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International Association of Democratic Lawyers: Mission to the Occupied Territories

[EDITOR'S NOTE: The *Journal* reprints below the Introductory Report and Legal Conclusions made by the delegation of the International Association of Democratic Lawyers following its mission to the territories occupied by Israel on October 13-20, 1980. The only change made in this report was the standardisation of Arab names of persons and places according to the system used by the *Journal* – Ed.]

PREFATORY REMARKS

It is only once one is inside the country and in physical contact with the appalling inequalities in both human and institutional relations that one is able to realize how far the legal order in Israel is in itself an obstacle to the observance of ordinary law and of the principle of legality. The very absence of a constitution strikes one as being a conscious programme: it means rejection of the very idea of the norm as an objective and universal guarantee. It is an attempt to secure a "freedom of action" which in reality signifies deliberate refusal to set any pre-established limits to the implementation of a consciously one-sided scheme.

This manner of juggling with the law would appear to be the reflection of an attitude of exaggerated self-defence, a tardy and misplaced response to the vexations suffered by the Jewish people

in the course of its history. But brutal domination and systematic injustice have never been an effective shield against attacks and abuses; we would say, rather, that they have helped to cause further deterioration and bring about further disasters. The humiliation of a people is always and everywhere a source of dangerous tensions for all alike, but primarily for the authors of that humiliation themselves.

This rejection of the principle that problems are to be settled by ethical and legal methods applies outside the country as well as inside it and within the occupied territories. The remonstrances and injunctions of the United Nations are ignored or scoffed at. The State manoeuvres in the exercise of its powers so as to be beyond the reach of any regulatory process.

The executive, which in the occupied territories is represented by the military

authorities, is all-powerful to the point of itself directly instituting the legislation. The law is thus violated at its very source, so that ultimately the legal order comes to identify itself with the arbitrary rule of a power deriving its legitimacy from force alone. Those principles which no civil society may put aside — namely, the dependability and universal validity of law — are sacrificed to the demands of a mythical “security.” Justice is denied at the level of its very institutional principles of impartiality and accessibility to the public and of those institutions which in the course of history have shown themselves to be irreplaceable: strict rules governing the use of evidence, and the force of *res judicata*.

It cannot validly be held, either, that this negation of ethical and legal notions should be assessed under the heading of “emergency law” in view of its intimate connection with the situation deriving from the military occupation of certain territories. The annexationist schemes of the Israeli government are too well known and too openly proclaimed for their permanent character and the growing likelihood of their implementation to be overlooked. Further, it has been universally grasped that the Camp David Accords are no more than an instrument — and not necessarily the only possible one — for obliging the Palestinian people to bear the cost and the burden of so ruthless a usurpation of their rights with all the risks it involves.

Hence it is no accident that during these last three years all the main non-governmental organizations concerning themselves with the preservation of international law and human rights should have decided to spare no effort to explore the situation in Israel and in the occupied Palestinian territories. The anxiety of the world with regard to what is happening in these lands to which peace is a stranger has expressed itself in on-the-spot investigations and pressing representations

to the Israeli government on the part of the Swiss League of Human Rights and the National Lawyers’ Guild of the United States (1977), the International Association of Catholic Jurists (*Pax Romana*) and the International League of Human Rights (1978), Amnesty International (1979) and the International Commission of Jurists (1980).

This unprecedented reaction is certainly the outcome of the general demand for clarification of the motives, circumstances and possible ultimate results of extra-normal conduct on the part of a State the illegality of which assumes truly historic proportions. All these different investigations have produced findings which are identical and dramatically eloquent.

They have brought to light a state of things characterized by grave and flagrant breaches of the universal principles of law and of generally accepted institutional ethics. Israel is seen to be a State which is organically atypical and contradictory, since it respects only those ties and observes only those limits which are dictated by an exceptionally fierce *raison d’Etat*. The effects of such a situation on the life of the Palestinian people, over and above the torture and other inhuman practices which, however odious and intolerable, are unfortunately well known to exist, include further ones which are unprecedented and unpredictable. For example, there is the adoption, for the administration of the occupied territories, of norms which have been assigned legal value (i.e. the orders issued by the military authorities) but which are generally not published and hence remain undivulged even to those whom they directly concern.

Notwithstanding its intolerable character — which our Association most emphatically revealed from a different point of view during the meeting on the Camp David Accords in September 1979 — it is a situation which is turning out to

be difficult to tackle in a realistic and constructive manner. Yet it is precisely in the context of Palestine that we can reach the most correct assessment both of the practical inadequacy of international norms governing human rights in view of all the possibilities they involve of misusing democratic institutions, and of the urgency of the need to remedy this situation.

It is for this reason that, as the outcome of our inquiry on the spot, we wish at once to stress the immediacy of this need and to make known our desire to assist in the programming of an effective and coordinated joint action — an action on the level of the problem to be faced.

INTRODUCTORY REPORT

The Delegation of the International Association of Democratic Lawyers arrived in Israel on the 13 October 1980. Its members were Monique Chemillier-Gendreau, Professor of International Law at Rheims University (France), Romeo Ferrucci, retired judge (Italy), and Patrick McCartan, a solicitor from Dublin (Ireland).

It spent the period from 14 to 17 October, 1980 visiting many areas, homes and offices of people in the occupied territory of the West Bank. The towns and cities visited included Jerusalem, Hebron, Nablus, Ramallah and al-Birah, Bethlehem and others, which represented the major areas of Arab population in the West Bank. During these visits approximately 40 persons were interviewed at length. These people constituted a well-informed and representative body of opinion, covering many professions and areas of work.

The following constitutes a résumé of the facts established during the course of the work of the delegation.

Military Occupation or Civil Administration?

Travelling throughout the occupied territories it is impossible not to notice the overwhelming military presence of the Israelis there: for example, military checkpoints on the roads, patrols in the towns, installations guarding public offices, buildings and settlements, and the constant movement [of] equipment and personnel. However, this physical presence of the military strength of the Israeli people in the occupied Arab territories can only be fully appreciated by understanding their true role and the methods employed by them to make this military presence most effective towards the ends and designs of the Israeli administration.

