The International Crimes Of Israeli Officials

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The legality of many of the actions of the government of Israel towards the Palestinian Arabs has often been raised and discussed. The United Nations in particular has criticized Israel for violanting the legally protected interests of the Palestinians Arabs. The resolutions of the General Assembly, the Security Council, the Human Rights Commission, the Committee on the Inalienable Rights of the Palestinain People, and the Special Commitee to Investigate Israeli Practices are replete with references to treaties and other internatonal law instruments. Most frequently cited is the Convention relative to the Protection of Civilian Persons in Time of War, of 12 August, 1949 (the Fourth Geneva Convention), which requires a country occupying foreign territory to treat the population of that territory humanely.

International law is a body or practices that have become accepted by the countries of the world. Like the common law of England, it has grown little by little. As practices become general, they are considered to be binding on the countries of the world. Frequently, countries get together and write down the norms they consider binding on themselves. These documents are variously called treaties or conventions.

One of the areas of inter-country action that has become the subject of international law is war. Law developed in an effort to protect civilians from harm during war, and to protect combatants once they are captured. With the formation of the International Committee of the Red Cross in the ninteenth century, this body of law developed quickly and was embodied in several treaties. Until the twentieth century, there was no rule in international law that prohibited a country from declaring war on another and attacking it. But after World War I, law developed to restrict states in their use of force against other states. The aim was to make war illegal. First in a 1928 treaty and then in the United Nations Charter, most countries agreed that war was illegal. The only permissible self-defense against an attack.

The law about protection of civilians and treatment of prisoners was developed after World War II against the background of atrocities that had been committed during that war. In particular, the mass killings perpetrated by the Nazi government led to war crimes tribunals that established the principle that an individual government official could be prosecuted for certain acts. High officials of the Nazi governement, and of the Japanese government as well, were prosecuted and convicted for initiating aggressive war, and for killing civilians.

In the following years, a number of types of activity were defined by treaties as involvingindividual liability. The 1948 convention on genocide defined the crime of mass killing of members of ethnic or similar groups. As the international movement for self-determination gained momentum in the 1950's and 1960's, countries turned their attention to acts by government officals aimed at holding populations in forced dependence. In 1976 a treaty was drafted on apartheid was declare illegal, and a government official carrying out a policy of apartheid was declared guitly of a crime. Harkening back to a term that

had been used in the Nuremberg prosecutions, the apartheid treaty called apartheid a crime against humanity.

By custom and by treaty, a body of law emerged that established that the individual owes certain duties to the international community, even if that individual is a government official carrying out the policy of a government. Individual officials are forbiden to engage in actions that are viewed as inflicting major injury to the international community.

This body of law is relevant to actions carried out by israeli officials in the name of the state of Israel. Israel has been criticized for a variety of actions of Palestine and of neighboring states. It has been called to task by the United Nations and other internatonal bodies for aggression, for expelling inhabitants of territories it has occupied, for establishing civilian settlements in houses territories, for demolishing houses as a punitive measure, for hte long-term detention of persons without charging them with a crime, for torturing detainees during interrogation, and for establishing punitve curfews.

While these acts are illegal on the part of the state of Israel, they are also crimes for which individual israeli officials are responsible. This article does not attempt to catalogue all such acts that constitute crimes by Israeli officials. It attempts rather to highlight some of the more salient examples. International law developed the concept of individual responsibility in an effort to bring about a more humane world, in which individuals would not have to fear becoming the victims or atrocities.

Aggression as a War Crime

One of the acts made a war crime is the initiation of an aggressive war. The Charter of the International Military Tribunal at Nuremberg, drafted to indicate the law to be applied to the post-World War II trials, defined what it called "crimes against peace". These were: "planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of the foregoing." This provision is applicable to the acts of Israeli officials who undertake aggressive actions in the name of Israel. Over

the years of its existence, Israel has committed aggression on a number of occasions.

The first instance was in 1947-48, when Zionist military forces undertook a campaign of attacks on Palestinian villages with the aim of taking over Palestine. Great Britain was in the process of withdrawing from Palestine, and the entity entitled to sovereignty was the people of Palestine, who were predominantly Arabs. The Zionist forces, which enjoyed a preponderance of military force, attacked Arab areas and took them over, establishing their own state in May 1948. This forcible acquisition of territory to which Arabs of Palestine were entitled constituted aggression, hence a crime against peace.

There was criminality as well in the manner in which the Zionist forces, which were reorganized in June 1948 as the Israel Defense Force, pursued the hostilities against the Arabs of Palestine. Warfare is regulated by norms that restrict a combatant's activity. A combatant may attack only military objectives. Attacks on civilians (noncombatants) constitute violations of the laws of war. Under international law, a combatant is individually liable for violation of the laws of war, at least violations of a serious nature. The Nuremberg Charter defined a category of offense it called "war crime". This category involved "violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation of slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity".

As they conquered Arab towns and villages the Zionist forces drove the population out, either by forcibly escorting them, or by terrifying them so that they fled of their own accord. In these ways they forced out approximately 80 percent of the Arabs in the territory it captured. The Zionist forces confiscated the property of the Arabs they expelled, in many cases dynamiting their villages. The took over homes, farms,

and businesses. This expulsion and property confiscation constituted war crimes under the Nuremberg Charter definition.

Since the early 1950's, Israel has used high levels of militray force to combat Palestinian forces based in neighboring countries that sought to re-establish themselves in Palestine. In many instances, that force fell upon civilian populations, either of Palestinians in refugee camps, or of the local populations of those countries. The United Nations Security Council regularly received complaints against Israel for this use of force and regularly condemned it. In many instances the Israeli military forces caused substantial civilian casualties. Under the law of warfare, force may not be directed against civilian objectives. If it is, the parties responsible are guilty of war crimes.

