Universal Declaration of Human Rights which articulated principles such as the right to life, liberty, security, property etc<sup>(30)</sup>. The four Geneva Conventions of 1949 envisaged the principles of protection of civilians in time of war and the prohibition of violations of a number of human rights<sup>(31)</sup>.

Article 27 of the Convention Relative to the Protection of Civilian Persons in Time of War, provides that "... Civilians described as protected persons are entitled in all circumstances to respect for their persons, their honor, their family rights, their religious convictions, their manners and customs...". Acts which were specifically forbidden are: murder, torture, infliction of corporal punishment (Article 32), punishment for an offence not committed by the person punished or infliction of collective penalties, intimidation, terrorism, pillage, reprisals against persons and property, (Article 37) individuals, or mass forcible transfers or deportation of persons (Article 49) and destruction of real personal property, except where such destruction is absolutely necessary for military operation (Article 53).

In addition to these obligations enshrined in these international instruments, Israel assumed specific obligations in accordance with the UN Partition Resolution of November 1947 to "respect and protect" the human rights and fundamental freedom of the Palestinian Arabs who were to be under the control of the proposed Jewish State. The resolution stipulated that the constitutions of the Arab and Jewish States, to be established in accordance with its terms, should include, inter alia, provisions for guaranteeing all persons the enjoyment of human rights and fundamental freedom<sup>(32)</sup>.

However, these human rights were denied and continue to be denied by Israel to two million Palestinians in a most brutal and inhuman way. The Palestinians who remained within the State of Israel did not fare better. They were reduced to the status of second class citizens and subject to various forms of oppression, arrest, detention, restriction on their liberty of movements, expropriation of their properties and in a number of cases, destruction of their homes and villages.

Israel's violation of the human rights of the Palestinian Arabs increased and intensified after the occupation of the remaining parts of Palestine in 1967. Israel was faced with a large Arab population, as well as, a more active Palestinian resistance. It

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(30) Stone, J., *Israel and Palestine; Assault on the law of Nations* (1981), p. 127.

(31) Preamble of the UN Charter states "...We the people of the UN determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women and of nations large and small and..." .

(32) Article 27, 32, 37, 49 and 53.



felt no compunction in resorting to illegal and brutal means spreading fear to reduce opposition. These illegal means included the uprooting and expulsion of the Palestinians, mass destruction of homes and villages, torture, imprisonment, deportation, prolonged curfews and collective punishments which constitute grave violations of human rights<sup>(33)</sup>.

Thus, the UN General Assembly adopted on 19 December 1968, at its plenary meeting Resolution 2443 (xxxiii) calling for the establishment of a special committee to investigate Israel practices affecting the human rights of the population of the occupied territories. Subsequently, Sri Lanka, Somalia and Yugoslavia were appointed on 12 September 1969 to serve on the committee<sup>(34)</sup>.

On 11 December 1969, the UN General Assembly adopted a resolution calling upon Israel "...to desist forthwith from its repeated repressive practices and policies toward the civilian population in the occupied territories and comply with its obligations under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of August 12, 1949 as well as, the Universal Declaration of Human Rights and the relevant resolutions adopted by the various international organizations.. "<sup>(35)</sup>

The Special Committee was requested by the UN General Assembly to take cognizance of these provisions.

On 5 October 1970, the Special Committee presented first report to the UN General Assembly which referred it to the Special Political Committee for discussion. The latter Committee then requested the UN General Assembly to renew the mandate of the Special Committee, to investigate all Israel's practices and the Assembly approved such a request<sup>(36)</sup>.

On 17 September 1971, the Special Committee transmitted a more detailed report to the UN General Assembly. It was found that the evidence collected support the allegation that Israel is following a policy of annexation and is settling the occupied territories in a manner calculated to exclude all possibility of restitution to lawful ownership. The report further found that "...every attempt on the part of Israel at carrying out a policy of annexation and settlement amounts to a denial of the fundamental human rights of the local inhabitants in particular, the right to self-determination and the right to retain their homeland and a repudiation by Israel of accepted norms of international law<sup>(37)</sup>.

The Committee base its findings that Israel was pursuing in the occupied territories a policy of annexation and settlement which is considered synonymous, on several asserted facts:

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(33) Part (1) B (d) Guaranteeing to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedom, including freedom of religion, language, speech and publication, education, assembly and association.

(34) Meed, *M.E.'S Business Weekly*, **32**, No. 47, November 25, (1988).

(35) *UN Doc. A/8089*.

(36) *Ibid.*, Resolution 2546 (XXIV) of December 11, (1969).

(37) *UNGA Res. 2727 (XXV)*.

