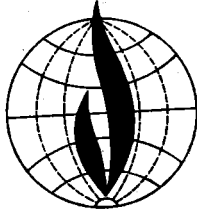


**THE RULE OF LAW
IN THE AREAS
ADMINISTERED BY ISRAEL**

**Israel National Section
of the International
Commission of Jurists**



**THE RULE OF LAW
IN THE AREAS
ADMINISTERED BY ISRAEL**

**Israel National Section
of the International
Commission of Jurists**

Additional copies of this publication are available from:
The Israel National Section of the International Commission of Jurists
c/o Adv. Daniel Jacobson
4 Yehuda Halevi St.
Tel Aviv 65135
ISRAEL

Printed by TZATZ
22 Fierberg St.
Tel Aviv, Israel
1981

CONTENTS

Foreword by Justice Haim H. Cohn	vii
Abbreviations	xiii
Chapter One: THE ASSUMPTION OF ADMINISTRATIVE AUTHORITY BY ISRAEL	1
Chapter Two: LEGISLATION OF THE REGIONAL COMMANDER	5
The Power to Amend Local Law	5
The Legal Background	5
Israeli Practice in the Region	8
Publication of Enactments by the Regional Commander	9
Chapter Three: JURISDICTION OF THE LOCAL COURTS IN ACTIONS AGAINST THE ISRAELI AUTHORITIES	13
Compensation for Injury	15
Appeals against Decisions of the Israeli Authorities	16
Chapter Four: THE COURTS SYSTEM IN THE REGION	21
Local Courts	21
(a) Structure	21
(b) Appointment of Judges	22
(c) Judicial Review of Enactments of the Regional Commander	23
(d) Civil Jurisdiction	25
(e) Criminal Jurisdiction	25
(f) Court Facilities	26

Military Courts	27
(a) Structure and Procedure	27
(b) Right of Appeal	27
(c) Trial of Offences Committed Prior to Entry of the Israel Defence Forces into the Region	29
(d) Right to Legal Representation	30
(e) Visits by the International Committee of the Red Cross	30
(f) Evidence Required for Conviction	31
(g) Stay of Proceedings	31
Concurrent Jurisdiction of the Local and Military Courts	32
The Legal Profession	33
Chapter Five:	
THE ISRAELI HIGH COURT OF JUSTICE	35
The Principles of Operation of the High Court of Justice	36
Petitions by Residents of the Region to the High Court of Justice	37
Jurisdiction of the High Court of Justice to Hear Petitions of Residents of the Region	41
Chapter Six:	
PUBLIC AND PRIVATE LANDS	43
Public Land	43
Private Land	45
Expropriation of Private Land for Public Purposes	45
Land Transactions	46
Land Settlement Proceedings	47
Absentees' Property	48
Requisition of Private Property for Military Purposes	49
Israeli Settlements in the Region	54
Building Restrictions	55
Chapter Seven:	
ECONOMIC DEVELOPMENT AND PROVISION OF PUBLIC SERVICES	57
The Legal Background	57
Israeli Practice in the Region	58
Water	59
Drilling Permits	60
Water Utilization by Israel	61
Health and Welfare Services	62
Exports	62
Imports	63

Co-operative Societies	64
Banks	64
Chapter Eight:	
SECURITY MEASURES	67
The Defence (Emergency) Regulations, 1945	67
Deportation	68
Demolition and Sealing-up of Houses	69
The Legal Background	69
Israeli Practice in the Region	70
Administrative Detention	71
The Legal Background	71
Israeli Practice in the Region	72
Chapter Nine:	
BASIC FREEDOMS	75
The Legal Background	75
Israeli Practice in the Region	76
Freedom of Assembly	76
The Legal Background	76
Israeli Practice in the Region	76
Freedom of Speech and Expression	77
The Legal Background	77
Israeli Practice in the Region	78
Freedom of the Press	78
The Legal Background	78
Israeli Practice in the Region	78
The Right to Strike	79
Academic Freedom	79
The Legal Background	79
The School System	80
Universities	81
Freedom of Movement	84
The Legal Background	84
Israeli Practice in the Region	84
Freedom to Enter Israel and the Gaza District	84
The "Open Bridges" Policy	85
Family Reunification	86
Identity Cards	86
Other Measures	86
Chapter Ten:	
ELECTIONS TO LOCAL AUTHORITIES	89
The Local Jordanian Law	89
The Position since June, 1967	90

Chapter Eleven:	
APPOINTMENT OF TRADE UNION OFFICIALS	91
The Local Jordanian Law	91
The Position since June, 1967	91
Chapter Twelve:	
TAXATION IN THE REGION	93
Taxation in General	93
Value Added Tax	94
Its Nature and Object	94
Factual Considerations	94
Legal Considerations	95
CONCLUSION	99
Footnotes	100

FOREWORD

The administration by Israel of territories not included within the boundaries of the State of Israel, namely, the area of Judaea and Samaria, or, as they are described from the vantage point of the Hashemite Kingdom of Jordan, the West Bank (of the River Jordan), as well as the Gaza Strip and the Golan Heights, came under the control of Israel by virtue of belligerent occupation as a result of the war waged against Israel by Egypt, Jordan and Syria in June, 1967. Apart from the city of Jerusalem which, including its eastern part, has always been regarded by the State of Israel, and under its laws, as an integral part of the territory of Israel, no claim has been laid by the State of Israel so far to any of those "administered areas": they are administered by Israel pending the final settlement of their status in a peace treaty between the belligerent parties. Resolutions of various United Nations organs calling on Israel to withdraw its forces from, and terminate its administration of, the administered areas, appear to have no basis in international law, so long as such withdrawal and termination have not been agreed upon by all parties concerned in a peace treaty concluded between them.

The question as to the status under international law of the administered areas has been much debated, but the discussion appears to be largely academic. It centres on the applicability in and to these areas of the international conventions relating to the belligerent occupation of enemy territory as a result of war; and the Israeli official position has always been that the areas in issue here have never been "enemy territory" in the sense that they were never lawfully under the sovereignty of the Hashemite Kingdom of Jordan. But be that as it may, and whether or not those international conventions are binding on the State of Israel in respect of its administration of such territories, it has from the very first been the declared policy of the State of Israel that its military and civil organs abide by the humanitarian provisions of the Hague Regulations and the Fourth Geneva

Convention of 1949 as if they were binding and applicable. And whenever the question arose in the courts of Israel as to the status of the administered areas, and the powers vested in the military authorities charged with their administration, the position invariably taken by the government and by the military commanders was that those provisions of the Hague Regulations and the Geneva Conventions should be followed.

In a statement published shortly after the 1967 war, the then Attorney-General of Israel declared that not only would the humanitarian rules contained in the Hague Regulations and in the Geneva Convention be observed *de facto*, but beyond that, all the norms and principles of natural justice observed as a matter of course in Israel, would also be implemented in the territories administered by Israel, even though they might not have found expression in international Law¹. For the purposes of this study, therefore, it is taken as axiomatic that the humanitarian provisions of the Hague Regulations and the Fourth Geneva Convention, as well as all customary international law, are applicable to the administered areas. The question as to their exact status under international law, therefore, is not dealt with here.

In view of the fact that Israel administers these territories as an uninvited ruler, against the will of the population and of the defeated belligerent, it is only natural that such administration should arouse resentment. Given the splendid isolation in which Israel often finds herself nowadays in international organizations, it is quite natural that such resentment should find not only repeated and vociferous expression, but also the support of some international organs whose objectivity has long given way to political bias. Rather than dissipating her resources on political polemics, Israel has preferred to concentrate her efforts on steadfastly ameliorating the administration of the territories and raising the living standards of the population — with the result, of course, that the voices of resentment have grown progressively stronger and have appeared to win the day by default.

The political agitators have now, however, been joined by reputable legal scholars who have inscribed the motto “Law in the Service of Man,” on their banner and who, thanks to their sincere motivation as co-fighters for the Rule of Law, have won affiliation with the International Commission of Jurists. A study written by two of them, Mr. Raja Shehadeh and Dr. Jonathan Kuttab, *The West Bank and the Rule of Law*, has been printed and distributed under the auspices of the International Commission of Jurists. An unbiased observer might perhaps have asked himself whether fair observance of the principles inherent in the Rule of Law ought not to have required the submission of the study to the Government of Israel for its comments before publication — especially as the Secretary-

¹ M. Shamgar, “The Observance of International Law in the Administered Territories,” 1 IYHR, Vol. 1, (1970), p.266.