All life in the occupied areas is now governed by the Israeli military machine. All civil powers are effectively vested in the Military Governors appointed by the regime under the Minister of Defence to control and develop the Arab territories in the interests of Israeli designs. The judicial services are staffed by military personnel. To facilitate the total usurpation of civil and judicial function in the occupied territories, the Israelis have, during the period of occupation since 1967, passed over 950 military orders transferring, piecemeal and without permanent publication, the effective running of everyday life in the occupied territories to the military authorities. The term "effective" is used because the authorities allow to exist elected municipal representatives and councils, as a façade of normality. It will be seen in the course of this Report that since 1976 in particular when the last municipal elections took place the authorities have engaged in a systematic campaign of harassment of the proper workings of these elected authorities.

This military code of law of the Israelis facilitates the work of the Israeli army, whose clear task today is the effective annexation of the whole of the occupied territories. All acts of aggression

by the military machine in the occupied territories are justified "in law" as being necessary for security purposes and in the interest of maintaining the security of the Israeli gains. Use of the claim of security purposes effectively denies any recourse by the individual to the civil or ordinary courts for remedy. These courts have adopted a constant code of jurisprudence that denies the individual any right to call on the civil courts to interfere with the stated decisions of the military authorities in regard to any matter such as land acquisition, judicial or administrative detention, restriction of movement and control of civil public affairs.

In the light of all the evidence acquired by the Delegation, it is the conclusion of this Report that the argument that Israel is administering the occupied territories is without regard to the facts as they exist. The presence of the military in the occupied territories is in the pursuit of the expansionist policies of Zionism, a policy that can now have no regard for the basic rights of the Palestinians, whom the Israelis are determined to drive from their homeland, once and for all time. Security is not the immediate task of the Israeli armed forces, but the systematic harassment and disruption of Palestinian life with a view to compelling the mass exodus of the indigenous population.

Civil and Democratic Life

In the occupied territories, the absence of an autonomous assembly of elected representatives and, indeed, the loss of all national institutions and organizations, has placed the municipal councils in a position of primacy, as being the only remaining institutions that have both elections and services to offer to the Palestinians directly. The elections to these bodies are normally held every four years. The last such election was held in 1976, when the National Democratic Front candidates polled over 80 percent on average of the votes, taking all 22

positions of mayor and in some instances capturing 100 percent of the vote, for example, in Hebron. The success of the Arab candidates represented a severe setback for the Israeli designs and further represented a total collapse of their attempts to infiltrate into the civil life of the territories and thereby crack the unified block of Palestinian resistance. The elections of 1980 are now overdue and it is feared that the Israelis will not allow new elections to be held. Meanwhile, the Israeli administration appears to have adopted very definite, though not very new, tactics. These tactics involved the systematic harassment of the mayors themselves and the interference in every possible way with the work of the Councils and the conduct of the ordinary civil business of the lives of the Palestinian people.

Harassment of Mayors

On the morning of the 2 June, 1980 there was unusual army activity in the Ramallah and al-Bireh twin municipalities. They were expecting something. A demonstration? Yet the people had no such plans, at least not before 7.30 a.m. when the army moved into their positions. At that time the phones to the homes of the Mayors of the two towns went dead, as did that of the district hospital. At 8 o'clock that morning, Mayor Khalaf got into his car and turned on the ignition — there was an explosion and shortly after, a second, but not before Mayor Khalaf could be dragged from his car. He was badly injured, losing his left foot and suffering extensive burns. As soon as he was taken to hospital, word was sent to Mayor Tawil, his neighbour in al-Bireh, summoning him to the hospital and warning him to take care. He travelled by another car to the hospital and on his return home he found a totally unequipped soldier prepared to check over his car and garage for any explosives, provided Mayor Tawil would

accompany him to open the door. He declined, and as soon as the soldier, without equipment, interfered with the door there was a massive explosion, killing him instantly. Some minutes after, a proper bomb disposal squad arrived from the local Israeli camp to deal with the problem already disposed of. Again that same morning, Mayor Shak'a of Nablus lost both his legs in a similar explosion and is now convalescing in a London hospital.

The day before, the editions of the two Palestinian daily newspapers in Jerusalem and the West Bank received banning orders, without reason, prohibiting the distribution of their papers in the West Bank for the immediate following two weeks. It was on this day also that Begin had assumed the role of Minister for Defence. It is the universal view of the Palestinians that there can be little or no doubt on whose orders the soldiers of Israel were sent to Ramallah and al-Bireh on the morning of 2 June, 1980, and equally no doubt can be cast upon their function: to deal with any reaction that might arise in the local population from the attempted assassination which their commanding officers, at least, must have been aware of.

Of the five Mayors and Deputy Mayors interviewed by the Delegation, all were subjected to personal restrictions of movement and functioning of their duties. All were subjected to town arrest, restricting their right to move beyond the

city limits without permission. Mayor Tawil of al-Bireh was refused permission to travel to England at the invitation of municipal authorities there. He was placed under town arrest on the 7 August, 1980, after the attempt to kill him had failed. A copy of his order placing him under town arrest is included in the Appendix, as is a copy of a special one-day travel permit to enable his movement outside the city limits (nos. 1 and 2).*

The summary deportation of the two Mayors, Qawasmeh of Hebron and Milhem of Halhul on the 4 May 1980, without any right or opportunity to defend the proceedings, is indicative of the total disregard for the elected representatives of the Palestinian people. Their deportation was totally illegal by Israeli law and was indeed criticized by the High Court (Supreme Court) of Jerusalem. Their deportation was in flagrant disregard of the universally accepted rights of natural and human justice.