Firstly, the committee pointed to the existence of an Israeli Ministerial Committee for Settlement of the Territories. This showed beyond doubt that Israel is pursuing a policy of settlement in territories occupied as a result of the hostilities of June 1967. Secondly, it made reference to the declared practice of land expropriation and settlement in East Jerusalem, the West Bank and Gaza Strip, which were at the heart of the Middle East problem.

On 19 December 1971 the Special Committee transmitted a supplementary report to the UN Secretary General for general distribution, in which it stated further evidence had been found that Israel was pursuing a concerted policy of settlement leading to annexation<sup>(38)</sup>.

On 25 October 1973, the fifth report was transmitted to the UN General Assembly. The Assembly adopted a denouncing action, formulated in a stronger resolution passed by vast majority, condemning Israel's practices affecting the demographic structure and physical character of the occupied territories. It also called upon all states to refuse to recognize such changes and the legitimacy of occupation generally as null and void<sup>(39)</sup>.

In the fifth report the Special Committee found conclusive evidence that Israel is following a policy of establishing settlement in the occupied territories with long range aims of populating them with Israeli nationals some of whom are new immigrants.

In the fall of 1974, 1975 and 1976 the Special Committee transmitted the sixth, seventh and eighth reports to the plenary sessions of the UN General Assembly. Each of them recognizing events tending to confirm conclusions reached in earlier reports, in addition to the findings of new settlements established within these last years<sup>(40)</sup>. This influenced the UN Security Council to issue a consequent statement in October 1976 unanimously condemning Israel's demographic practices and the civilian settlements in the occupied territories which were deemed a violation of international law and a hindrance to peace in the region<sup>(41)</sup>.

### **The Palestinian Uprising in the Occupied Territories**

The Palestinians in the occupied territories have clashed numerous times with Israeli soldiers and settlers. The most violent and protracted unrest, however, began on December 9, 1987, ignited by a traffic accident between an Arab vehicle and a truck driven by an Israeli that resulted in the deaths of four Palestinians<sup>(42)</sup>. On January 3,

1988, the Israeli Government announced that it would permanently expel nine Palestinians accused of being among the chief instigators of the riots<sup>(43)</sup>.

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(38) *UN Doc.* 8389.

(39) *UN Doc.* A/8 389 Add.

(40) *UNGA Res.* 2949 (XXVII) December 8, (1972).

(41) *UN Doc.* A/1027 (1975).

(42) *UN Monthly Chronicle* 5, (1976).

(43) **Kifner**, A General Strike by Israel's Arabs Disrupts Country, *N.Y. Times*, December 22, (1987), art 1, Col. 5.

Consistent with Israeli responses to deportations of Palestinians from the occupied territories, the UN Security Council responded to the announcement by passing two resolutions denouncing the deportations as violations of international law, particularly, the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War<sup>(44)</sup>. While the Security Council repeatedly asserts that Israel shall adhere to the requirements of the convention, Israeli Government rejects the application of the convention of the occupied territories<sup>(45)</sup>.

Security Council Resolution 607 of January 5, 1988, called upon Israel to refrain from deporting any Palestinian civilians from the occupied territories and strongly requested Israel, as an Occupying Power under the Geneva Convention, to abide by its obligations arising under the convention<sup>(46)</sup>.

Article 49 of the Convention prohibits individual or mass forcible transfers, as well as, deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country occupied or not<sup>(47)</sup>. Security Council Resolution 608 of January 14, 1988, called upon Israel to rescind the order to deport the nine Palestinian civilians and to ensure the safe and immediate return of those already deported. On January 21, 1988 the UN Secretary-General submitted a report to the Security Council recommending that it appeal to all High Contracting Parties to the Geneva Convention to urge Israel to change its position regarding the applicability of the Convention to the Occupied Territories<sup>(48)</sup>.

However, the Security Council resolutions have had little impact on Israeli denial of the applicability of the Geneva Convention to the Occupied Territories. If the Security Council is to play effective role in ending the unrest in the Occupied Territories, its resolutions must have some legal validity, particularly, in their references to applicability of the Geneva Convention. The resolutions must also have some binding legal effect on the behavior of Israel with respect to the Occupied Territories and should contain some legal analysis based on the humanitarian spirit of the Geneva Convention.

### **United Nations Intervention Is an International Legal Obligation**

Authority of the UN Security Council to interpret the Geneva Convention is based on Article 24 of the UN Charter which describes the role of the Security Council within the UN, as well as, on the historical acceptance of Security Council interpretation of the Geneva Convention by the UN members<sup>(49)</sup>. However, interpretation of the Geneva Convention may more appropriately be left to the ICJ.

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(44) **Friedman**, Israeli Army Decides to Deport 9 Arabs in Wake of Rioting, *N.Y. Times*, January 4,(1988), art 1, col. 1.