General of the International Commission of Jurists, in his Preface, presents its findings to the reader as if they were incontrovertible facts. Be that as it may, it is without doubt the merit of this publication that it enables the debate on the administration of the territories to be elevated to the level of an informed discussion on the legal basis and justification of such steps as have actually been taken by the military commanders by virtue of their authority. While the study of Messrs. Shehadeh and Kuttab can in no way be accepted as a correct statement either of the facts or of the law, it is a welcome challenge to state both fact and law as they really are — not unlike a legal pleading whose *ratio vivendi* is to stand until authoritatively corrected. The Israel National Section of the International Commission of Jurists felt itself called upon to take up this challenge, and it commissioned the present study with a view to acquainting the international legal community with the facts and the law as seen by the “villains” themselves.

While this study is neither government-sponsored nor government-backed, it is mostly the work of lawyers who do their reserve duty in the Israel Defence Forces as legal advisers to the military commanders in the administered areas. Normally, they engage in private practice as advocates before the ordinary courts of Israel; but for a few weeks each year they perform their military duties by devoting their legal abilities and acumen to fostering the Rule of Law in the administered areas. Many of them are members or supporters of the Israel National Section of the International Commission of Jurists — whose objects they promote by keeping a constant and jealous watch for any infringement or diminution of the Rule of Law at the hands of military men and administrators not trained in the law. If they have not always succeeded, it is because security considerations, which are not within their competence or expertise, have been regarded as overriding — as indeed they are under the provisions of international law. While all of those legal contributors will have to remain anonymous, it is my pleasant duty to mention at least the most active and outstanding among them, Joel Singer, the head of the International Law Branch of the Military Advocate-General's Unit, without whose devotion and scholarship this study could never have crystallized.

It has been our editorial policy to refrain from discussions or polemics with Messrs. Shehadeh and Kuttab: we do not see this study as an arena in which to fight them and prove them wrong. Their publication served us as a welcome opportunity to state our case: and we have endeavoured to state it *sine ira et studio*, citing chapter and verse for every legal proposition we have submitted. The authorities we relied upon are the internationally recognised experts, whose books on the law of military occupation have been the *vademecum* of the legal advisers of the military commanders throughout the years. In addition, many references will be found to articles in law journals by erudite writers and, of course, to the opinions of courts of justice.

One point of polemics, however, I cannot forgo — and I may perhaps be

allowed some indulgence in view of the fact that it relates to a matter in which I myself was privileged to play a humble part. The learned authors, Messrs. Shehadeh and Kuttab, devote a few lines only (on page 26) to the fact that the Supreme Court of Israel sitting as a High Court of Justice has assumed jurisdiction over the military commanders in all administered territories, although "in law," as the authors state, "the High Court of Justice in Israel does not have jurisdiction beyond the territory of Israel." They do not fail to mention that this "has been heralded by Israel as the first occasion in the history of military occupations when citizens of an occupied territory have been allowed a direct appeal to the high court of the occupying powers," but they make it quite clear that they want no share in any such "heralding." Instead of fairly assessing and evaluating the abolition of the Court of Cassation and the limitation of jurisdiction of the local High Court in the West Bank, as if the High Court jurisdiction in Israel were but a poor substitute. Needless to say — and, of course, the learned authors do not say — no local court could ever have exercised any jurisdiction over the military authorities of the occupying power, so that the changes brought about in respect to them (which are described in detail below), have nothing whatever to do with the assumption of jurisdiction by the High Court of Justice of Israel.

This assumption of jurisdiction is not based only, as the authors insinuate, on the Attorney-General's restraint from raising objections for lack of jurisdiction — although it is true that such objections were in fact never raised. The court assumed jurisdiction, which in effect is extra-territorial, over the persons of the military commanders and their subordinates, the underlying reason being that all organs of the Government of Israel are subject to the jurisdiction of the High Court of Justice in respect of all their acts and omissions, wherever they may have taken place. It is by virtue of this personal — as distinguished from territorial — jurisdiction that the court will order any military commander, or any subordinate official in the administered areas, to do any act which by law he is obliged to do, or to abstain from doing any act which by law he ought not to do. Furthermore, the court will grant any petitioner, irrespective of nationality, domicile and status, enemy or otherwise, all such effective and immediate remedies as it may consider necessary in order that justice be done, provided the grant of such remedy is not within the jurisdiction of any other court².

In actual practice, this means that whenever any military or other Israeli authority exceeds its lawful power or threatens to do so, or infringes on the rights of of any individual in any other unlawful way (as by unlawful discrimination), effective redress by the court will be immediately available in the normal course of events, by way of an interim injunction to preserve the *status quo ante* until

² Section 7, Courts Law, 1957, 9LSI, p.157.

the petition is heard and disposed of. It goes without saying that neither temporary nor final orders are issued as a matter of course: every petitioner has to make out a *prima facie* case to warrant intervention by the court. But any fair investigation into allegations that the military commanders in the administered areas have exceeded their powers, ought, in my submission, to start from the basic premise that every such excess of power constitutes, in the particular system evolved and practised in Israel, a valid cause of action in the Israeli High Court of Justice.

If many, or perhaps even most, of the matters alleged to amount to an excess of power have not in fact been made the subject of a High Court action, it is not because the High Court of Justice's jurisdiction lacks effectiveness, nor because the population of the administered areas lacks confidence in the Israeli Judiciary. It is because of the terror employed by certain groups against those daring to have recourse to the courts of the so-called oppressor, and because of the propaganda-war value of alleged excesses of power which were not judicially probed, as distinguished from allegations which judicial enquiry may prove to be without foundation. It is also because unremedied excesses serve the propaganda-war far better than do excesses that have been redressed. Nevertheless, the records of the Israeli High Court show a rather impressive frequency of petitions from the administered areas against their military commanders; and there is hardly any activity of the military administration that has not, at one time or another, come before the court. It cannot in fairness be denied that, in the history of military occupations throughout the world, the Rule of Law has never been better served and implemented than by affording the rights and remedies that Israel has made available to the residents of her administered areas.

I must admit that I myself am far from happy and complacent about certain aspects of the military administration, all of which are fully and unreservedly described in the present study. Not everybody in Israel subscribes to the prevailing military concepts of security requirements, but so long as the Army has the responsibility for maintaining security, and so long as the administered areas are exposed, both from within and from without, to terrorist influence and attacks, those concepts must prevail. But there is at least one case on record in which the High Court has taken upon itself the overruling of the military commander even on the question as to whether a certain act of his was necessary for maintaining security. This does not mean that the Court will substitute its own notion of security requirements for that of the military authority; but it will — and did — enquire into the question of whether it was *bona fide* security requirements that did in fact prompt the action. There is no doubt that the very existence of the High Court jurisdiction, and its character as an exacting watchdog, has contributed most effectively to the self-restraint which military commanders are imposing on themselves in ever-increasing measure.

The Israel National Section of the International Commission of Jurists submits this study to the international legal community, trusting that the discerning eye and the analytical mind of the lawyer, trained in the ascertainment and evaluation of facts, will easily differentiate between a *tractatus politicus* and a sober statement of law and fact. Not that a political pamphlet has no justification, especially if it is overtly presented as such and does not purport to pose as what it is not; but lawyers, as distinguished from politicians, are hardly in the habit of contenting themselves too easily with what at best amounts to political argument, unsupported by evidence and by authority.

Jerusalem, March, 1981.