Interference in Domestic Affairs

Every act, project or decision of the municipal authorities is subject to the review of the military authorities. Permission is required for everything and is in reality seldom forthcoming. On the pretext of security, essential projects of housing, roads, water drilling, health schemes, etc., are held up for months on end or refused by a military regime bent on slow disruption. Hebron has been

* For space reasons it is impossible to include the documents mentioned in the Report as part of the Appendix. The documents appended were: 1) Copy order restricting Mayor Tawil to town arrest; 2) Copy of special one-day travel permit enabling Mayor Tawil to move outside the city limits; 3) Map indicating the development of and future plans of Israeli illegal settlements; 4) Text of Military Order No. 825 restricting union affairs; 5) Text of, and commentary on, Order No. 854 restricting educational affairs; 6) Copy and text of correspondence from Military Governor to Vice-President of Beir Zeit University dated 28 August 1980; 7) Copy and text of correspondence in reminder of no response to no. 6 above; 8) Copy of Appendix No. 1 to Bir Zeit University Newsletters (June 1980) outlining events of military harassment of students (4 April 1980 to 2 June 1980) – *Ed.*

waiting for permission since 1978 to drill a second well to supply the town's need of water. A site has been located by a professional survey, demanded by the Military Commander as a precondition for permission. Ramallah has sought in vain to use an existing and purpose-built four-storey building as a school. Cities are forced to build houses without proper permission out of the necessity to meet the needs of a naturally expanding population. Many of these houses are demolished again systematically by the Israelis.

All of this is even more unacceptable when it is considered that Israel contributes nothing to the budget of the municipalities. They are compelled to rely on contributions exclusively from abroad and serviced through Amman in Jordan. To obstruct even this flow of essential funds, the Mayors are subjected to town arrests and refused permission to travel to Jordan and elsewhere, to present their personal claims for financial assistance to fund the city projects.

There are also widespread reports of the running-down of essential services such as clinics, hospitals, court facilities and schools. This, alongside a sustained campaign attempting to point a finger of blame on the municipal authorities, is calculated only to discredit further the remaining vestige of electoral legitimacy in the minds of the Palestinians. This, and the effective disruption of the ordinary life of the Palestinians, makes continued living in the area unbearable, with the one option of emigration, which in many cases becomes inevitable.

Land Acquisition

The present policy of land acquisition is geared not to security purposes but to the ultimate Zionist goal — "The land without the Arab people." This applies equally within the occupied territories and the country of Israel. The programme of Begin and the Likud envisages a sustained programme of settlement

building despite the provisions of the Camp David Treaty. This programme of expropriation of the land of the Palestinians, which is running at a fantastic rate daily, is not based on any security requirement but on a programme to secure the total annexation of the West Bank and other occupied areas into a "Greater Israel." The extent of the past and proposed settlement developments has been analysed and exposed to be clearly geared for the purposes of surrounding with settlement population all existing Arab centres of population. The object would be to isolate one Arab community from the other, whilst concentrating all essential services in Israeli settlement hands, to the loss and eventual ghettoization of the Arab communities. This pattern and the extent of the settlement programme is illustrated by the map showing the positioning of the settlements in the Appendix (no. 3).

This indiscriminate policy of land robbery is perhaps greatest at the very moment [when] it is being perpetrated on the most vulnerable section of the Arab population, the Bedouin. The military orders drafted recently to facilitate the expropriation of vast tracts of the Bedouin land in the Negev Desert were prepared under the title of orders "to enact the peace of Camp David." At this very moment, the Israeli government is in the process of seizing without proper compensation one third of the inhabited lands of the Arab Bedouin of the Desert of Negev. There exist in this whole area approximately 11 million dunums, of which the Bedouin have until recently occupied a mere 250,000. Despite the vast tracts of land available to the Israeli government for the purposes of siting their military and air bases as they retreat from the Sinai, they have chosen to annex for their purposes some 80,000 dunums of the land occupied by the Bedouin.

Labour Unions and Work

The disruption of life amongst the Palestinians since the occupation by the Israelis has meant a huge movement of people off the land into the refugee camps and towns of the West Bank and occupied territories. This is even greater in the Gaza Strip which is one of the most densely populated rural areas in the world. This movement of the population has resulted in the loss of a great number of jobs and equally the loss of a large producer sector of the local economy. More and more, the West Bank and occupied territories are depending on Israel for essential items. Israel, on the other hand, has one of the highest inflation rates running in any economy today, with the result that real incomes have dropped dramatically amongst the Arabs. For example, one municipal officer quoted the present-day price of sugar for their local orphanage as 4,900 Israeli lira for one sack, whereas six years ago it cost a mere 35 Israeli lira.

The situation is exploited to the full by the occupiers, who make use of the ready pool of cheap labour, which swells to their outer limits the many cities and towns in the Arab lands. Every day 75,000 Arab workers, carrying identification/permit cards go to Israel to work. They compose approximately 15 percent of the Israeli labour force, which itself mainly comprises Arab Israeli citizens. As under the pass system of South Africa, the workers are not allowed to stay in Israel overnight, being obliged to travel long journeys home each day. It is estimated that on average travelling and working amount to 14 hours a day. No allowance is made for travel. Alongside this, the worker has no rights in Israel; as an Arab, he is subject to Jordanian (local) law, which does not apply in the Israeli country. There is no stated law of action allowing redress by a worker against his employer, and any remedy available to him will be declared by the Court only on

the bringing of the action at the hearing of any case. Effectively, all actions for compensation, unfair or wrongful dismissal, or social welfare are closed to him. A threat of strike will lead to instant dismissal, and work is generally in the dirty and low-paid areas. All Palestinian workers are not entitled to any of the social benefits that accrue from normal tax contribution. Thus, they are not entitled to pensions, sick benefits, etc., and this in effect means a discrimination of wages of approximately 20 percent with their Arab Israeli counterpart. On the other hand, those Palestinians who work in the West Bank are faced with jobs in small and badly-equipped workshops of the craft industrial type. In the whole West Bank area it is estimated there are only eight factories employing over 50 workers. This situation in the West Bank is particularly aggravated by a policy of total non-investment in Arab projects by the Israelis. The lack of employment is one of the most serious causes of emigration out of the occupied territories, without the right of return, particularly among the young qualified section of the population. Unemployment and poor working conditions, together with bad wages, serve the interests of the Israeli plans of forced expulsion from the occupied territories.