(45) Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, (1949), 6 U.S.T. 3516, T.I.A.S. No.3365, 75 U.N.T.S. 387 (Hereinafter Geneva Convention).

(46) *UN Doc. S/19443*, (1988).

(47) *Ibid.*

(48) Geneva Convention Supra Note (44).

(49) Reported submitted to the Security Council by the Secretary-General in Accordance with Resolution 605 (1987), UN Doc. S/19443 (1988) (Hereinafter Secretary-General's Report).

For the authority of the Security Council, See *UN Charter* chs V-VIII.

Although the UN Charter does not give the Security Council explicit authority to interpret international agreements. The broad peacekeeping power it grants, the security is on potential source of authority for interpreting the Geneva Convention. In Article 24 of the Charter, the Security Council is given primary responsibility for the maintenance of international peace and security<sup>(50)</sup>.

Although the Security Council is authorized to press for peaceful settlement of international disputes, whenever, possible. While the Security Council has the primary peacekeeping function, the ICJ created under the UN has the primary adjudicatory function. Under Article 36 of the Statute of the Court, the Court's compulsory jurisdiction includes: a) interpretation of treaties; b) any question of international law; and c) the determination of the existence of any fact that if established would constitute a breach of an international obligation<sup>(51)</sup>.

Article 36 of the UN Charter states that the Security Council is required to take into consideration that legal disputes should as a general rule be referred by the parties to ICJ in accordance with the provisions of the Statute of the Court<sup>(52)</sup>. Under Article 96 of the UN Charter, however, the Security Council may ask the ICJ for an advisory opinion on a question of international law. (1) A strict reading of these provisions of the UN Charter and the Statute of the ICJ reveals that the Security Council is on tenuous ground in intercepting the applicability of the Geneva Convention on the Occupied Territories. More appropriately, the Security Council should have requested an advisory opinion from the ICJ<sup>(53)</sup>.

The role of the Security Council and the ICJ merge in Article 94(2) which makes the Security Council the enforcement arm of the Court. Thus, the Security Council could use Article 94 to force Israeli compliance with the Geneva Convention by first asking the ICJ for an advisory opinion on the applicability of the Geneva Convention to the Occupied Territory and then, appealing to itself to enforce the opinion if Israel does not accept the court's opinion<sup>(54)</sup>.

The Security Council not only fails to resolve intricate conflicts but it also illustrates violation of human rights in the Occupied Territories. Simply passing a resolution is one of the weakest exercises of Security Council power. The Security Council can alternatively invoke economic sanction encourage UN members to break diplomatic relation with Israel or even use armed force.

However, the real importance of the resolutions lies not in what they say but in who votes for them. The potential impact of the USA vote in the Security Council as matters involving Israel carries much more weight than the actual resolution. (1) A USA vote in favor of a resolution critical of Israel, which happens rarely, is a terrible blow for Israel's image in the world community<sup>(55)</sup>.

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(50) *Ibid.*, art. 24.

(51) *UN Charter*, Supra Note 49 at the Statute of International Court of Justice Art. 36.

(52) *UN Charter*, Supra Note 49 art. 36, para. 3.

(53) *Ibid.*, art. 96, The Statute of International Court of Justice.

(54) *Ibid.*, art. 94 (2).

(55) *N.Y. Times*, March 25, (1988) art. 6, col. 1.

## Conclusion

United Nations intervention to rectify the Palestinian situation is an international legal obligation. This obligation arises in the first place under the UN Charter. The history of Palestine from the Balfour Declaration until the present has been one of avoidance of law and justice. The number of wrongs, illegalities and injustices committed in this country is shocking. The rectification of the situation requires the undoing of acts done in Palestine in violation of law, justice and in breach of the legitimate rights of the Palestinians. The conclusion is unavoidable that the only way to restore right and justice in Palestine by means other than war is for UN intervention to react and to uphold the ideals of the Charter and the principles of justice and international law. This can not be done merely by the passing of resolutions<sup>(56)</sup>.

It is evident that without international pressure and coercion, Israel will not comply with UN resolutions or abandon the fruits of its military conquests or undo any of its acts that have caused the Palestine tragedy.

Thus, in taking such actions to remedy the situation in Palestine, the UN would be merely executing its purposes and discharging its duties under the Charter. The position is strengthened by two other considerations:

Firstly, the UN holds a special responsibility in respect of the tragedy that is now existing in Palestine which is the consequence of the Partition Resolution.

Secondly, the UN General Assembly gave in 1947 clear and unequivocal guarantees to the Palestinians who were to live in the proposed Jewish state in respect of human rights and fundamental freedoms.