Haim H. Cohn
Member, International Commission of Jurists
Chairman, Israel National Section of the
International Commission of Jurists

ABBREVIATIONS

- American Manual — *The Law of Land Warfare*, F.M. 27-10 U.S. Army (Department of the Army, 1956).
- British Manual — *The Law of War on Land being Part III of the Manual of Military Law* (London, The War Office, 1958).
- Civil Affairs — *Civil Affairs Operations*, FM 41-10 U.S. Army (Headquarters, Department of the Army, 1962).
- C.P. & O. — *Collection of Proclamations and Orders*, issued by the Military Government in the Region of Judaea and Samaria (in Arabic and Hebrew).
- Feilchenfeld — E. H. Feilchenfeld, *The International Economic Law of Belligerent Occupation* (Washington, Carnegie Endowment for International Peace, 1942).
- Fourth Geneva Convention — *IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12th August, 1949.
- Gerson — A. Gerson, *Israel, The West Bank and International Law* (London, Frank Cass, 1978).
- Greenspan — M. Greenspan, *The Modern Law of Land Warfare* (California, University of California Press, 1959).
- Hague Regulations — *Regulations Respecting Laws and Customs of War on Land, Annex to the Convention Concerning the Laws and Customs of War on Land*, 1907.
- ILR — *Israel Law Review*, published under the auspices of the Faculty of Law, The Hebrew University of Jerusalem.
- IYHR — *Israel Yearbook on Human Rights*, published annually under the auspices of the Faculty of Law, Tel Aviv University.

- LSI — *Laws of the State of Israel*, official English translation by the Ministry of Justice.
- Oppenheim — L. Oppenheim - H. Lauterpacht, *International Law: A Treatise, Vol. II, Disputes, War and Neutrality* (London, Longmans, Green & Co. Ltd., 7th edition, 1952).
- Pictet — J. S. Pictet, *Commentary, IV Geneva Convention* (Geneva, International Committee of the Red Cross, 1958).
- Piskei Din* *Judgments of the Israeli Supreme Court* (in Hebrew).
- Schwarzenberger — G. Schwarzenberger, *International Law as applied by International Courts and Tribunals, Vol. II, The Law of Armed Conflict* (London, Stevens & Sons Ltd., 1968).
- Schwenk — E.H. Schwenk, "Legislative Power of the Military Occupant Under Article 43, Hague Regulations," 54 *Yale Law Journal*, (1945), p.393.
- Stone — J. Stone, *Legal Controls of International Conflict* (Sydney, Maitland Publications Pty. Ltd., 1959).
- Von Glahn — G. von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis, The University of Minnesota Press, 1957).

Chapter One

THE ASSUMPTION OF ADMINISTRATIVE AUTHORITY BY ISRAEL

Since the entry of Israel into the Region of Judaea and Samaria (hereinafter called "the Region"), the powers of the Jordanian authorities have been exercised by the military government and its civil administration. The assumption by Israel of the authority, duties and responsibilities vested in the local Jordanian Government under the local law applying in the territory is in accordance with the requirements of international law.

In fact, by virtue of its actual control of the territory, Israel was bound under international law to carry out all the administrative functions and assume all the responsibilities which Jordan was no longer in a position to exercise¹. Article 43 of the Hague Regulations lays down the basic principle as follows:

L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publique en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

The original French text of the Hague Regulations is the official one. In the English translation, which is not binding, this article reads as follows:

The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter shall do all in his power to restore and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country.

It follows from this principle that:

- (a) military occupation itself amounts to a *de facto* transfer of the authority from the previous government to the occupying power;
- (b) it is the duty of the occupying power to restore and maintain public order and normal everyday life, while respecting the provisions of local Jordanian law.

As to the extent of the *de facto* transfer of authority, it should be pointed out that while the (unofficial) English translation speaks generally of “the authority of the power of the State,” the official French text refers to “l’*autorité du pouvoir légal*”, which means all the powers deriving from the local law of the occupied territory.

Several authorities refer to this question of the transfer of administrative powers from the previous government to the occupant. Oppenheim writes²:

As the occupant actually exercises authority, and as the legitimate Government is prevented from exercising its authority, the occupant acquires a temporary right of administration over the territory and its inhabitants³.

The fact that the occupant is given the competence to administer the territory in place of the former administration is intended to prevent a vacuum in the efficient administration of everyday life and the maintenance of public order. Thus, rather than being a right of the occupying state, it is a duty owed by it to administer the territory for the benefit and welfare of the local population.

On this aspect of the administration of the territory, Von Glahn remarks⁴:

In view of the fact that the occupant exercises administrative control in the territory under his authority... while simultaneously he is obliged to restore public order and safety as far as possible, it appears that the occupied territory should be administered not only in the (military and other) interests of the occupant, but also to the greatest possible extent for the good of the native inhabitants.

The same principles were also reflected in a judgment of the Israel Supreme Court in a case arising from activities by the military government. In *The Christian Society for the Holy Places v. The Minister of Defence*⁵, it was held that:

Military occupation suspends the powers of the former sovereign body ousted by the occupant, and in the words of Article 43 (of the Hague Regulations) those powers pass *de facto* to the occupant.

This premise is based not only on the above-mentioned legal principles but also on sheer logical and pragmatic considerations. In view of the fact that the ousted authority is not in a legal and factual position to exercise administrative functions in the occupied territory, the occupying power must take over.

With the object of fulfilling its obligations and of setting up proper administrative machinery for the well-being of the population and to ensure public order, a civil administration was set up by the military government. Here, Israeli professional employees, representatives of corresponding government ministries in Israel, work alongside the local employees. Such representatives are termed “staff officers” — a term often misinterpreted as meaning military officers. The civil administration comprises a variety of departments, each concerned with different areas of activity. The senior official in each department is empowered to

act in accordance with the relevant Jordanian law and enactments published by the Regional Commander. Such powers are in practice exercised by local employees, as the number of Israeli officials constitutes a very small proportion of the staff of any department. Thus, in 1979, 349 Israeli officials were employed in the administration of the Region, as compared with 11,279 local employees. The proportion becomes even more striking when one considers that, in 1968, there were 380 Israeli officials and 2,930 local employees.

In conclusion, the assumption of administrative authority by Israel in Judaea and Samaria, and the enactments of the Regional Commander empowering Israeli officials to exercise administrative functions, are based upon undisputed legal foundations in conformity with the relevant rules of international law.

Chapter Two

LEGISLATION OF THE REGIONAL COMMANDER

Under international law, the Regional Commander is empowered to determine obligatory norms of conduct in matters of security, public order and the general welfare of the local population. The exercise of such authority involves a certain latitude in amending existing local law. Needless to say, the publication and circulation of all enactments by the Regional Commander is a condition *sine qua non* for the exercise of this power.

THE POWER TO AMEND LOCAL LAW

It has been contended that Israel is exercising the right to legislate in excess of the powers vested in an occupant, which are allegedly limited only to enactments essential for the security of its forces in the Region.

Such a contention finds no support in the Hague Regulations nor in the Fourth Geneva Convention, and is also incompatible with the views of all the major authorities on the matter.

THE LEGAL BACKGROUND

As shown above¹, the Hague Regulations prescribe the duty of the occupant as being to restore and ensure "l'ordre et la vie publique" and this has been rendered incorrectly in the English version as "public order and safety."

It was presumably this inaccuracy that misled those who support the restrictive view concerning the legislative powers of the occupant.

In this context Schwarzenberger observes² that:

The words in the official French text "l'ordre et la vie publique" are freely, if hardly accurately, translated in the unofficial English translation as "public order and safety."

Likewise, Westlake points out³ that:

the word 'safety' in Art. 43 does not adequately render the "*vie publique*" of the original [French] which describes the social and commercial life of the country.

Schwenk⁴ also indicates that "*la vie publique*" is to be construed as meaning "social functions and ordinary transactions which constitute daily life."

Although article 43 does not expressly mention a law-making power, there can be no doubt that, together with article 64 of the Fourth Geneva Convention which deals with the power to enact penal provisions, it forms the basis for the legislative activity of the military government.

The rule embodied in article 43 requires that the occupant continue to conduct the affairs of the occupied territory according to the local law in force at the date of occupation. However, this rule is qualified by the proviso: "unless absolutely prevented." Several international legal authorities have construed this qualification:

According to Von Glahn⁵:

... there are certain categories of laws which may be necessary during the course of a belligerent occupation but which nevertheless have nothing to do with military necessity in a strict sense of the term... It has to be remembered that the secondary aim of any lawful military occupation is the safeguarding of the welfare of the native population, and this secondary and lawful aim would seem to supply the necessary basis for such new laws as are passed by the occupant for the benefit of the population and are not dictated by his own military necessity and requirements⁶.