Order 825 (20 March 1980)

One would expect, as a result of the foregoing, much union activity and labour unrest. Job opportunities, or the lack of them, militate against such actions. However, the Israeli government has gone even further by the introduction of an order (No. 825, 20 March 1980) to allow total control of union affairs. The text is referred to in the Appendix. This Order allows the military authorities:

1. to expel any member from any union;
2. to prohibit a person who has been sentenced to five years or more imprison-

ment from standing in union elections and to facilitate these powers;

3. to receive notice of all nomination for elections 30 days in advance of the elections being held, and

4. to disqualify from membership of any union any elected person of the union and to further annul any decisions of the union taken while the disqualified person was working as an elected person.

Again the use of arrest and banning orders on travel are universal. George Hazbun, Deputy Chairman of the West Bank unions, is under town arrest at Bethlehem. Hasan Barghuti, General Secretary and Mahmud Ziyadeh, Deputy Secretary General of the hotel and restaurant employees' union (an essential area of Holy Land trade) are both barred from Jerusalem, their headquarters, and under town arrest; the former at the village of Kobar and the latter at Hebron. Zakaria Hamdan from Nablus, Khalil Hijazi from Nablus, Damin Hussayn 'Awdeh from Ramallah and Husni Haddad from Bethlehem, all union leaders in their areas, have been, with many others expelled from Palestine because of their union activities.

The May Day celebrations are suppressed in the West Bank and have not been allowed for the past three years. In Jerusalem (not considered part of the West Bank by the Israelis), the May Day celebration was attacked by police, leading to 22 arrests of the organizers this year. Seven of these were held for a week and all were released without charges.

All union meetings and education classes must be notified to the military authorities one month in advance, indicating the topic, the content of the address and the speakers to deliver the lecture — by reason of a military order passed in 1976. All the delegations of the International Labour Organization are conducted through government channels — often with curious results: for example, when Mr. Adil Ghanim went to meet the

delegation of the ILO during their visit of 1976, the meeting [was] held in the Military Governor's office of his district, where he found that his interpreter was a member of the Shin Beth (Security Police) and was one who had in fact interrogated him before. Again, on the return visits of the ILO in later years, Mr. Ghanim was not entitled to meet the delegation at all. He was specifically requested, and available at the time to see the delegations. In September 1980 he met a delegation of the CGT (General Workers' Union of France) in Nablus and was, after it, summoned to the Military Governor's office of his district and was personally questioned by the Political Advisor to the General Commander of the entire West Bank as to how the meeting and delegation were arranged and what was discussed, etc. This particular interview lasted six hours in all. It is interesting to know that Mr. Ghanim [who] is the General Secretary of the Trade Unions of the West Bank, was banned from [attending a meeting] taking place on 4 January 1980, as the District Military Governor considered the meeting was being convened for political purposes, that is, to express a motion of solidarity with the workers of the Jerusalem Electrical Company which the Israelis are anxious to expropriate so that they can connect up the local grid to the national Israeli grid, thereby making the local population subject to more direct control by the Israelis.

*Education and Academic Freedom
Order 854 (8 July 1980)*

As in the other areas of Palestinian life, the military occupiers of the State of Israel have brought about a situation of absolute control over education and academic freedom in the occupied territories.

By Military Order (No. 854, 8 July 1980), the control of admissions of students to the universities and other

institutions of education is placed totally in the hands of the Military Governor of the area in which the institution exists. Further, all institutions of education, existing at the date of the order or not, must obtain a permit from the Military Governor to exist and all teachers must be cleared by him and his office in advance of their specific employment. The Military Governor may decline acceptance of any teacher who has been held for questioning only by the authorities; that is, in reality every teacher. The text of this order again is included in the Appendix (no. 5).

By changing the law, Order 854 for the first time brings the universities, of which there are three in the West Bank, under the direct control of the Military Government. It has met with a total condemnation by the academic and third-level institutions in the occupied territories. Again, as in all essential areas of social administration, the educational institutions of the occupied territories are financed from the nations abroad and not one shekel is provided by the forces of repression that seek to control them.

The Order was introduced in July 1980 just before the summer recess of the Knesset and the closing for holidays of the universities. By letter dated 27 August 1980, the Vice-President of Bir Zeit University, Gabi Baramki (the President and son of the founder, Professor Hanna Nasser, has himself been expelled and has been residing in Jordan for the past number of years), was informed that he must seek a permit to function and comply always with the new Order. When, by 8 October, the letter was not replied to, a further communiqué was issued to him directly that (1) the permit to exist be applied for, (2) all foreign... students apply for permits to attend the university, (3) all local residents must also be given permission to attend, and (4) the full details of all teachers and students be submitted for observation.

Both these communiqués are exhibited with translation in the Appendix (nos. 6 and 7).

The university, we understand, proposes to ignore these demands on the basis that absolutely no concept of security-and thereby no justification whatsoever-could warrant such unprecedented interference. This is not to say that the matter will not rest as it is; however, the case of the teachers has been presented by Professor Nasser to UNESCO for their response.

Finance

Despite the fact that Arab universities are registered as charitable organizations within the law, they are subjected to heavy taxes. This is another method applied by the Israelis to interfere in the legitimate life of the Palestinians. Thus, for example, to equip the new science complex of Bir Zeit with a computer the university was compelled to spend 50,000 dollars above the cost of the computer in tax. Customs duties accounted for 10 percent, purchase tax 30 percent, loan tax 6 percent, whilst VAT accounted for another 12 percent. The authorities point out that both Israeli universities and Arab universities are subject to taxation, but [the same authorities] often fail to refer to the fact that all taxation is repaid by way of bonus and investment to the Israeli universities only. Again, not a shekel is expended by the Israelis on Arab education. In 1979, 240,000 dollars were paid by the Bir Zeit university to the Israeli occupiers in taxes. This was from a budget of a mere 5.8 million dollars (or 4 percent approximately was paid in taxes). For an institution, as with all Arab schools, financed by donations only, such demands are extremely damaging to the well-being of their community.