The Security Council, in dealing with complaints by countries neighboring Israel, did not address the issue of individual liability for war crimes, but the way in which it characterized many of Israel's actions makes it clear that war crimes were committed. In 1953 the Council criticized Israel for a raid on Qibya (Jordan) during which the IDF killed 66 women, men, and children. In Resolution 101 of November 24, 1953, the Council said that the raid violated the United Nations Charter.

In 1955, the IDF entered the Gaza Strip and attacked Egyptian forces there. The United Nations Security Council denounced the attack, during which the IDF killed 38 Egyptian soldiers. In its Resolution 106 of March 29, 1955, the Council found a "prearranged and planned attack ordered by Israel authorities... committed by Israel regular army forces against the Egyptian regular army force", which it condemned as aggression. In December 1955, the IDF attacked Syrian military posts, killing 56 persons. Before the Security Council, it justified the action as retaliation for smaller Syrain attacks. The Council rejected the justification and it its Resolution 111 of January 19, 1956, "reminded the Government of Israel that the Council has already condemned military action in breach of the General Armistice Agreements, whether or not undertaken by way of retaliation, and has called upon Israel to take effective measures to prevent such action".

In 1956 Israel, together with France and Great Britain, invaded Egypt. The Security Council was unable to adopt a resolution condemning the invasion because France and Great Britain, both permanent members of the Council, enjoyed the power of veto. But in its Resolution 119 of October 31, 1956, it resolved "to call an emergency special session of the General Assembly" on the matter "considering that a grave situation has been created by action undertaken against Egypt" and "taking into account that the lack of unanimity of its permanent members at the 749th and 750th meetings of the Security Council has prevented it from exercising its primary responsibility for the maintenance of international peace and security".

The Council condemned a 1966 attack by Israel into the West Bank village of Samu, where the IDF killed fifty persons, characterizing the raid as "a large-scale and carefully planned military action" and recalling "repeated resolutions of the Security Council asking for the cessation of violent incidents across the demarcation line". In its Resolution 228 of November 25, 1966, the Council "deplored the loss of life and heavy damage of property" resulting from the attack and emphasized to Israel that actions of military reprisal cannot be tolerated, and that, it they are repeated, the Security Council will have to consider further and more effective steps as envisaged in the Charter to ensure against the repetition of such acts.»

When war broke out between Egypt and Israel on June 5, 1967, Egypt said that Israel had initiated the attack. Israel said that it had attacked only after its radar screen showed that Egyptian aircraft were on their way to Israel. Israel later acknowledged that it had invented that scenario, and that it had not been attacked by Egypt. Israel acknowledged that it had initiated the hostilities with bombing raids on Egyptian air bases.

From that time Israel justified its attack on Egypt on the ground that Egypt had been about to attack it. It said that Egypt had moved troops near its border with Israel and had requested the United Nations to withdraw the troops that it had maintained on the Egypt-Israel border since the 1956 war. Israel argued that the two actions led it to believe

that Egypt was on the point of attacking.

In fact, however, Israel did not expect Egypt to attack. Egypt had moved its troops and requested a United Nations withdrawal out of concern that Israel might attack Syria. In May 1967 tension had developed between Syria and Israel, and Israel had threatened to invade Syria. Egypt, by moving troops and requesting a United Nations withdrawal, hoped to deter an Israeli attack on Syria, and to be in a position to attack Israel if Israel attacked Syria.

Leading Israeli officials subsequently acknowledged that the government of Israel did not expect Egypt ot attack it unless it attacked Syria. Gen. Itzhak Rabin, Chief of Staff of the Israel Defense Force, said in a February 29, 1968, interview in the French daily newspaper *Le Monde* that Nasser sent troops to the border to make it appear he was deterring an attack by Israel against Syria. Rabin said, "I do not believe that Nasser wanted war. The two divisions he sent into Sinai on May 14 would not have been enough to unleash an offensive against Israel. He knew it and we knew it."

Menachem Begin, later as Prime Minister, alluded to the 1967 war in a speech to Israel's National Defense College in 1982, in which he explained Israel's invasion of Lebanon of that year. As recorded in the *New York Times*, August 21, 1982, Begin said that the attack on Lebanon had not been required for immediate self-defense. Referring to Israel's situation in 1967, he said that then too Israel had not been threatened with immediate attack. Israel "had a choice", he said. "The Egyptian Army concentrations in the Sinai approaches do not prove that Nasser was really about to attack us. We must be honest with ourselves. We decided to attack him."

According to Article 51 of the United Nations Charter, initiating a war is justified only if it is done in self-defense. Since Israel did not act in self-defense in 1967, its attack constituted aggression in violation of the Article 2 of the United Nations Charter, which states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity of political independence

of any state, or in any other manner inconsistent with the Pruposes of the United Nations."

After Israel attacked Egypt, the government of Jordan, which had recently concluded a defense alliance with Egypt, initiated hostilities against Israel that same day, June 5, 1967. Under Article 51 of the United Nations Charter, a state is permitted to use force in defense of another state against which aggression is being committed. Jordan's use of force against Israel was thus lawful, and israel's counter-force against Jordan was unlawful.

On June 8, 1967, Israel invaded Syria, which had not attacked it, as during the hostilities from June 5 to June 7 there had been only minor incidents between Israel and Syria. Since Israel was not being invaded by Syria, there was no justification for its invasion of Syria. Thus, Israel's invasion of Syria constituted aggression.

The Security Council did not condemn Israel for aggression in connection with the 1967 war, Primarily because the United States, using the threat of veto, protected Israel. But the invasion by Israel of Egypt, Jordan, and Syria was aggression. IN addition, it was a crime against peace on the part of Israel's leading officials. Under the Nuremberg formulation liability for a crime against peace is borne by those who plan, prepare, initiate, or wage such a war. That does not mean that every foot soldier is liable. The cases tried after World War II indicate that only those at the highest policy level are liable. This would include Israel's cabinet, which on June 4 adopted a decision to authorize the Israel Defence Force to attack Egypt. It would include as well the top echelons of the Ministry of Defense.