Feilchenfeld explains the qualification in article 43 in the following manner⁷:

The application of these regulatory powers extends over practically all fields of life, includes the whole field of economics and finance, and results invariably in a considerable body of decrees if an occupation lasts for any length of time. Practically every analytical field of law from administrative law to commercial and so-called private law, may be affected by such regulations, and the whole economic process, including production, distribution, finance, and consumption becomes subject to permitted changes.

Greenspan, in referring to the situation in which an occupation continues for a lengthy period, adds the following⁸:

If an occupation is of any substantial duration, the occupant will find it necessary to legislate on a large number of matters by proclamation or ordinance⁹...

The Israeli High Court of Justice dealt with the question of amending local legislation during prolonged occupation (as in the case of the Israeli administration of Judaea and Samaria) in *The Christian Society for the Holy Places v. The Minister of Defence*¹⁰. In that case, the Staff Officer for Labour Affairs in Judaea and Samaria introduced an amendment to the Jordanian Labour Law in order to enable the application of the arbitration procedure provided for in that Law. The

petitioner challenged his right to do so. The court held *inter alia*¹¹:

Life does not stand still and no government, occupant or otherwise, can properly discharge its duty to the population if it freezes the legislative situation and refrains from adapting it to temporal needs. On enquiring whether some enactment of an occupying power is consonant with article 43 of the Convention, great importance attaches to the question of the legislator's motive. Did he legislate to forward his own interests or out of a desire to serve the well-being of the civilian population, "la vie publique" of which article 43 speaks.

The court added¹¹:

A reasonable interpretation of the phrase "unless absolutely prevented" in article 43 requires us to construe the article as substantiating the duty placed upon the occupying power towards the public in the occupied territory and, as I have already shown, this duty includes also that of regulating social and economic matters.

The majority of the court upheld the amendment. Cohn, J., in his minority opinion held:

The authority vested in the respondent under article 43 (of the Hague Regulations) is not meant to empower him to change the world and to provide the local population with ideal living conditions, or even with conditions which may seem to him better and more equitable. The authority is intended only for restoring such order and public life as existed prior to the occupation and for ensuring their continued existence¹².

The above opinion, however, did not only constitute a minority view in the case under consideration, but would appear also to be inconsistent with the weight of opinion of legal authorities, as indicated above.

It is further mistakenly contended that article 64 of the Fourth Geneva Convention restricts the legislative capacity of the occupant to matters pertaining to security only. Such a contention is ill-founded, and fails to take into account the terms of article 64, which provide as follows:

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

It should be noted that article 64 does not rescind any rule of international law, but is intended to supplement article 43 of the Hague Regulations¹³.

In the interpretation of the Fourth Geneva Convention, by Jean S. Pictet, the occupying power is said to be empowered by article 64 to enact three types of legislation¹⁴:

- (a) It may promulgate provisions required for the application of the Convention in accordance with the obligations imposed on it by the latter in a number of

- spheres: child welfare, labour, food, hygiene and public health, etc.
- (b) It will have the right to enact provisions necessary to maintain the "orderly government of the territory" in its capacity as the power responsible for public law and order.
 - (c) It is, lastly, authorized to promulgate penal provisions for its own protection...

ISRAELI PRACTICE IN THE REGION

In the early stages of the Israeli presence in the Region, legislation by the Regional Commander was indeed limited mainly to matters of security and public order which constituted the principal issues facing the military government at the time. With the prolongation of the Israeli presence, during which time substantial economic, social and other changes took place, the need to adapt the local Jordanian law to these new circumstances arose¹⁵.

All the Orders issued by the Regional Commander that amend local law were issued as a result of the necessity to deal with problems which arose in the course of time regarding the maintenance of normal day-to-day life in the Region. The amendments to local law are not arbitrary, but are selective, at times following legislative amendments effected in Jordan and at times consequent upon legislation in Israel, aimed at according additional social rights to the local population, or at strengthening the close economic ties that have developed between the populations of the Region and of Israel.

Indicative of the selectivity of the military government in amending local law is the fact that of a total of 890 Orders issued by the Regional Commander, only 115 have, directly or indirectly, amended local law — 12.5% of the total. All such legislation, it may be observed, is examined before actual enactment by experienced lawyers for the purpose of ensuring that it is in accordance with the rules of international law. Every draft Order is confirmed at senior military level and in certain matters at the highest political level. Legislation by the military government frequently follows upon the advice and recommendation of various local residents or is the result of intervention by judges, lawyers and other local bodies. For example, when it was considered necessary due to inflation to amend the relevant Jordanian law applicable in the Region, under which local courts could award only 9% interest for damages, enquiries among lawyers and judges in the Region indicated opposition to the suggested amendment. This opposition was expressed in view of the fact that many transactions and legal proceedings in the Region specify the Jordanian Dinar, which is virtually unaffected by inflation.

However, the Military Government is now contemplating a change in the rate of interest on claims and transactions concluded in Israeli Shekalim, following the introduction of such an amendment in the Gaza District¹⁶.

Further examples of the Israeli authorities' approach to legislation may be found in the following instances:

— The amendment to local legislation with regard to accident victims' compensa-

tion¹⁷ in order to adapt it to the new "no-fault" legislation in Israel, which imposes an absolute liability on insurance companies to pay compensation¹⁸. This is in contrast to the law previously in force in the Region, which entitled an accident victim to compensation only when the driver was at fault. Had such an adaptation not been implemented, there would have been a clear lack of symmetry between the law in the Region and the law in Israel on such a vital topic, with consequent hardship for the local population.

— Improvements to local accident legislation, including immediate insurance coverage for accident victims¹⁹ and the setting up of a special Victims' Compensation Fund for cases in which the driver causing the accident is unknown or uninsured²⁰.

— The application in the Region by an order of the Safety Belt (Vehicles) Law of 1973²¹, which made compulsory the installation of safety belts in all motor vehicles and the use of these belts outside urban limits. A corresponding Order²² was issued by the Military Commander to apply to the Region.

— Similarly, in the field of workmen's compensation, the Jordanian Labour Law of 1960²³ was amended in order to provide previously non-existent rights for injured workers²⁴, including compulsory insurance by employers²⁵, immediate payment of compensation by employer and insurer²⁶ and payment of special medical expenses.

— Legislation by the Regional Commander was also considered necessary in order to enable Israeli lawyers to appear in the local courts so as to prevent the paralysis of these courts, in view of the strike by local lawyers since 1967, and the difficulties which such a strike could cause to the local population. The strike, which amounted to a total boycott of the local courts in the Region by nearly all local lawyers, was actively promoted by the Jordanian Bar in Amman²⁷.

To sum up: the law in force in Judaea and Samaria when Israel first took over the administration thereof, has remained in effect. In the course of the fourteen years since 1967, Jordan has enacted new laws which in the circumstances do not apply in the Region. But, in view of the many social and economic developments occurring in the Region, there was an urgent need to amend existing legislation and adapt it to changing circumstances. In doing so, Israel has acted in a lawful and correct manner in accordance with international law.

PUBLICATION OF ENACTMENTS BY THE REGIONAL COMMANDER

In the first days immediately following the establishment of military government in the Region, the enactments of the Regional Commander were published in Hebrew and Arabic in the form of posters pasted on walls, and distributed among the local residents. After a very short period, the military government was able to publish its enactments in an orderly way, in an official gazette entitled *The Collection of Proclamations and Orders (C.P. & O.)*. This is published periodically and distributed free of charge and incorporates in Hebrew and Arabic all the enactments that have been issued by the Regional Commander. To

date, 45 volumes of the gazette have been published. The front pages of the first and most recent issues are reproduced on pages 11 and 12.

Further, in order to bring the contents of an enactment to the attention of the local residents as soon as possible, every enactment is published individually, in Hebrew and Arabic, in large quantities. It is then immediately distributed in the Region, free of charge, to all those persons and bodies whose names appear on a list prepared by the military government, as well as to other individuals and bodies who may be directly affected by the particular enactment.

The list — known as the general distribution list — includes all the judges and local prosecutors, accountants, municipalities, village councils and chambers of commerce. These last three bodies are required to bring the contents of the various enactments to the notice of their residents or members, as the case may be, and to display the enactments on the public noticeboards at their offices. In addition, the enactments are displayed at the District Commanders' offices and at each post office in the Region. Numerous copies of each enactment are also deposited with the Staff Officer for Legal Affairs of the military government for allocation to the local lawyers.