Curriculum Control

Whilst it is true to say that there is as yet no direct control of the content of

school courses, the authorities have developed discrete and effective indirect methods. Thus, for example, all text books of Arabic history, culture or politics are banned, for security reasons, being inevitably pro-Palestinian [sic] Liberation Organization and therefore, to the Israelis, inflammatory and leading to incitement of the student and reader. A list of approximately 60 current Arabic academic journals are banned from Bir Zeit and other libraries, even though they are openly available in the Israeli universities, etc. — places where Arab students also study.

Administration

After the invasion of the territories, the Palestinian teachers and academics formed a Council of Higher Education to plan and administer all levels of education in the occupied territories. This Council has been functioning since 1977, but their meetings have been banned by the military authorities from time to time, the last one on the pretext that it was being convened for political reasons: that is, to discuss the introduction of Order No. 854 referred to above.

All building and development projects are subject to military supervision.

Social and Cultural Life

On 31 March 1976 in the Galilee area, a peaceful demonstration concerning land expropriation was set upon by Israeli soldiers, killing six Arabs. Ever since, this date is known as the "Day of the Land." It is remembered by various events. Students of Bir Zeit decided this year [1980] to organize a work camp in their village. However, without explanation the project was banned.

In Ramallah this year [1980] an art exhibition and social club were closed by the District Military Governor because both were opened by the local Deputy Mayor, 'Awdeh Rantisi himself an Anglican Pastor.

As outlined above, the May Day celebrations have not been allowed in the occupied territories for the past three years. It is an offence to be found with a copy of *al-Tali'a* ("The Vanguard"), the weekly paper of the West Bank Communist Party. Both the party and its paper are banned there, while in Israel there are Communist party members in the Knesset.

All Arabic books on poetry, folklore, history, etc., are banned, if they relate to Arab affairs or are considered anti-Zionist or anti-Jewish: for example, *The Merchant of Venice* is not allowed.

All political demonstrations or meetings are under strict control, and, as we will see later, all papers and journals are strictly censored....

Last year (March 1979) at Bir Zeit, the following impressive list of speakers were banned by the Military Governor:

1. Dr. Suleiman Bashir, Lecturer at al-Najah University.
2. Bashir Barghuti, Editor of *al-Tali'a*.
3. Tawfiq Tubi, member of the Knesset and Israeli Communist Party.
4. Dr. Haydar 'Abd al-Shafi, Head of the Red Crescent Society in Gaza (Red Cross equivalent for the Arab World).
5. Tamar Gojansky, member of the Israeli Communist Party.

All of these are persons of public standing in their own areas and all were banned from speaking in the West Bank to Palestinians for security reasons.

Media Censorship

By 7 p.m. on the day prior to publication, all anti-occupation newspapers must deliver three copies of the following day's proposed issue to the offices of the Military Censor. This is an officer appointed by the Government to act as censor of the publications and he is normally of the rank of brigadier with many subordinates working underneath him. One copy of the papers submitted will be sent to the Intelligence Police for filing,

one will be retained and one will be returned by the Censor with the deletions marked on all prohibited material. At midnight, [if] all things run smoothly, the paper may proceed to print. Delays are commonplace and the practice of producing 25 percent extra material to feed a capricious Censor adds greatly to the inconvenience, not to mention the cost, of production. Applications to review decisions are prohibited by the schedule of daily production and access to the courts for undue, unwarranted or indiscriminate interference of which there is a great deal) is impossible. This latter factor is brought about by the military regulations, which prohibit the marked (censored) and stamped official copy of the "passed" paper from being used as an exhibit in court. Again, no report may be made in any newspaper of the fact of any censorship. Because of the absence of any definition of the grounds of censorship, court pronouncement or precedent, and because of the total arbitrariness of decisions, it is impossible to know what is or is not accepted in practice or in advance. Thus, to save cost, time and inconvenience a large measure of self-censorship has grown up in the offices of the three Palestinian anti-occupation papers *al-Fajr* ("The Dawn"), *al-Sha'b* ("The People") and *al-Tali'a* ("The Vanguard"); [the latter] is a weekly organ of the West Bank Communists and is totally banned in the occupied territories, on penalty of imprisonment or substantive fines, if found in one's possession.

Other factors militate greatly against freedom of the press. All papers must be published by publishers holding an Israeli permit. Since 1967 there has been only one issued to a Palestinian, so they must rely on Israeli publishers exclusively. When one is obtained willing to work, it is often found that he lives under constant fear of reprisal; for example, a previous publisher of *al-Fajr* was kidnapped and murdered and subsequently

the paper was threatened four times with closure by the authorities. The publisher of *al-Tali'a* waited over one and a half years for a permit to work and only secured same after a High Court action was launched. The paper itself has been waiting over three years for a single telephone to be installed.

Threats to cease circulation are often issued to independent distributors. And total bans on publication in the occupied territories can be imposed by the military authorities; for example, as stated above, on the day before the attempted assassinations of the three Mayors on 2 June 1980, all the above three papers received banning orders for a full two weeks in the West Bank. Even advertisements must be submitted to the Censor for his approval.

These discriminations are not entirely or exclusively racist, because those Arab papers of a collaborating kind with the occupation authority or other Zionist programmes receive discriminatory benefits and favours.

Special attention is also reserved for the editors themselves. The three editors of the above-mentioned Palestinian newspapers, namely, Ma'mun al-Sayed (of *al-Fajr*), Bashir Barghuti (of *al-Tali'a*) and Akram Haniya (*al-Sha'b*) were placed under town arrest, imposed on the same day as that of Mayor Tawil and designed, they believe, to curtail their campaign to discredit the autonomy plans. Following from earlier reports, no Arab paper may receive any current Arabic external newspaper or journal for any reasons or purpose, although they are freely available to both Israeli television and newspapers.