During the June 1967 hostilities, the IDF killed large numbers of civilians. It dropped napalm on Palestinian civilians from airplanes, particularly those living in the large refugee camps between Jerusalem and Jericho. As reported at the time in a cable by the United States Embassy in Jordan, the IDF attacked many non-military targets: "IDF Air Force yesterday and again today hit many civilian targets on West Bank where there are absolutely no military emplacements". The IDF

also dropped napalm east of the Jordan River on refugees who had fled east throught Jericho. Several hundred thousand fled.

By napalming and bombing villages and refugee camps, the IDF forced a large number of civilians to flee. That forces expulsion constituted a "deportation" within the meaning of the Geneva Convention. Peter Dodd and Halim Barakat interviewed West Bank residents who fled to Jordan during the fighting. In their 1969 book *River Without Bridges: A Study of the Exodus of the 1967 Palestinian Arab Refugees,* they reported that 57 percent cited the intense bombardment by the IDF as the reason they left.

In addition to the napalming and bombardment, the IDF forced many other West Bank residents to flee by escorting them under guard to the Jordan border or by threatening them. In the West Bank town on Qalqilya, as reported in a United Nations study issued September 15, 1967 (U.N. Doc. A/6797), the IDF drove many residents out by force, after destroying 850 of the town's 2,000 houses.

After the fighting ended, the IDF totally destroyed three villages in the so-called Latrun Salient, an area just west of Jerusalem. Both the United Nations study and Israeli solider / journalist Amos Kenan, in his 1970 book *Isral: A Wasted Victory* (1970), described how the IDF blew up all the houses in the Latrun villages of Emmaus, Yalu and Beit Nuba, and then drove the villagers toward Jordan. Others who saw these refugees fleeing joined them out of fear.

The IDF put many residents on trucks by force and drove them to the Jordan frontier. In some towns, as reported in the *New York Times* of June 12, 1967, the IDF used loudspeakers to urge or order Palestinain residents to leave immediately. Elsewhere, it initiated rumors of reprisals against those who might remain. In some towns Israeli soldiers fired their guns, knocked on doors, and searched houses repeatedly, to create panic.

At the United Nations, Israel denied that it was expelling Arabs. In a "Note verbale" of June 22, 1967, to the Secretary General (U.N. Doc. S/8021), it said that "any allegation that Israel has been expelling

residents from their homes and thus creating a new refugee problem is untrue.'' But N.G. Gussing, The United Nations representative in the area, relayed ''persistent reports on intimidation by Israeli armed forces and of Israeli attempts to suggest to the population by loudspeakers mounted on cars, that they might be better off on the East Bank. There have also been reports that in several localities buses and trucks were put at the disposal of the population for travel purposes''. The law related to use to force prohibits not only aggression but also the gaining of terrtory by aggression. While Israel has not made a formal claim of sovereignty to any of the territory it seized in 1967, it extended the application of Israeli law to East Jerusalem (1967) and to the Golan Heights (1981). These actions amounted to annexation and were treated as such by the United Nations, which condemned them. These virtual annexations are thus an aspect of the aggression that Israel committed in 1967 and are additional war crimes. The United Nations Commission on Human Rights in Occupied Syrian Arab Territory», February 17, 1989, said that Israel's occupation of the Golan Heights and its extention of Israeli law to it in 1981 constituted ''an act of aggression''.

The 1967 war did not end hostilities between Israel and its neighbors. Israel continued reprisal raids that took many civilian lives, and the Security Council continued to condemn Israel. In Resolution 248 of March 24, 1968, in which it denounced an IDF attack on the town of Karameh, Jordan, the Council ''deplored the loss of life and heavy damage to property and found that the attack was'' of a large-scale and carefully planned nature. ''By Resolution 256 of August 16, 1968, it condemned a 1968 raid on Al-Fatah bases near the Jordanian town of Es-Salt, ''deplored the loss of life and heavy damage to property'', and ''Consider[ed] that premeditated and repeated military attacks endanger the maintenance of the peace.''

In December 1968, Israel attacked aircraft on the ground at the Beirut airport, resulting in the destruction of thirteen aircraft. By its Resolution 262 of December 31, 1968, the Council condemned Israel for the raid, which Israel had undertaken in reprisal for an attack by Palestinians

on an El Al airplane at Athens airport. The Council condemned Israel for "premeditated military action".

The Security Council condemned a 1969 air attack by Israel on Al-Fatah bases near El-Salt, Jordan. By its Resolution 265 of April, 1, 1969, it "deplored the loss of civilian life and damage to property", and "condemned the recent premediated air attacks launched by Israel on Jordanian villages and populated areas."

Following a 1969 air attack, the Council, by Resolution 270 of August 26, 1969, "contemn[ed] the premeditated air attack by Israel on villages in southern Lebanon in violation of its obligations under the Cherter" and "declar[ed] that such actions of military reprisal... cannot be tolerated."

In 1970, Jordan expelled the Palestine Liberation Organization's military units from Jordan, leading to their installation in Lebanon. From there, they conducted raids into Israel. Israel took up reprisals against these raids, leading to Security Council condemnations. In May 1970 the IDF invaded southern Lebanon, and the Security Council, by Resolution 279 of May 12, 1970, demanded "The immediate withdrawal of all Israeli armed forces from Lebanese territory" and condemned Israel for "premeditated military action". This invasion caused numerous civilian casualties - a war crime under the Nuremberg principles. The Security Council, by its Resolution 280 of May 19, 1970, "deplored the loss of life and damage to property inflicted." Israel did not immediately mithdraw from Lebanon, leading the Council in its Resolution 285 of September 5, 1970, to repeat its demand for withdrawal.