In addition, where specific enactments change existing arrangements that affect the population generally, as, for example, enactments concerning labour relations, these are brought to the attention of the general public and explained by means of the local press, radio and television.

The volumes of C.P. & O. are distributed free of charge to all those included in the general distribution list referred to above. Anyone else requesting copies from the military government receives them immediately.

It should be pointed out that the military government originally requested the owners of the various bookshops in the Region to assist in distributing the enactments by putting them on sale to the public at large. However, no bookshop owner agreed to do so, in contrast to the situation in the Gaza District where a Gaza bookshop has from the beginning sold the military government's publications. Consequently, in September 1967, the Order concerning the Sale of Official Publications²⁸ was published, section 2 of which provides as follows:

The Regional Commander is authorised to instruct the owner of a shop to display for sale, in such manner and quantity as the Regional Commander may direct, official publications, and to sell them to the public at large, at the official price printed²⁹.

Notwithstanding the publication of this Order, the shopkeepers stood by their refusal to sell publications of the military government, and, as a result, the military government was left with no alternative but to distribute the enactments free, as a service to the local population.

However, the military government is continuing its efforts to try to persuade local shopkeepers to sell the enactments to the public at large.



מנשרים, צווים ומינורים

סל

מפקדת כוחות צה"ל באזור הגדה המערבית

مناشير، أوامر وتعيينات

صادرة عن

قيادة قوات جيش الدفاع الاسرائيلي في منطقة الضفة الغربية

אב 727 (11 אב 1967)

מס' 1 - המדד 1

ה' באב תשכ"ז (11 באוגוסט 1967)

المحتويات

صفحة	مناشير
3	منشور بشأن تقلد السلطة من قبل جيش الدفاع الاسرائيلي (منشور رقم 1)
3	منشور بشأن أنظمة السلطة والقضاء (منشور رقم 2)
5	منشور بشأن بدء مفعول الامر بشأن تعليمات الامن (منشور رقم 3)
5	امر بشأن تعليمات الامن

أوامر

24	أمر بشأن حظر النهب (أمر رقم 1)
24	أمر بشأن الحجر الصحي (أمر رقم 2)
25	أمر بشأن انشاء محاكم عسكرية (أمر رقم 3)
26	أمر بشأن تفويض بتحديد أماكن الحبس (أمر رقم 4)
26	أمر بشأن مساحات منفلقة (أمر رقم 5)
27	أمر بشأن استسلام الجنود وتسليمهم (أمر رقم 6)
27	أمر بشأن حظر الاتجار وعقد الصفقات النقدية (البوك) (أمر رقم 7)
28	أمر بشأن حظر الشراء والبيع (أمر رقم 8)

تعینات

30	قائمة بالتعيينات الصادرة عن قائد قوات جيش الدفاع الاسرائيلي في منطقة الضفة الغربية
----	--

התוכן

עמוד	מנשרים
3	מנשר בדבר נטילת השלטון ע"י צה"ל (מנשר מס' 1)
3	מנשר בדבר סדרי שלטון ומשפט (מנשר מס' 2)
5	מנשר בדבר כניסתו לחוקף של צו בדבר הוראות בטחון (מנשר מס' 3)
5	צו בדבר הוראות בטחון

צווים

24	צו בדבר איסור ביקה (צו מס' 1)
24	צו בדבר הסגר תברואי (צו מס' 2)
25	צו בדבר כינון בתי משפט צבאיים (צו מס' 3)
26	צו בדבר הסמכה לקביעת מקומות מאסר (צו מס' 4)
26	צו בדבר שטחים סגורים (צו מס' 5)
27	צו בדבר התמסרות והסגרה (צו מס' 6)
27	צו בדבר איסור סחר ועסקות בבטיות (בנקים) (צו מס' 7)
28	צו בדבר איסור קניה ומכירה (צו מס' 8)

מינויים

30	רשימת מינויים שמינה מפקד כוחות צה"ל באזור הגדה המערבית
----	--



מנשרים, צווים ומינויים

של

מפקדת אזור יהודה ושומרון

مناشير ، اوامر وتعيينات

صادرة من

قيادة منطقة الضفة الغربية

العدد ٤٥

מס' 45

١٤ تشرين ٥٧٤١ (٢٤ ايلول ١٩٨٠)

מ"ד בתשרי תשמ"א (24 בספטמבר 1980)

Chapter Three

JURISDICTION OF LOCAL COURTS

The jurisdiction of the local courts regarding civil and criminal actions both against the military government and against Israeli soldiers is frequently questioned on the basis of the erroneous contention that "the executive, and its servants or agents should, like other bodies and individuals, be subject to the normal processes of the law"¹.

International law contains very clear rules in this regard, according to which an occupying power and its forces are not subject to the jurisdiction of the local courts. There is not a single precedent in which local courts in an occupied territory were permitted to hear an action against members of the armed forces of the occupant or against the occupant himself.

Von Glahn writes²:

...it can be stated definitely that the indigenous courts cannot be used by the inhabitants of an occupied territory to sue the occupant, even in the case of contracts entered into between such inhabitants and the occupation authorities. Owing to his military supremacy and his alien character, an occupant is not subject to the laws or to the courts of the occupied enemy state, nor have native courts jurisdiction over members of the occupying forces.

And Greenspan observes³:

Troops of the occupying power will, naturally, not be subjected during the period of the occupation to the jurisdiction of the local courts nor will local law, as such, apply to them. To do so would be paradoxical, since their status in international law derives from conquest.

Similar principles are stated in various military manuals and they are also reflected in the views of many legal authorities⁴.

In accordance with these principles of international law, the military government published the Order concerning Local Courts (Status of Israel Defence Forces Authorities) of 1967⁵. Section 2(a) states:

No action shall be brought in a local court and a local court shall not try any action or issue any order, decision or other directive which permits or enables an action against any of the following:

- (1) the State of Israel, its authorities and employees;
- (2) the Israel Defence Forces (IDF) and its members;
- (3) the authorities appointed by the Regional Commander or by a District Commander or by those authorities empowered by them to act in the Region;
- (4) persons serving in the authorities mentioned in subsection (a);
- (5) an employee in the service of the IDF or one of its agents.

However, according to Section 3 of the Order, the Regional Commander may permit any of the persons enumerated in Section 2 to be called as a witness in a local court. He may even give permission for an action to be brought in a local court against persons employed in the authorities referred to in subclause (3) or the employees specified in subclause (5).

In the majority of requests under this section, the permission is granted. Thus, for example, in 1979 out of 117 requests, 94 were granted, two were rejected, two were withdrawn and 19 are still under review. In 1980, out of 82 requests, 54 were granted, two were rejected, three were withdrawn and 23 are still under review.

All the requests are examined by the legal adviser to the military government. The average period required for processing them is two to three months.

In issuing this Order, the military government's intention was, on the one hand, not to place the relevant Israeli authorities above the law, and, on the other, not to leave the local population without relief against the military government or its branches.

In regard to criminal offences committed by members of the IDF in the administered areas, Israel acts in accordance with the recommendations of international law authorities⁶. A General Staff Order⁷ provides that "a member of the IDF stationed in an area administered by the IDF outside the borders of Israel must observe the provisions set out in proclamations, orders and notices issued by the person appointed by the IDF as Military Governor or Military Commander of the Region"⁸.

As regards relief available to the local population of the Region against the IDF, two boards were established by the military government:

- (a) one to deal with claims for compensation for injury caused to residents of the Region by the IDF or its members; and
- (b) the other to hear appeals against decisions of military government authorities made under local law or orders issued by the Regional Commander.

COMPENSATION FOR INJURY

The local Jordanian law in the Region dealing with civil wrongs is the Civil Wrongs Ordinance of 1944⁹. Section 4(1) of the Law provides that "no action in respect of any civil wrong shall be brought against... the Government."

This reflects the ancient proposition, long abandoned in most countries, that "the king can do no wrong." The Jordanians, nevertheless, felt that the population should not be left entirely without remedy against the Government, and accordingly enacted the Law concerning Settlements for Injuries Caused by the Hashemite Jordanian Army¹⁰. This allows *ex gratia* payments of up to 500 Dinars to be made in cases where a person suffered bodily harm caused by the army¹¹.