A free and vibrant press capable of honest and investigative journalism is essential to any democratic society. The importance of this fact is underlined by the most active campaign being engaged by the Israeli authorities against the progressive press of the occupied territories. The policy again appears to be to humiliate and deprive the Palestinian commu-

nity of any leadership or identity.

LEGAL CONCLUSIONS

The delegation brought back a fairly large body of information collected on the spot through direct contacts with various authorities officially representing the population of the occupied territories; its meetings with these are described in detail in the first part of this report. Previously it had acquainted itself with the already numerous works and findings on the situation in Israel, whether published or unpublished (including in particular the Bulletins of the UN Special Unit on Palestinian Rights and other United Nations reports). It had also acquainted itself with the position of the Israeli government as expressed in the statements made to the United Nations by the Israeli representative and as reflected in the Israeli press.

The conclusions which follow are the result of an analysis of the situation as a whole in the light of present-day international law.

The policy of the Israeli government is contrary to a certain number of fundamental norms in international law or norms relating to human rights which Israel has officially endorsed.

A. THERE IS, FIRST OF ALL, THE GENEVA CONVENTION OF 12 AUGUST 1949 RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR.

1. Applicability of this Convention to the situation in the territories occupied by Israel.

It is to be noted in this connection that:

a. The Israeli government signed the Convention and ratified it on 6 January 1952, which means that legally it is fully binding on Israel.

b. The situation created by the Israeli military occupation on the West Bank and in Gaza falls within the scope of this Convention, whatever the Israeli government may say to the contrary, and that Articles 6 and 47 of the Convention are perfectly clear in the matter. Thus:

Art 6, § 3: "In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143."

Art 47: "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.*"**

The machinery established by the Convention is designed precisely to obviate the occurrence of the situation Israel is attempting to arrive at in the occupied territories.

c. There can be no possible doubt as to the term by which the situation on the West Bank and in Gaza should be qualified. These territories are territories under military occupation.

This fact was recently recalled by the United Nations Security Council, in Resolution 465 dated 1 March 1980, in

** This and all later emphasis as used in the IADL Report – *Ed.*

which it affirmed once more "that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem." None of the five Great Powers used its veto against this resolution.

d. Further, Israel's attitude in the matter is absolutely contradictory. The position it officially upholds in its relations with international authorities is one of refusal to admit the use of the expression "occupied territories."¹

But judicial practice inside Israel takes a different line. In the Bet El/Bekaoth case, the Supreme Court declared, on 13 March 1979: "With reference to the Hague Convention of 1907 and the Geneva Convention of 1949, no one denies that the petitioners are such protected persons, within the meaning of the term in international law"; it is true, however, that it went on to state that it considered international law to be applicable only between states and to have no direct relevance to court proceedings inside a country.

More recently, in the case concerning the Elon Moreh settlement (Israel Supreme Court, 22 October 1979, No.HCJ 390-79), Judge Kitkon stated, "It is a mistake to think that the Geneva Convention does not apply to Judea and Samaria."

The line adopted by Israel consists in maintaining that the Convention is not legally applicable to the West Bank and Gaza, while claiming that in practice its

provisions are implemented by the government.

2. *This latter claim is a cloak for constant and generalized violation of the articles of the Geneva Convention.*

It is clear from the introductory part of this report, which gives the facts observed and the personal evidence obtained, that we are faced with:

a. *Open and flagrant violation of Article 49, which prohibits forcible transfers and deportations of the populations of occupied territories, and transfer by the occupying power of its own civilian population into these territories.*

The visitor to the occupied territories is confronted with the sight of an enormous number of refugee camps and a still larger number of new settlements coming under a perfectly official Ministerial Committee for Settlement of the Territory. These settlements are part of a master plan (the "Drobless Plan") under which Arab towns and villages are to be, in the long run, made into ghettos by being entirely surrounded; their establishment necessarily involves confiscations and expropriations of land, the victims of which have no effective legal remedy, "military security" being generally given as the one justification and considered as a sufficient one.

The phenomenon is occurring on so large a scale as to resemble the exercise of an actual right of conquest.²

b. *Permanent violation throughout the occupied territories of Art. 27 on the treatment of protected persons.*

¹ This is the position adopted, notably, by Professor Yehuda Blum of the Hebrew University, Jerusalem, now Israeli permanent representative at the United Nations. It is based on the assertion that there existed no "legitimate sovereign power" on the West Bank and in Gaza in 1967. It is to be found described in a United Nations pamphlet published in 1980 under the title of "The Question of the Observance of the 4th Geneva Convention of 1949 in the Territories of Gaza and the West Bank occupied by Israel in June 1967, including Jerusalem."

² See our annexes and the Bulletins of the UN Special Unit on Palestinian Rights for March 1979 and Sept.-Oct. 1979.

The intimidation, violence and insults prohibited under this article are a part of current practice. (See introductory report.)

c. Violation of Art. 32 through the openly acknowledged use of torture. (See our introductory report, and also Amnesty International's report for 1978.)

d. Violation of Art. 33 prohibiting collective penalties and terrorism, pillage, and reprisals against persons and property. (See the information given in the introductory report on the systematic destruction of property, the dynamiting of Arab houses and terrorist action such as that perpetrated on 2 June 1980 against the mayors of Nablus, Ramallah and al-Bireh.)

e. Violation of Art. 52 § 2, which runs: "All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited." (See the introductory report for the conditions Arab workers are subjected to in the occupied territories.)

f. Violation of Art. 53 on the preservation of property. (See destruction of houses as mentioned above.)

g. Violation of Art. 65 stipulating that the penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language.

The military governor's orders are not published in any official circular and are given to the inhabitants in Hebrew and not in Arabic. (See, for example, in our annexes the forced residence order given in Hebrew to the mayor of al-Bireh by the military authorities.)