After Israel again sent troops into Lebanon in 1972, the Council, in its Resolution 313 of February 28, 1972, demanded "That Israel immediately desist and refrain from any ground and air military action against Lebanon and forthwith withdraw all its military forces from Lebanese terriory". In its Resolution 316 of June 26, 1972, it condemned "the repeated attacks of Israeli forces on Lebanese territory and population." In 1973, in its Resolution 337 of August 15, 1973, the

Council condemned the "repeated military attacks conducted by Israel against Lebanon and Israel's violation of Lebanon's territorial integrity and sovereignty" and called on Israel "to desist forthwith from all military attacks on Lebanon".

In 1978 Israel launched a major invasion into Lebanon, occupying much of southern Lebanon and causing substantial loss of life. The Council, in Resolution 425 of March 19, 1978, called on Israel "immediately to cease its military action against Lebanese territorial integrity and withdraw forthwith its forces from all Lebanes territory".

In 1982 Israel again invaded Lebanon, characterizing the action as a reprisal for PLO attacks, though as a result to an agreement between Israel and the PLO a year earlier, there had been no PLO attacks for the previous twelve months. That invasion evoked Security Council condemnation in Resolution 509 of June 6, 1982, in which it demanded "that Israel withdraw all its military forces forthwith and unconditionally to the internationally recognized boundaries of Lebanon". When Israeli forces beseiged Beirut, the Council, in its Resolution 515 of July 29, 1982, demanded "that the Government of Israel lift immediately the blockade of the city of Beirut in order to permit the dispatch of supplies to meet the urgent needs of the civilian population and allow the distribution of aid provided by United Nations agencies."

During its 1982 invasion of Lebanon, the IDF killed thousands of civilisians - Lebanese and Palestinians - in its sweep north to the Lebanese capital of Beirut. While in occupation of Beirut in September 1982, the IDF permitted a Lebanese force hostile to Palestinian refugee camps called Sabra and Shatila and to kill civilians randomly. IDF forces provided lighting for the operation and prevented terrified residents from fleeing while the kiling continued. A number of Palestianians variously estimated from the hundreds to several thousand were Killedas a result. These killings were characterized by the United Nations General Assembly in its Resolution 37/123 D of December 16, 1982, as "an act of genocide". Genocide is a crime of an international character involving individual responsibility. It grew out of the killings of racial

groups during World War II and is defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Genocide, according to the Convention, involves the killing of the members of a national, ethnic, racial, or religious group with the intend to destroy the group in whole or in part. Since such a substantial number of Palestinians were killed, the criterion on intent is present.

The Security Council in 1985 condemned Israel's attack of October 1 of that year on a suburd of Tunis, Tunisia, that housed the headquarters of the Palestine Liberation Organization. That attack resulted in 68 civilian deaths. The Council, in its Resolution 573 of October 4, 1985, said that the attack was directed against "an exclusively residential urban area which traditionnally has been home to Tunisian families and a small number of Palestinian civilians who had to flee from Lebanon following the invasion of that country by the Israeli army".

Military Occupation

The law of war of applies not only during hostilities but also during a military occupation that follows hostilities. Israel, as a result of the 1967 hostilities, came into military occupancy of the Sinai Peninsula, Golan Heights, West Bank, and Gaza Strip. For varying periods it has been in occpation of portions of Lebanon. The Fourth Geneva Convention, to which Israel is a party, applies during military occupation, to give the occupying power certain powers to administrate the territory pending its return to the lawful sovereign. The Convention also provides a variety of protections for the local population against the occupying power.

The situation of military occupation is one that presents great opportunities for abuse, since a population is deprived of the right of self-rule and is under the control of an unwanted military force. That situation often leads to abuse because the population typically tries to drive the military force from ist territory. When Germany occupied portions of western and eastern Europe during World War II, guerrilla forces emerged in an effort to force it out. In reponse, it took drastic

action to terrorize the civilian population into obedience.

Israel has been in similar situation as a result of its occupation of Arab-populated territory. Its presence is unwanted by the local population, and it has resorted to measures of force to maintain its control. The Arab populations in question have not had access to any authority that can protect them from such measures. The International Committee of the Red Crosse attempted to ensure that humanitarian standards are followed, but it has at its disposal only whatever power of persuasion it may have with the government of Israel. The Fourth Geneva Convention suggested that some other country should take the role of a "protecting power" to aid a population under occupation, but that has not been done in the case of the territories occupied by Israel.

The Fourth Geneva Convention prohibits a wide variety of conduct by an occupying power. It places certain of the more serious violations into a special category of violation that it calls "grave breaches". The difference between a "grave breach" and other illegal acts is that if the act is a "grave breach" the individual official who perpetrates it is deemed guitly of a war crime and is subject to penal saction. Other states have not only the right but the duty to invertigate and prosecute persons who commit such crimes and to punish them for these offenses.

Expulsion of Inhabitants

One of the "grave breaches" committed by Israel is the expulsion of inhabitants of the occupied territory. It expelled, as indicated, large numbers during and following the hostilities of 1948 and 1967. It used deportation as well as a punitive measure against persons it said mobilized nationalist sentiment against the occupation. Like the deportations it undertook during the 1967 hostilities, these subsequent deportations violated the laws of war and constituted war crimes for which those responsible are individually liable.

Deportation violates Article 49, para. 1, of the Fourth Geneva Convention, which states: "individual or mass forcible transfers, as

well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that on any other country, occupied or not, are prohibited, regardless of their motive."

The Supreme Court of Israel ruled in the 1979 case of *Abu Awad v. IDF Commander of Judea and Samaria* that Article 49, para. 1, prohibits only mass deportations for purposes of forced labor or extermination and therefore that it does not prohibit the deportations in question. It based its view on the fact that the Nazi government had carried out mass deportations for forced labor or extermination, and that this was the back-ground against which the Fourth Geneva Convention was drafted. The Court's view of Article 49, para. 1, has been rejected by all other United Nations member states, however. Article 49, para. 1, explicitly prohibits "individual" deportations and makes deportations illegal regardless of the purpose. The United States has repeatedly protested Israel's deportations as a violation of Article 49, para. 1, as has the European Economic Community and the United Nations Security Council. The United States said in the Security Council in a discussion of Israel's deportations that Article 49, para. 1, prohibits deportations regardless fo their motive (U.N. Doc. S/PV. 2780, January 5, 1988).