This Law goes on to prescribe¹² that damage to property is to be evaluated by military experts, and here there is no limit to the compensation payable. There is no appeal against the evaluation made: the claimant may either accept payment of the sum offered by way of settlement or refuse it¹³.

The title of the Law, the manner in which it is drafted and its contents, show clearly that its object was not to provide a right of action in torts against the Jordanian Government but to set up statutory machinery for making *ex gratia* payments for injury or damage caused by the army without affecting the Government's immunity to claims in torts provided for in the local Jordanian law¹⁴.

Upon the establishment of the Israeli administration in the Region in 1967, the military government sought to alter the situation whereby the entire population was deprived of any opportunity to institute proceedings against the Government for injury or damage caused by the latter (apart from that caused by the army), a situation in which people were subject to arbitrary administrative decisions without any right of appeal.

With the object of introducing in the Region accepted norms for legal remedies, an Order concerning Claims was issued in 1968¹⁵. Section 2(a) provides:

Any resident of the Region who claims that he has suffered damage in the Region as a result of the act of members of the IDF or of a body acting together with the IDF or a civilian employee of the IDF and that he is entitled to compensation in respect of such damage, may file a claim with the Staff Officer for Claims.

The Order provides that the Staff Officer for Claims shall consider the claim and decide whether to pay compensation and the amount to be paid; for this purpose it confers on him all such powers of summoning and swearing witnesses, compelling appearance, and production of documents, as are conferred on a military court (section 7). Appeals against his decision may be made to a Claims Appeal Board consisting of three members; the presiding member must be a lawyer (section 8). They are "subject to no authority other than that of the law"

and are not responsible to the Regional Commander (section 9A). This provision is based on section 13 of the Israeli Judges Law, 1953¹⁶, designed to guarantee the independence of the judiciary.

It should be emphasised that the claims which may be submitted to the Staff Officer for Claims are not restricted to damage caused by the IDF, but extend to damage caused by any civilian authority acting in the Region within the framework of the military government. As opposed to the limitations contained in the local Jordanian legislation, there is no restriction as to the amount of compensation that can be awarded.

In setting up this special tribunal to which the residents of Judaea and Samaria may present claims against the military government, Israel was following a practice commonly used by many countries. Thus, for example, as Von Glahn points out¹⁷:

The American practice... has been to operate special claims commissions to handle the multitude of claims which normally arise in the course of any belligerent occupation.

In addition, residents of the Region are free to bring an action in any Israeli court against the State of Israel in respect of any damage caused by the military government¹⁸. For this purpose the Israeli courts consider the military government an agency of the State of Israel.

In practice, many claims have been made by residents against the military government both in the Region and in Israeli courts, and large sums of compensation have been paid where these have been well founded. Since the issue in 1976 of the Order concerning Compensation for Traffic Accident Victims¹⁹, the principle of absolute liability has been introduced in Judaea and Samaria in claims arising out of traffic accidents. Anyone injured by a vehicle driven by an IDF member or a civilian employee of the military government is automatically entitled to compensation without having to prove negligence on the part of the defendant²⁰.

APPEALS AGAINST DECISIONS OF THE ISRAELI AUTHORITIES

As explained above²¹, on the establishment of the Israeli administration in the Region, the military government assumed all the powers previously vested in the Jordanian regime under local law. In many instances, that law provides that the residents of the Region have a right to appeal against decisions or actions of the Government to the local courts or to quasi-judicial Government tribunals.

But in view of the principle of international law that a military government is immune to the jurisdiction of the local courts, it became necessary to set up a system of new tribunals to deal with instances in which local law provided a right of appeal and which would also enable people to contest military government decisions under the Orders published by the Regional Commander.

In this matter, Israel acted in accordance with the practice common to other states. For example, according to the American practice as set out in Civil Affairs:

Boards are established to process certain quasi-judicial issues. Findings of fact and determination of applicability of laws or rules of equity are areas in which boards operate. The appointing authority may specify procedural rules or instruct the board to set its own rules. The appointing authority must define the board's jurisdiction. A board may consist of one officer but often numbers two or three. Boards pass on requisition demands, property control orders, labor issues; valuations of utilities, real property, and services, and like administrative matters. (p.160).

Appeal Boards were accordingly established to hear appeals against decisions made under certain specified Orders, or "in any other matter" with which the Regional Commander might empower them to deal. Under the Order concerning Appeal Boards²², the composition and procedure of these tribunals is similar to that of the Claims Appeal Boards: they are three-member bodies presided over by a lawyer, and are subject only to the authority of the law.

The Schedule of the Order lists the various enactments under which decisions are open to appeal. They include, *inter alia*, those dealing with abandoned property; government property; classification and valuation of goods for customs and excise purposes; the powers of the court in relation to the acquisition of land for public purposes; income tax appeals; natural resources; pensions; and rights of depositors in local banks.

It should be pointed out that the chairman of an Appeal Board is always a civilian lawyer chosen for his expertise in a particular field. For example, the chairman of the Board dealing with taxation is an expert in tax law. Under a decision of the President of the Military Court, who is also responsible for the daily working of the Appeal Boards, the Board concerned with matters affecting land is always composed of three lawyers, all of whom are experts in local land law. In other matters, only the chairman need be a lawyer, although generally the other members are professionals in the relevant field.

The Order lays down that an Appeal Board is not generally bound by the law of evidence and procedure, but may prescribe its own procedure as long as every appellant is assured of the right to appeal before it in person or to be represented by an advocate. The Commissioner — an office filled in practice by the President of the Military Court in Judaea and Samaria — is also empowered to make provisions regarding procedure and to order their publication.

Directives on procedure were accordingly published in 1967²³. One of them prescribes that an Appeal Board "shall conduct its business as far as possible in accordance with the rules of procedure applicable in the courts." They also detail the method of submitting and handling an appeal, the documents to be attached to the file, the mode of hearing, and other similar matters.

The rules of evidence are more flexible than in a court of law. Strict adherence to the law of evidence could well be to the disadvantage of the appellant, burdened with the onus of proof. Consequently, he may produce certain types of testimony and documents which would be inadmissible in a court, e.g., hearsay evidence and documents not authenticated by a notary.

In general, the provision relieving the Appeal Board from adherence to the laws of evidence and rules of procedure is designed to simplify the proceedings so as to make it easier for the appellant to submit his case and to shorten the hearing. Such an approach is consonant with the accepted rationale behind the procedure of administrative tribunals in common-law countries.

While section 6 of the Order enables the Regional Commander to accept or reject the findings of an Appeal Board, in the fourteen years during which these tribunals have operated, there has not been one instance where a recommendation has not been accepted. Had there been such an instance, the appellant would have been at liberty to petition the High Court of Justice in Israel to review the Regional Commander's decision. Similarly, were a Board itself to dismiss an appeal, the appellant could apply to the High Court of Justice.

In any event, all decisions of the military government and its authorities are subject to judicial review by the High Court of Justice, whether or not a direct right of appeal lies against these bodies. In practice, residents of the Region make ample use of this right to apply to the High Court, which deals with many such petitions every year.

Allegations have been made that the Regional Appeal board has no fixed address and no permanent secretariat, and that lawyers do not know where to present appeals on behalf of their clients. Section 1(b) of the Procedure Directives provides that "an appeal shall be lodged in writing, in duplicate, with the Commissioner of Appeal Boards, at Regional Headquarters, Judaea and Samaria." The President of the Military Court serves as the Commissioner, and the secretariat of that court also acts as the secretariat of the Appeal Board. The location of the President's office is familiar to all lawyers in the Region.

Moreover, under Section 1(c) of the Directives, an appeal may also be lodged with any other body of the Military Government, which is required to forward it to the Military Court secretariat at the address prescribed in the previous subsection.

All hearings of an Appeal Board take place in chambers at the Military Court, as determined from time to time by the President of the Court. Notice of the date and place of the hearing is always sent to the appellant or his counsel. Generally, the date is actually fixed in advance with counsel. This practice is based on section 3 of the Procedure Directives:

The Commissioner shall inform the appellant (or his counsel) and the relevant staff officer, of the date and place of the hearing of the appeal by written notice, which shall be sent in sufficient time before the date of the sitting to enable it to be acknowledged and the material to be prepared by the parties.