The majority of the public figures or persons holding responsibilities whom we met in the occupied territories had been at one time or another subjected to such measures restricting their freedom of

movement in the absence of any real justification and without any pretence of one other than so-called "military security"; this serves as a cloak for the Israeli government's arbitrary behaviour and its breaches of the legal order — including the legal order obtaining in the event of military occupation under the Fourth Geneva Convention.

h. Constant violation of Arts. 71, 72 and 73 on penal procedure as a whole and the rights of the defence. A flagrant example was provided by the recent trial of the mayors of Hebron and Halhul to which no witnesses were admitted. (See further examples in the introductory report.)

i. Violations of Article 76 on treatment of detainees. (See introductory report and Amnesty International's report.)

j. Violations of Art. 143 on supervision by the Protecting Powers and their access to all places of internment, detention and work.

It should, further, be noted in connection with implementation of the Convention that it contains its own machinery for the instituting of enquiries under Arts. 147, 148 and 149.

Art. 147 lists the possible grave breaches of the Convention, among them wilful killing, torture or inhuman treatment, the wilful causing of great suffering, unlawful deportation or transfer and illegal detention; in fact, it mentions all the cases of infringement we have just been mentioning. Article 148 makes the Convention legally binding since it provides: "No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party... in respect of breaches referred to in the preceding Article."

It is sought in Article 149 to ensure the effectiveness of the machinery for safeguards; this Article runs:

"At the request of a Party to the conflict, an enquiry shall be instituted, in

a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

"If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

"Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay."

B. ISRAELI POLICY IS CONTRARY TO THE UNITED NATIONS CHARTER AND THE WHOLE OF THE DERIVATIVE LAW BUILT UP BY THE U.N.

1. *Israel's commitments towards the United Nations.*

Israel was admitted to the United Nations in May 1949 and has since been bound, as a signatory to the Charter, by all the obligations deriving from the latter.

The Charter is a treaty between states and thus comes within the scope of Article 26 of the Vienna Convention of 29 May 1969 on the Law of Treaties, which runs: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Pacta sunt servanda. But in Israel's case it is important to recall the conditions of its admission to membership and the particular wording of the General Assembly resolution which made this possible. Under resolution 181 (II) of 29 December 1947 the General Assembly approved the partition of Palestine. On 11 December 1948 it adopted resolution 194 (III), its second major resolution on the country, which set up a conciliation commission, called for the demilitarization and internationalization of Jerusalem, and asserted the right of the Palestinians to return to their homes. Israel had already applied for admission to the United Nations on 29 November 1948, but its application had not rallied sufficient votes in the Security Council,

several of whose members had criticized Israel for not putting the UN resolutions into practice.

It should be recalled that Israel's relations with the UN were of a very special nature, since Israel was the one nation to have acquired statehood and been given its land under an official decision of the Organization.

When Israel made its second application for admission at the beginning of 1949, its representative gave assurances that it would observe the principles contained in the Charter and implement the UN resolutions. It is absolutely essential to recall here the statement made by that representative at the time:

"With regard to the status of Assembly resolutions in international law, it is admitted that any which touch the national sovereignty of the Members of the United Nations are mere recommendations and not binding. *However, the Palestine resolution is essentially different, for it concerns the future of a territory subject to an international trust. Only the United Nations as a whole is competent to determine the future of the territory, and its decision therefore, has a binding force.*"

It is likewise absolutely essential to recall that the General Assembly resolution admitting Israel to membership [resolution No. 273 (III) of 11 May 1949] contains a specific reference to these assurances and to the basic resolutions:

"*Noting... the declaration by the State of Israel that it 'unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a member of the United Nations,'*

"*Recalling its resolutions of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the Ad Hoc Political Committee in respect of*

the implementation of the said resolutions,

"The General Assembly....

Decides to admit Israel to membership in the United Nations."

Thus, from May 1949 onwards Israel was bound by the United Nations Charter and by the resolutions quoted above — which it had freely accepted — and was also bound to the other Member States by what is known as derivative law; this is the law deriving from resolutions passed by United Nations organs by an overwhelming majority or by consensus, or repeatedly and insistently, and thus legitimately considered to be the expression of international custom and as such made binding. It is important to recall here that the body of principles contained in the Charter and in the law deriving from the work of the various United Nations organs represents a fundamental progress in the development of international law.

2. Israel's non-observance of its commitments under the Charter.

Israel has infringed the prohibition on the use of force and on the right of conquest contained in paragraph 4 of Article 2 of the Charter. The whole of the policy it has been pursuing for years in the occupied territories goes to show that Israel is attempting to turn the military occupation into an actual annexation.

a. In its relations with the Palestinian people Israel is violating the principle that any people has the right to self-determination provided for under Art. 1 § 2 of the Charter; this is a principle which is particularly important in present-day international law and may legitimately be considered a principle of *jus cogens* (general peremptory law).

b. Israel is violating the right of any people to free disposal of its natural resources. This is a right whose full significance was brought out by General Assembly Resolution 1803 (XVII) of 14 December 1962.

The resources we are mainly concerned with here are the water sources of which the Palestinians have been deprived by the new settlements. (See our introductory report, particularly the example of Nablus, where 30 percent of the water previously available to the Palestinians has been appropriated for the new Israeli settlements.) The problem is so serious that the Sixth Conference of Heads of State and Government of the Non-aligned Countries, meeting in Havana in September 1979, passed a resolution on "permanent sovereignty over the natural resources in the occupied Arab territories," in which it condemned "the measures taken by Israel to usurp and divert the Arab water resources in Palestine and in other occupied Arab territories, thus depriving the Arab populations living under the occupation of the water resources essential to their existence and economic development."

c. Israel is violating the various Security Council and General Assembly resolutions as a whole, particularly in that these have most constantly reasserted:

- i. the Palestinians' right of return;
- ii. the need for Israel to withdraw from the occupied territories;
- iii. the applicability of the Fourth Geneva Convention of 1949;
- iv. the prohibition on the establishment of settlements in the territories concerned.