Offenses Against Property

The law of war, as indicated, also prohibits offenses against property. During hostilities, a belligerent party is not permitted to destroy property unrelated to combat activity. Once in military occupation, a belligerent party is not permitted to destory property unless essential in the course of a military operation. The destruction of property is deemed a "grave breach" of the Fourth Geneva Convention and hence a war crime. In its Article 147, the Convention characterizes as a "grave breach" the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and antonly."

The dynamiting, mentioned above, of the villages of Emmaus, Yalu and Beit Nuba was a violation of these prohibitions and hence a war crime on the part of those responsible. During its occupation on the territories it seized in 1967, Israel has confiscated extensive tracts in the West Bank, the Gaza Strip, and the Golan Heights. These confiscations constitue "plunder" of the real property of individuals (private property) and of the people collectively (public property). One aspect of this "plunder" has been the implantation of Israel's own citizens as settlers on the seized land. This implantation indicates that the land takeover is not for some temporary military purpose but to appropriate the land for the benefit of israel.

Israel has also destroyed property as a means of punishment. It regularly demolishes houses of persons it suspects of certain offenses. This too constitutes "plunder" of property under the Nuremberg Charter and unlawful appropriation of property under the Geneva Convention. Israel's government justifies these house demolitions as a punitive measure. But while the Fourth Geneva Convention permits an occupying power to impose punishment for offenses, certain measures are prohibited. Expulsion and property destruction are forbidden by the Fourth Geneva Convention, whether done as a punishment or for some other purpose.

Physical abuse of Persons

The law of war prohibits the physical mistreatment by an occupying power of persons under its control in territory under military occupation According to Article 32 of the Fourth Geneva Convention "no physical or moral coercion shall be exercised against protected persons, in particular to obtain information form them or from their parties". And in Article 33, the Convention states: "The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or estermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or

scientific experiments not necessitated by the medical treament of a protected person, but also to any other measure of brutality whether applied by civilian or military agents».

Under Article 147 of the Convention. "torture or inhuman treatment", constitute "grave breaches". The Nuremberg Charter similarly defined "ill treatment" of a civilian person as a war crime. During Israel's occupation, persons who have been detained on suspicion of acts defined by the Israel military law as offenses have frequently alleged torture under interrogation by the security service. Torture allegations relayed by attorney included charges of use beatings, sleep deprivation, burning with cigarettes, placing a foul-smelling sack over the head for long periods causing near suffocation. Some detainees suffered severe physical injury as a result ot the treatment.

In 1978 the East Jerusalem consulate of the United States studied the issue, because Palestinians applying for a United States visa were entitled to a visa only if they had no criminal record. Many visa applicants with criminal records claimed that the conviction was based on a confession gained by torture. The consulate investigated a number of such cases. In a May 31, 1978, cable to the Deparment of State titled "Jerusalem 1500" the consulate reported its conclusion that torture had frequently occured. The cable was published in the *Christian Science Monitor*, April 4, 1979.

In 1987 the government of Israel appointed a commission to in vestigate the interrogation practices of its security services in the investigation of security-related offenses. The commission, headed by former Supreme Court Judge Moshe Landau, found that security officials had, since 1971, routinely used physical force to gain confessions from detainess. the commission said that these officials, when called to testify in court about the confession, routinely denied having used physical force. The commission said that the officials believed that the judges were "part of the game", meaning that judges were aware lying when denied having used force (*Jerusalem Post,* week ending November 7, 1987).

While it criticized the false testimony, the commission ruled that, in the interrogation of persons suspected of security offenses, "the employment of moderate physical pressure cannot be avoided" It explained that when an offense such as a bombing is committed in the West Bank or Gaza Strip, investigators cannot hope to get information in the usual way. Neighbors are unlikely to inform on other Palestinians, and the suspects are not likely to talk willingly. Therefore, it said physical force was not only authorized but recommended as a method of getting a confession. It did not define in public documents what "physical pressure" was permitted but drafted secret guidelines to set limits. As reported in the *Jerusalem Post*, week ending November 14, 1987, the government cabinet of Israel endorsed the commission's report. By so doing, it urged security service interrogators to use physical force to extract confessions.

Both human rights law and the Fourth Geneva Convention prohibit use of physical force to gain a confession from a suspect. Thus, the government of Israel, by endorsing the Landau Commission report, was squarely putting itself in violation of international requirements. Under the Nuremberg Charter, any official who makes the policy to use unlawful force against a detainee is liable for commission of a war crime. As regards physical force against detainees, this would include the members of the Landau Commission and the members of the government cabinet. These officials have set a policy that constitutes a "grave breach" of the Fourth Geneva Convention.

Israeli officials also committed "grave breaches" of the Fourth Geneva Convention by the policy of force the government adopted in 1988, in response to Palestinian street demonstrations. It instructed the IDF to administer summary physical punishment to demonstrators by breaking limbs. Many IDF soldiers did so. Since Article 147 of the Fourth Geneva Convention prohibits "inhuman treatment", this policy qualifies as a "grave breach"

Detention Withtout Charge

Israel's law permits its officials to detain persons without filing a criminal charge. It applies in the West Bank and Gaza Strip according to the Defense (Emergency) Regulations, originally adopted by Britain when it controlled Palestine. Regulation 111 of the Regulations provides: "A military commander may by order direct that any person shall be detained in such place of detention as may be specified by the military commander in the order".