Contentions that the success rate of appeals to the Boards is not high²⁴, and assertions that the Boards are prejudiced and act in accordance with a policy dictated by the Regional Commander, are completely unfounded. The following figures illustrate the true state of affairs:

(a) *Appeal Boards*

In 1979, 19 appeals were presented. Four were successful and one was settled by compromise; seven were withdrawn by the appellants; three were dismissed, because the appellants failed to appear. Four were still at the pleading stage at the time of writing.

In 1980, 15 appeals were presented. One was successful and one was settled by compromise; three were withdrawn by the appellants; two were set aside because of the Board's lack of jurisdiction. Eight were still at the pleading stage at the time of writing.

(b) *Claims Boards*

In 1979, only one claim was presented and this was accepted by the Board.

In 1980, three claims were presented. One was settled by compromise; one was returned to the Staff Officer for Claims for further examination; and one was still at the pleading stage at the time of writing.

As has been shown, an essential component of the rule of law in the Region is efficiently maintained by a system of tribunals to which residents may bring actions and appeals against the military government and its authorities. Proceedings in these tribunals are conducted in a proper manner under the constant scrutiny of the High Court of Justice, a supreme judicial institution which is empowered to review actions both of the military government and of the tribunals operating in the Region²⁵.

Chapter Four

THE COURTS SYSTEM IN THE REGION

In the present chapter the different court systems functioning in the Region, their structure, jurisdiction and methods of procedure will be briefly surveyed. It should be stressed from the outset that although international law¹ enables an occupant to establish military courts in place of the local courts, especially in matters of criminal law, Israel has not done so, but has left the existing court system intact.

LOCAL COURTS

(a) Structure

From the beginning, the military government maintained a policy of non-interference in the local judicial system. This policy of non-interference has, in fact, been applied to other spheres of life in the Region where security considerations are not directly involved. Thus, the Israeli personnel serving in the civil administration limit themselves to professional supervision only and the local officials continue to act to the extent they did under Jordanian administration².

This applies in particular to the judicial system, which is by its very nature independent of the government and subject solely to the law, save for its administrative side³. In fact, in the entire judicial system in the Region there are only five Israeli officials, most functions being performed by local officials. The judicial system includes not only the courts but also such institutions as the Land Registry Office, the Registrar of Companies, the Registrar of Trade Marks and Patents, and the Notary Public.

When in 1967 the Israeli military government was set up, it found in the Region Courts of First and Second Instance and a Court of Appeal. A Court of Fourth Instance, namely the Court of Cassation, has its seat according to Jordanian law⁴ in Amman, the capital of Jordan. A court of cassation is a form of supreme appellate court, acting both as the highest appellate court and as a High Court of Justice. It has been incorrectly alleged that Israel abolished the Court of

Cassation in the Region. However, since its seat is in Amman only, it is clear that Israel did not, in fact, abolish the court, but rather that it became inaccessible to the local population after 1967. Israel was under no obligation to establish in the Region a new Court of Cassation, and had such a court been established there would doubtless have been criticism of Israel's competence to do so⁵.

There are many judicial systems, including Israel's, that do not possess such a fourth instance and operate successfully without it. In any event, in the initial months of Israeli administration in 1967, the refusal by local lawyers and judges to cooperate in operating the court system made it impossible to appoint suitable persons as judges of a court of cassation. The military government therefore transferred certain functions of the Court of Cassation to the jurisdiction of the Court of Appeal in Ramallah, and the power of control and review to the President of that court.

(b) Appointment of Local Judges

Article 54 of the Fourth Geneva Convention deals with the status of judges and public servants in occupied territory and lays down that their status may not be prejudiced and that no sanctions may be taken against those who refuse to act for reasons of conscience. The article goes on to say that "it does not affect the right of the Occupying Power to remove public officials from their posts." On this power of removal, Pictet observes⁶:

The last sentence of Article 54 confirms the Occupying Power's right to remove public officials from their posts for the duration of occupation. That is a right of very long standing, which the occupation authorities may exercise in regard to any official or judge, whatever his duties, for reasons of their own.

The power to remove local judges is part of the general authority of the occupant with regard to the legal system without prejudicing the independent status of the judiciary, which is subject to the law alone. The occupant must inevitably have the concomitant power to replace judges who have been dismissed or, as reason dictates, to replace judges who have resigned or retired, or to appoint judges to posts which have become vacant.

The rule of international law with respect to the competence of the occupant to supervise every aspect of the judicial system is summarized by Von Glahn⁷:

The power of an occupant to remove native officials from their posts is followed logically by his right to appoint new or additional officials in the occupied territory and to delegate to them such powers as may be necessary to carry out their assigned functions. Such appointed officials would logically be subject to any oath of obedience exacted from officials retained in their posts. Most important, however, so far as all native officials are concerned: regardless of whether they were retained or newly appointed, the exercise of their authority depends entirely on the express or implied consent of the occupant.

In accordance with the principles detailed above, the Israeli authorities duly introduced the necessary changes in the Jordanian Judicial Independence Law⁸ transferring the powers held previously by the Jordanian Minister of Justice to the Regional Commander and replacing the Jordanian Judicial Council, which was the authority empowered to appoint judges, by a Judges Appointment Committee.

Contrary to allegations in this regard, notice of the setting up and composition of that Committee was duly published⁹.

The military government has not dismissed a single judge, despite the broad powers vested in it by international law. On the contrary, in 1967 Israel encountered many difficulties arising from the fact that a number of local judges had left the Region, several refused to resume their duties and others chose to retire. Altogether, 31 of the 39 judges employed by Jordan prior to the 1967 hostilities did not resume their judicial functions. Israel consequently found itself in a position in which it was obliged to appoint new judges in order to maintain the due functioning of the legal system. At that time, the Staff Officer for Legal Affairs consulted with prominent local lawyers regarding the nomination of new judges¹⁰. This situation was not facilitated by the fact that almost all of the lawyers in the Region declared a strike¹¹.

The powers formerly held by the Jordanian Judicial Council to function as a disciplinary tribunal in matters affecting judges were transferred to a special disciplinary tribunal comprised entirely of local judges¹². Disciplinary matters involving a judge who is not a member of the Court of Appeal are handled by two appellate judges (one of whom acts as chairman), and the President of the Court of First Instance. In the case of a disciplinary action against an appellate judge, three appellate judges sit on the tribunal. Since, until now, there has been no case requiring the convening of the tribunal, no notice of appointment has yet been published.

(c) Judicial Review of Enactments of the Regional Commander

A local court, by whomsoever appointed, may not invalidate enactments issued by the Regional Commander, due to the fact that such enactments become part of local legislation, thus constituting binding law. As Shamgar¹³ has observed:

The legal system operative in the territories as a whole may be viewed in terms of a layer of proclamation law enacted by the Military Commanders of the area, called "Security Enactments," which has been superimposed on the local law existing before the entry of the Israel Defence Forces (I.D.F.) with both types of law binding on all courts, whether military or indigenous.

Only governmental acts regarded as being in patent disregard of the rules of international law with regard to the maintenance of orderly government and the safeguarding of public order could possibly be considered as being beyond the capacity of the occupant. Even then, only the Regional Commander may decide

the issue. On the power of the local courts to question enactments of the military government, Von Glahn¹⁴ writes:

... it should be kept in mind that an occupant is essentially the only judge of the need to change, suspend, or amend the laws of the occupied territory. His decision is final for the duration of the occupation, during which the courts of the occupied territory cannot apply the principle of judicial review to his legislative actions.

Morgenstern sums up the conclusions of various courts on that point as follows¹⁵:

While municipal courts during the occupation have affirmed that they will not enforce measures of the occupant which go beyond the powers permitted him by international law, they have been reluctant to inquire whether legislative measures which *prima facie* could be intended to safeguard public order, and thus to satisfy the requirements of Article 43 of the Hague Regulations, were in fact necessary. They have considered themselves bound to apply them.

Accordingly, the Court of Appeal in Ramallah¹⁶ considered the Regional Commander to be the appropriate authority for ordering the amendment of the local law to enable the appearance in courts of Israeli lawyers in place of those local lawyers who had gone on strike¹⁷.