These resolutions are so very numerous that it is impossible to give a complete list of them here. We will confine ourselves to mentioning resolution 242 passed by the Security Council in 1967, and resolutions 452 (1979) and 465 and 469 (1980) passed more recently, all three of which most emphatically recall the Israeli commitments referred to above and express disapproval of the many infringements recorded.

It should be remembered in this connection that the Charter itself provides machinery for seeing that its signatories

fulfil the obligations accepted under it. The system is a dual one: in addition to the possibility of expulsion under Art. 6 (not as yet implemented against any state), there are the provisions of Chapter VII ("Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"), which have already been used against Rhodesia and South Africa.

d. Israeli policy is contrary to the International Covenants on Human Rights.

1. Israel is a party to these Covenants, which it signed on 19 December 1966 (though it is true it has not yet ratified them). They came into force in 1976.

2. The Israeli government is failing to observe the provisions of these Covenants in a great many respects.

a. Let us recall Art. 1 of both Covenants (the one on economic, social and cultural rights as well as the one on civil and political rights): reference is made in both cases to the right of all peoples to self-determination and to free disposal of their natural resources, whereas, as we have stressed, the Palestinian people is at present deprived of such rights.

b. Among the most important provisions we would mention:

i. Art. 4 of the first of the two Covenants, concerning the need for any limitations to the rights concerned to be determined by law. This is infringed in that the orders of the military governors are not published and that very numerous limitations to the rights of the Palestinians are introduced quite independently of any statutory basis. (See introductory report and annexes.)

ii. Art. 6 on the right to work. (See introductory report for the conditions under which Arabs are obliged to work in the occupied territories.)

iii. Art. 12 on the right to health....

iv. Art. 13 on the right to education. (See in particular, in the introductory report, the information we obtained on

the subject from the Bir Zeit University authorities.)

v. Art. 7 of the second Covenant, which prohibits torture, and cruel, inhuman or degrading treatment. (See our introductory report and the Amnesty International report.)

vi. Art. 9 on the right to liberty and security and the prohibition of arbitrary arrest or detention. In this connection we have already mentioned the absolutely arbitrary cases of forced residence, not to speak of the cases of arrest and detention....

vii. Art. 10 on the treatment of detainees.

viii. Art. 12 on the right to liberty of movement within the territory of a state, and its provision that no one shall be arbitrarily deprived of the right to enter his own country. (This is precisely the "right to return" of which so many Palestinians are deprived.)

ix. Lastly, Art. 14 on judicial procedure and the rights of the defence. (See, for example, in the introductory report, the account of the triple outrage committed against the mayors of Ramallah, al-Bireh and Nablus and the fact that despite the Israeli government's assurances no inquiry was opened.)

We may add here that the two Covenants are completed by an optional protocol containing machinery for ensuring that they are duly put into practice by entitling individuals to submit any complaints in the matter to the Human Rights Committee. But the Israeli government has not signed this protocol.

CONCLUSION

Under our delegation's terms of reference and on the strictly legal level there is no other conclusion to be drawn than the suggestion that the machinery provided by the various instruments be brought into action. This signifies use of:

a. the enquiry procedure provided for

in the Geneva Convention of 1949, as a means of putting an end to the innumerable breaches of law committed in the occupied territories;

b. the machinery provided by the [UN] Charter as a possible means of putting an end to Israel's many flagrant breaches of the obligations deriving from its membership of the United Nations. This would mean implementation of the United Nations. This would mean implementation of Art. 6 on expulsion procedure, or of the various measures provided for in Chapter VII as sanctions against any member guilty of threats to peace.

Such suggestions, though rational enough when viewed on a straightforward legal basis, have little in common with reality or feasibility. Legal solutions exist in practice only insofar as they are preceded by changes in social realities (on the level of balances of power and mental attitudes) which make it possible to overcome the contradictions from which the conflicts have arisen.

This being the case, we will conclude with a few remarks on the basic components of a potential solution to the problem.

After thirty years of actual existence, with regular administrative structures and a government, the Israeli State created on the initiative of the United Nations in 1947 is an effective entity which in international law cannot be ignored by anyone. But the whole notion of Israel's "security" needs reconsidering.

At the present moment "military security" is an alibi for all the arbitrary measures against the population and against the Palestinians holding official posts in the occupied territories.

In its ruling in the Bet El/Bekaoth case, the Israeli Supreme Court goes a very long way in this direction, since on the subject of new Jewish settlements it says: "The claim of the respondents that this is required for urgent military needs is, in the opinion of the petitioners, nothing but a subterfuge disguising other motives.... But the main point is that in terms of pure security considerations there is no reason to doubt that the presence of settlements, even 'civilian' ones, composed of citizens of the occupying power, in the occupied territory, is a significant contribution to the security of that territory, and that such presence makes it easier for the army to fulfil its task...."³

This is in fact a perfectly brazen acknowledgement of the fact that the military security argument is merely a cloak for *raison d'Etat* or royal privilege — in other words, for arbitrary acts of government. Indeed whenever, in the course of our inquiry, we questioned victims of forced residence orders, arrests, or confiscation of property on the reasons given them as justification for such measures, the invariable reply was: "Military security."

It is now absolutely imperative for Israel to adopt a totally different conception of "security." Israel's true security is dependent on the extent to which satisfaction can finally be given to the legitimate aspirations of its Arab neighbours, of the population living in the occupied territories and of the Arab minority in Israel itself.

The requisite legal machinery exists. It precludes any notion of vengeance or reprisals.

The machinery we have actually men-

³ It will be noted here that, while the Israeli Supreme Court fully acknowledges that there is military occupation of the territories, *at the same time* by approving and justifying the presence of settlements, it violates Art. 49 of the Geneva Convention of August 1949.

tioned relates to the taking of sanctions. But the United Nations can provide a framework for political solutions which would become operative by degrees and would make it unnecessary to take them. The [UN] Organization has already done so in other circumstances and its assist-

ance could be instrumental in securing Israel's withdrawal from territories it has occupied far too long.

The only prerequisite, on the part of Israel, its Arab neighbours and the Great Powers, is the *political will* to such a solution.