In 1980 (West Bank military order 815), a limited judicial review was provided. A detainee was to be brought before a military judge within 96 hours. The judge was to quash the detention if the order as not issued for objective reasons of security. The judge was to review the detention order every three months.

The detainee had no right to learn the grounds suspicion, which was typically deemed classified intelligence information, but bore the burden of proving that The reasons leading to the order "were not objective reasons of state security". Appeal could be taken to the Supreme Court of Isreal.

The gouvernment of Israel used administrative detention liberally in Lebanon, particularly during its 1982 invasion. It Incarcerated several thousand Lebanese and Palestinian civilians in a camp called Anser. It has also used administrative detention in the occupied Gaza Strip and West Bank. It made extensive use of administrative uprising of 1988. During that year it detained about 5,000 persons on suspicion of uprising-related activity. It opened a new detention facility in the Negev desert near the town of Ketziot (also called Ansar 3) to house them. Because of the large numbers of persons il was detaining in this fashion, the government eliminated the limited judicial review and substituted for it a review by a military panel. Il also permitted any IDF officer above the rank of colonel to order detention, whereas before only the military commander of the West Bank or of the Gaza Strip had that power.

Administrative detention violates Articles 78 of the Geneva

Convention, which permits internment "for imperative reasons of security", provided that a case is reviewed every six months. Article 6 of the Convention does not permit administrative detention more than one year after the "general close of military operations". Thus, administrative detention has been unlawful in the 1967 - occupied territories since June 1968.

Administrative detention is a "grave breach" of the Fourth Geneva Convention. Article 147 says that "unlawful confinement of a protected person" constitutes "grave breach", as does the act of "wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention".

Administrative detention was used as a substitute for a regular criminal trial, particularly during the 1988 uprising, when so many persons were being arrested that the courts could not try them. Since administrative detention is a "grave breach", the members of the governments of Israel responsible for administrative detention are guilty of war crimes.

The Palestinian Uprising

The United Nations Commission on Human Rights said as early as 1972 that many of the practices followed by Israel in the territories it occupied in 1967 constituted "grave breaches" of the Fourth Geneva Convention. In a 1987 statement, Resolution 1987/2, titled "Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, "the Commission said that" Israel's grave breaches of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949", constituted "war crimes and an affront to humanity".

During the Palestinian uprising that began in December 1987, the gouvernment of Israel continued suppressive practices that it had used since 1967, in violation of the Fourth Geneva Convention. It increased the severity of these practices, however. It detained larger numbers of persons without charge and used physical force against demonstrators

and against other persons in the vicinity of demonstrations. It adopted an explicit policy of summary physical punishment administered by soldiers, who were directed to break the limbs of persons they detained.

The United Nations Commission on Human Rights, in a resolution titled "Question of Violations of Human Rights in Occupied Palestine", of February 17, 1989, again referred to Israel's actions as war crimes. It stated "that Israeli violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, applicable to the Palestinian population and territories under Israeli occupation, including the physical and psychological torture of Palestinian detainees and their subjection to improper and inhuman treatment, the imposition of collective punishment on towns, villages and camps, and the administrative detention of thousands of Palestinians for example in the 'Ansar 3' concentration camp in the Negev, the deportation and expulsion of Palestinian citizens by force, the confiscation of their property, raiding and demolition of their houses, and the annexation of Jerusalem, all constitute war crimes under international law."

The Crime of Apartheid

The International Convention on the Suppression and Punishment of the Crime of Apartheid, July 18, 1976, prohibits "racial segregation and discrimination" undertaken to dominate a racial group. Over ninety states adhere to the Convention. In addition to the Convention, apartheid is prohibited by customary international law, which is a body of law that states have worked out as a kind of common law of nations. Racial segregation is considered to violate customary international law. Israel is not a party to the Apartheid Convention but is bound by customary international law. It recognizes apartheid as unlawful, since it has criticized South Africa for apartheid.

The Apartheid Convention characterizes apartheid as a crime against humanity, and individual government officials who carry it out are

responsible individually. Under the Convention, the crime of apartheid involves "racial segragation and discrimination" that is carried out "for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and sytematically oppressing them". The Convention lists a number of acts carried out for that purpose as acts of apartheid.

The Apartheid Convention is applicable to Israel's acts if they can be characterized as being undertaken with that purpose. Given the history of Israel's taking of Palestine from its Arab inhabitants and its expulsion of most of them form Palestine in 1948, and given the fact that Israel was extablished under a philosophy that called for the predominance of Jews in Palestine, it would seem that the necessary racial element is present. Since one racial group is depriving another of rights in a way that aids the former in maintaining its dominance the crime of apartheid is present.

A number of the practices of Israel's government discussed above as war crimes under the Fourth Geneva Convention constitute as well acts of apartheid. The Apartheid Convention prohibits the "infliction upon the members of a racial group" of "serious bodily or mental harm" by "subjecting them to torture or to cruel, inhuman or degrading treatment or punishment". The use of physical force against Palestinain detainees under interrogation thus constitutes an act of apartheid.

The Apartheid Convention also prohibits the "arbitrary arrest and illegal imprisonment of the members of a racial group." Thus, the administrative detention used by Israeli is an act of apartheid. The Apartheid Convention prohibits the "persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose *apartheid*". The govenment of Israel has suppressed organizations and persons who opposed its policies. In addition to criminal charges against individuals, it has banned organizations that oppose a continuation of its control.

IN August 1988, Israel banned a large number of Palestinian organizations, evidently concerned that they might from a base for the

establishment by the Palestinians of an independent state. It banned the many so called popular committees that directed uprising activities in localities, and which also provided security and medical services and organized collective agricultural production and emergency food supplies.