The UN General Assembly Resolution of 29 November 1947 stated in Article (1) of Chapter (4) of the Declaration that "... (1) The provisions of Chapter (1) and (2) of the Declaration shall be under the guarantee of the UN and no modification shall be made in them without the assent of the General Assembly of the UN. Any member of the UN shall have the right to bring the attention of the General Assembly of any infraction or danger of infraction of any of these stipulations and the General Assembly may thereupon, make such recommendations as it may deem proper in the circumstances"<sup>(57)</sup>.

Chapter (1) of the Declaration dealt with Holy Places, Religious Buildings and Sites while Chapter (2) concentrated on religious and minority rights. The effect of such provisions were to place the rights of the Palestinians Arabs in the Jewish State and Jews in the Arab State whether such rights are legal, political and human, under the guarantee of the UN<sup>(58)</sup>.

What has happened is a tragedy for the Palestinian Arabs who for centuries had lived in Palestine. They have been driven out, expelled and deported from their homes, dispossessed of their human rights and fundamental freedoms.

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(56) Meed, *The M. E.'S Business Weekly*, 32, No. 42, October 21, (1988).

(57) Resolution 181(11) November 19, (1947).

(58) Cattani, Henry, *Palestine & International Law*, Longman, London, (1973), pp. 167-169.

An intervention by the UN to solve the tragedy in Palestine would not be defeated by Israel's invoking the argument of domestic jurisdiction under paragraph (7) of Article (2) of the UN Charter, because Israel was created by the UN Partition Resolution of November 1947<sup>(59)</sup>. Israel's international legal status is fundamentally different from the status of any other state.

The UN Partition Resolution imposed upon Israel obligations and restrictions which constitute definite limitation on her sovereignty. They are of a permanent character and they cannot be modified without the consent of the UN<sup>(60)</sup>.

Thus, the UN is under an international legal obligation to intervene effectively to rectify the Palestinian tragedy and when this is done, the Arab-Israeli conflict may be settled peacefully.

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(59) Greig, D. W., *op. cit.*, pp. 403-407.

(60) Resolutions 181(11), November 19, 1947, Chapter (4) Paragraph (1).

## الممارسات الإسرائيلية وتأثيراتها على حقوق الإنسان في الأراضي العربية المحتلة

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**المستخلص :** بدأت المشكلة الفلسطينية مع بداية الحرب العالمية الأولى عندما أعلن وزير خارجية بريطانيا اللورد بلفور عن التزام الحكومة البريطانية بإنشاء وطن قومي لليهود في فلسطين وتعين بريطانيا الدولة المنتدبة على فلسطين حيث ساهمت في فتح باب الهجرة لليهود إلى فلسطين وبعد الحرب العالمية الثانية بدأت المشكلة الفلسطينية تأخذ وضعاً أسوأ، الأمر الذي أدى ببريطانيا إلى إعلان انتهاء انتدابها على فلسطين وهنا أعلنت إسرائيل قيام دولتها عام ١٩٤٧م.

بعد حرب يونيو عام ١٩٦٧م استولت إسرائيل على قطاع غزة الذي تديره مصر والضفة الغربية والجزء الشرقي من مدينة القدس الذي تديره الأردن ومنذ ذلك التاريخ وإسرائيل تمل تلك الأراضي، الأمر الذي أدى إلى تقسيمها إلى مناطق عسكرية تدار من قبل حكام عسكريين إسرائيليين مع الاحتفاظ بالنظام القانوني الأردني لكن لم تقبل تطبيق معاهدات جنيف لعام ١٩٤٩م المتعلقة بالحفاظ على المدنيين لأنها لا تعتبر الأراضي المحتلة أراضي أعداء احتلت في خلال الحرب وإنما أراضي لها الحق في احتلالها وفقاً للحق التاريخي.

أشار البحث إلى الحكم المحلي الذي تريد تطبيقه إسرائيل في الأراضي العربية المحتلة والذي يختلف عن حق تقرير المصير الذي يطالب به الفلسطينيون وفقاً لقواعد القانون الدولي وقرارات الأمم المتحدة وأشار أيضاً إلى الانتفاضة الفلسطينية التي بدأت بعد الحادث الذي أدى إلى قيام هذا العمل إلى قيام إسرائيل بإبعاد بعض المدنيين الفلسطينيين من الأراضي العربية المحتلة.

أشار البحث إلى تدخل الأمم المتحدة ممثلة في مجلس الأمن والذي أصبح ضرورة تختمها قواعد ميثاق الأمم المتحدة وينبثق هذا التدخل من قرار التقسيم لعام ١٩٤٧م الذي أصدرته الجمعية العامة والذي أعطى الشرعية الدولية لقيام دولة إسرائيل وأعطاهم الحق في عضوية الأمم المتحدة.