After declaring the popular committees illegal, the government sent the IDF into Gaza Strip refugee camps to arrest persons it believed to be committee members. It put many in administrative detention and expelled others. The Defense Ministry issued a statement that "any person remaining a member of the popular committees, and any person assisting them faces imprisonment ans prosecution." Membership in an illegal organisation or atttendance at a meeting of an illegal organisation, or possession of the literature of an illegal organization is punishable by a prison term up to ten years under West Bank Military Order 378. The same penalty became applicable to attendance at a meeting of such a committee, possession of its literature, or contribution of money to it.

At the same time, the Minister of Defense closed the Arab Studies Society, a social science research organization based in Jerusalem, stating that a draft of an independence declaration for a Palestinian state had been found in its office. It placed the head of the Society, Faisal Husseini, in administrative detention. The government also closed the General Federation of Labor Unions in the West Bank, located in Nablus, West Bank, which housed offices of trade unions representing municipal workers, workers in soup factories, bakeries, health services, printing shops, and unions representing machinists, electricians, and drivers. It closed as well the Professional Unions Complex building in Beit Hanina, West Bank, that housed professional associations of physicians, dentists, veterinarians, pharmacists, lawyers, engineers, and agricultural engineers.

The Apartheid Convention also prohibits the denial "to members of a racial group" of "basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right

to freedom of opinion and expression, and the right to freedom of peaceful assembly and association".

The government of Israel has violated these provisions. In early 1988 it closed the institutions of higher learning in the West Bank and Gaza Strip and kept them closed into 1989. It also closed primary and secondary schools and kept them closed for most of that period as well. It closed trade unions, as indicated, and thereby violated rights of assembly adn association. The Apartheid Convention also prohibits the "expropriation of landed property belonging to a racial group" or to its members. Thus, the confiscation of land, mentioned above, is an act of apartheid.

The Apartheid Convention is also applicable to certain policies of Israel towards the Arab population of the territory Israel took in 1948. In that territory, 92 percent of the land is not open to either ownership, leasing, or sub-leasing by Arabs but is preserved as land for use by Jews. Many government functions in that territory are carried out by worldwide Zionist institutions that are dedicated to promoting the interests of Jews. This includes much infrastructure development like road building and construction of settlements. The cession by the government of some of its functions to organizations that promote the interests of only the dominant ethnic group constitutes an act of apartheid.

Denial of Self-Determination

The perpetuation of an apartheid regime by force constitutes an act of apartheid. And the forcible maintenance of a foreign regime is a war crime since it involves use of force against the principles of the United Nations. Israel, by refusing to withdraw from the West Banck, Gaza Strip, and Golan Heights, is imposing on their populations an alien regime.

The Golan Heights are Syrian territory, to which Israel has no legitimate claim. Egypt held the Gaza Strip during 1949-1967 without claiming sovereignty, pending exercice of self-determination by its population. Egypts continued to enforse in Gaza the law of Palestine.

Laws were published in the Palestine Gazette, which had been the official publication of laws until 1948. The Gaza Strip was considered by Egypt "an inseparable part of the land of Palestine and its people are a part of Palestine". The Constitution decreed in 1962 was declared to remain in force "until a permanent constitution for the State of Palestine is promulgated".

The West Bank was administered after 1948 by Transjordan, which incorporated it in 1950, forming a state henceforth called Jordan. It stipulated, however, that the incorporation was without prejudice to some other territorial solution that might be found for the Arabs of Palestine. In 1988 Jordan renounced its claim to the West Bank.

When Israel occupied the West Bank and Gaza Strip in 1967, the populations of the two territories held a right to self-determination. That right is not eradicated by belligerent occupation. A people enjoying a right to self-determination is entitled to merge with an existing state, to establish a relation of autonomy with an existing state, or to form its own state.

The United Nations General Assembly has resolved that states holding peoples in dependence may not use force to maintain that hold. In its 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, the Assembly stated: «Every state has the duty to refrain from any forcible action which deprives peoples... of their right to self-derermination and freedom and independence. In their actions against and resistance to such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter of the United Nations".

The United Nations General Assembly in its Resolution 34/44 of November 23, 1979, characterized Israel's occupation as a denial of self-determination and hence as a "serious and increasing theart to international peace and security". the Assembly "urged all States... to extend their support to the Palestinian people throught its

representative, the Palestine Liberation Organization, in its struggle to restore its right to self-determination''. The Human Rights Commission of the United Nations assessed the use of force by the Palestinians to re-gain self-determination. It a addressed the Palestinain uprising of 1987-88 in its Resolution 1988/3, titled ''Situation in Occupied Palestine'', of February 22, 1988. It found a ''right of the Palestinian people to regain their rights by all means in accordance with the purpose and principles of the Charter of the United Nations and with relevant United Nations resolutions'' and stated that ''the uprising of the Palestinian people against the Israeli occupation since 8 December 1987 is a form of legitimate resistance, an expression of their rejection of occupation.''

Since a forcible denial of self-determination is a threat to the peace, officials of a government that denies self-determination are involved in activity that constitutes agression. One rationale as to why a denial of self-determination is unlawful is that it is a continuing aggression against the population of the territory in question. Thus, Israeli officials who are responsible for denying self-determination to the Palestine Arabs are individually responsible for their acts.

A people entitled to self-determination may exercise it in one of three ways. It may choose to merge with an existing state. It may choose independence. Or it may choose a relationship of autonomy with an existing state. In November 1988, the Palestine National Council made explicit the method by which it chose to exercise their right of self-determination. It declared statehood for a Palestine state, to be established in the West Bank and Gaza Strip. The Palestinian people have a right to such a state, based on their occupation of the territory over a period of centuries. Prime Minister Yitzhak Shamir of Israel said that Israel would prevent the establishment of such a state, and in a variety of ways, the government of Israel undertook to prevent such statehood. These acts constitute war crimes on the part of those Israeli officials involved.

Punishment of War Criminals

The acts here discussed are crimes of an international character. Under international law there is no international court that can try and sentence persons who commit international crimes. The International Court of Justice, located at the Hague, was established to hear cases involving countries. The countries that established the Court created it as a forum to resolve the problems they have with each other. Thus, they gave it jurisdiction only over suits by one country against another. They did not give it the power to prosecute individual persons. Since World War II, various proposals have been made to create a special court at the international level to prosecute individuals, and while drafts of treaties to establish such a court have appeared, no such treaty has been adopted.

As a result, the enforcement of the law on international crimes is left to countries. Since the crimes are of an international character, all contries have an interest in them. Such crimes are deemed to violate the publice order ot the world, and thus each country has a stake in supressing them, regardless of the location where they are perpetrated.

In addition to having a legitimate interest, each country has an obligation under international law to see that perpetrators are uncovered, prosecuted, and, if guilty, punished. Many countries have adopted provisions in their penal codes making explicit provision for such international crimes, thought they can in many instances be prosecuted under existing crimes, such as murder.

The countries that organized international military tribunals after World War II acted even though the acts alleged had not occurred in their territories. Signatories of the Genocide Convention undertake (Article 1 of the Convention) "to prevent and to punish" genocide. Persons who commit genocide, say Article 4 of the Convention, should be punished "Whether they are constitutionally responsible rulers, public officials or private individuals". Thus, government rank does not preclude criminal liability for genocide.

Regarding "grave breaches" of the Fourth Geneva Convention, all signatories (and nearly all countries are signatories) undertake in Article

146 "to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention." In addition, each signatory "shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts." It may also, if it perfers, "hand such persons over for trial" to another signatory. Accused persons are to be assured a "proper trial and defense."

Under the Apartheid Convention, the government leaders of a state practicing apartheid are individually liable. So too are "those organizations, institutions and individuals committing the crime of apartheid." In Israel a number of non-governmental organizations aid the government of Israel in committing war crimes against the Palestinians in the occupied territories. Zionist institutions like the Jewish Agency, the World Zionist Organization, and the Jewish National Fund assist in financing and planning the use of land that the government confiscates. That renders these organizations guilty of apartheid, in addition to their officials who carry out individual unlawful act.

The Apartheid Convention forbids officals of other governments from abetting, encouraging, or cooperating in apartheid. Other countries are also obliged under the Convention to adopt any legislative or other measure necessary to prevent any encouragement of apartheid. This prohibition applies, for example, to officials of a government like that of the United States, which provides income tax exemptions to individuals who make financial contributions to Zionist institutions, and which, through military and economic aid, facilitates the commission by Israel of the crime of apartheid. Jurisdiction to try for the crime of apartheid is universal, states parties agreeing "to procesute, bring to trial ans punish.. persons responsible for, or accused of" acts of apartheid.

These rights and obligations of other countries flow from the fact that apartheid, like the other international crimes, is an offense not only against

the indigenous population victimized by it, but as well against the international community as a whole. The Apartheid Convention recites the rationale by stating that apartheid and its effects "seriously disturb and threaten international peace and security". The United Nations Security Council too has declared in its Resolution 392 of June 19, 1976, that "apartheid is a crime against the conscience and dignity of mankind and seriously disturbs international peace and security." The Council used this rationale in its Resolution 418 of November 4, 1977, to impose economic sanctions against Southern Rhodesia and to call for embargo on shipment of arms to South Africa. While the South Africain government has contended that its apartheid policies fall within its domestic jurisdiction under Article 2, para. 7 of the United Nations Charter, the Security Council has found a basis for international concern both in the human rights violations and in the threat to the peace it finds posed by apartheid in South Africa.

Thus, persons individually liable for international crimes are subject to prosecution where they are found. Other states have not only a right but a duty to prosecute.

Consequences

Nazi German officials were prosecuted by the international tribunal formed after World War II, and individual countries have continued to prosecute them as they are found. Countries have prosecuted their own citizens - typically low-ranking military officers - for the commission of war crimes, like the prosecutions in the United States arising from the My Lai village killings in Vietnam.

What are the prospects that states will recognize this liability with respect to officials of Israel? What are the prospects that prosecutions will be initiated ? If such prosecutions were initiated, would it achieve any positive result in terms of Israel's policies in the occupied territories or in terms of a political settlement ? These same questions were posed after World War II. At that point, of course, the war had ended and

the crimes had ended. Prosecution was not necessary to bring an end to the unlawful situation that gave rise to them. But even in that situation it was decided that prosecution was useful. Perhapls it was, as often argued, simply the justice of the victor over the vanquished. But it was thought that prosecution provided the world a lesson that such acts undertaken by individuals were universally condemned. It was hoped that prosecution would indicate to future government officials that even if they may commit these acts and not be punished within their own state, they must fear international prosecution. Thus, a deterrent function was envisaged.

In the case of the crimes committed by Israeli officials, a greater reason for prosecution might, in addition, make it clear to the international community that the acts in question are condemned by the international community as highly detrimental to the international order and to the rights of individuals and peoples. It might thus have a significant demonstration effect.

The United Nations has repeatedly declared various Israeli policies to be unlawful. While it has in a few instances declared that acts committed by Israel were war crimes, it has not pursued that line to a significant degree. The situation is perhaps analogous to that of wrongdoing by a business corporation. So long as liability rests on the corporation as a whole, corporate officials view sanctions as a cost of doing business. But if civil or criminal sanctions are threatened against them as individuals, they may be more circumspect.

Whether prosecutions of Israeli officials will be undertaken depends on the international community.

They could be undertaken, as at Nuremberg and Tokyo, by an international tribunal constituted specifically for the purpose. Or they could be undertaken by individual countries. As to the significance of prosecution in achieving a political settlement, the important point might be not so much in actual prosecution as in a realization by world public opinion and by policy makers that what is occurring does constitute a series of international crimes. That realization might show the seriousness of the situation and might promote efforts at a solution.

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PALESTINE LIBERATION ORGANIZATION UNIFIED INFORMATION