This judgment of the Ramallah Court of Appeal is also significant from another angle. The judgment of the lower court had denied the validity of the Order concerned. Although that judgment was set aside on appeal, it demonstrates that the lower court in fact had no inhibitions about ruling against an Order of the Regional Commander or subjecting it to judicial review¹⁸.

The validity of the Order¹⁹ was also considered in the Bethlehem Magistrate's Court²⁰. In its judgment of 27th February, 1968 that Court held that since the Regional Commander is responsible for public order and the security of his forces in the Region, he alone is competent to decide on the necessity to legislate for these two purposes, and the court will not question the need to amend local law²¹.

Examination of the practice of local courts in a long series of cases shows that the Military Governor alone decides the question of necessity to change local law. The Norwegian Supreme Court held in *Halvorsen* (1941):

In approaching the question whether an Ordinance is in conformity with Article 43 of the Hague Regulations, we must note, first, that the occupant is empowered to enact new laws where the necessity arises. Whether such legislation is, in fact, urgently necessary is a question of political expediency which must be left to the judgment of the occupant who exercises legislative power in occupied territory. It cannot be subjected to judicial review. If courts had the right to examine the expediency of a law or to deny the necessity for its enactment, they would be liable to interfere in a field for which they lack the required qualifications, and in which the

occupant must have the decisive voice, seeing that he is by international law both entitled and bound to ensure public order and public life in occupied territory²².

(d) Civil Jurisdiction

As stated above²³, apart from entertaining actions against the military government, the jurisdiction of the local courts has not been restricted, in so far as both local residents and Israeli nationals are concerned. It has been contended, however, that the local courts do not always have jurisdiction in actions against Israeli nationals because of the insertion in contracts to which Israeli nationals are party, of special clauses vesting the Israeli courts with exclusive jurisdiction.

Here, confusion exists between two kinds of contracts: those made by Israelis as private persons in the course of their ordinary dealings with residents of the Region, and those made between the military government as a fiscal body and private persons in the Region.

As to the first kind, it is common practice everywhere, according to the rules of private international law, to introduce into contracts concluded between two private parties a clause which gives jurisdiction exclusively to a particular court or tribunal to settle disputes arising out of the contracts in question. The very nature of freedom of contract accords parties the right to choose the law and the court or tribunal to which they may have recourse. One of the reasons for including such a clause in a contract is to enable the parties to arrange their affairs in full knowledge of the law and procedure that will govern the settlement of any possible disputes between them. As there are unrestricted private contractual relations between residents of the Region and Israeli nationals, the rules of conflict of laws would naturally be applicable to them.

As for the second kind of contract, it should be pointed out that a jurisdiction clause in commercial contracts between the military government and private persons in the Region (contractors and others) granting jurisdiction to the Israeli courts, is for the benefit of the private persons and serves their interests. For as has already been observed²⁴, under international law the military government enjoys immunity from local court actions on any matter²⁵, including civil actions. Were it not for a jurisdiction clause, therefore, local residents could not bring any civil action against the military government in respect of contracts which they might conclude with it.

(e) Criminal Jurisdiction

The local courts continue to entertain jurisdiction regarding criminal offences according to the local Jordanian law which remained intact. In only one sphere has Israel intervened: by abolishing capital punishment — a penalty which the local courts had, under Jordanian law, been empowered to impose²⁶. With respect to violations of the security enactments of the military government, the military courts have jurisdiction to deal with such offences²⁷.

There has been criticism of the fact that Israelis who commit offences in the Region are brought to trial in military courts instead of in the local courts. According to the prevailing law in the Region, concurrent criminal jurisdiction exists in the military and local courts for both Israeli nationals and local residents. The Order concerning the Closing of Criminal Files²⁸ enables the legal adviser of the military government to decide where an offender is to be tried. In respect of offences committed by Israelis in the Region, the tendency is to try them in military courts, where the language in which the proceedings are conducted is Hebrew, and the procedure is similar to that of the courts in Israel. Greenspan describes international practice in this context as follows²⁹:

The military courts try civilian offenders against the proclamations, ordinances and regulations issued by the occupying forces, as well as those cases where it is considered inadvisable that the indigenous courts should take jurisdiction, such as trial of nationals of the occupying power and of its allies.

(f) Court Facilities

Criticism has been levelled with respect to court facilities in the Region, similar to that which is frequently aimed at the administration of courts all over the world and is not confined to the court system in question. As is the case with all other bureaucratic organizations, the local court system is susceptible to bureaucratic and budgetary shortcomings.

However, the narrow question of court facilities is to be viewed in the broad perspective of the vast improvement in public services and the rapid growth of the Region's economy³⁰.

As regards specific facilities in the courts, it has been contended, for example, that law libraries are non-existent in any of the courts. This allegation is unfounded. There exists a large and extensive law library in the Ramallah Court of Appeal in addition to collections of basic law books to be found in every judge's chambers. Recently, due to plans to convert the library in Ramallah into an additional courtroom, the library was transferred to another room in the same building. During this time all the books remained available to judges and lawyers. These plans have since been suspended and instructions have been given to restore the library to its original room, where, needless to say, it will remain open to lawyers and to the general public.

It has been contended that the Ramallah Court of Appeal is not suitably situated due to its proximity to the local vegetable market. In fact, the Court occupies premises used as an office block prior to 1967, and is naturally situated close to the commercial centre and market of the city. That particular building was chosen as a court-house because it was the largest office block in Ramallah. It was refurbished by the Israeli authorities at considerable cost. Apart from the courts, it houses other offices of the civil administration. The Court of Appeal it-

self consists of four court-rooms and more than 30 offices, all of which are maintained in a condition becoming their judicial functions.

MILITARY COURTS

(a) Structure and Procedure

Military courts were established in the Region under the Order concerning Security Provisions, 1970³¹, based upon article 66 of the Fourth Geneva Convention:

In case of a breach of the penal provisions promulgated by it in virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country...

The Order established two types of courts: single-judge courts and courts composed of a panel of three judges. The judge of the former type of court, and the president of the latter, must be army officers with legal training, while the other two judges of the panel may be officers without legal qualifications.

The judges with legal training are either senior officers on the Military Advocate-General's Staff, or prominent jurists in the reserves. All such judges are members of the Israeli Chamber of Advocates.

Trials before military courts are held in accordance with the procedure obtaining in the courts of the common-law countries, which guarantees observance of the rules of natural justice including, *inter alia*, presentation of a written statement of charge; proceedings in the presence of the accused; publicity of proceedings; translation of the proceedings for the accused by an interpreter provided by the court (subject to the right of the accused to ask for another interpreter), and the accused's right to be represented by counsel of his choice (see below). The rules of evidence are those obtaining in courts martial, which are the rules of evidence applicable in common-law courts.

The sole jurisdictional difference between the two types of courts described above lies in their sentencing powers. A single-judge court may not impose a prison sentence exceeding five years or a fine in excess of 5,000 Israeli Shekalim. Both courts are empowered to try any offence included in the Regional Commander's enactments as well as offences under local law triable in the local courts.

Most cases are heard by a single-judge court. A three-member court may remit a case to a single-judge court at the request of a military prosecutor³². This provision is to the benefit of the accused, since the sentencing powers of a single-judge court are more limited.

(b) Right of Appeal

A military court of appeal as such has not been instituted in the Region, but

petitions against verdicts and sentences of the military courts may be submitted to the Regional Commander. This procedure is based upon article 73 of the Fourth Geneva Convention, which states explicitly that:

Where the laws applied by the court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

On the scope and nature of appeals under article 73, Pictet comments as follows³³:

The word 'appeal' in this paragraph must be taken to mean any recourse to law aimed at obtaining the quashing or alteration of the sentence. It could take the form of an ordinary appeal, an appeal to the High Court, or possibly a petition for a review of the sentence.

That the right of appeal is qualified, is further substantiated by the British Manual, which observes, with reference to article 73, that "there is no absolute right of appeal"³⁴. Von Glahn, also, in discussing article 66, observes³⁵:

The last sentence of Article 66 does not mean that an occupant is required to create an appellate system of occupation courts. Article 73... covers the problem by providing that an appeal may be directed to the 'competent authority of the Occupying Power' when appellate courts have not been created in the occupied territory. The writer assumes that this 'competent authority' would be the theater commander of the occupant, although a military governor might well constitute the authority in question.

The Order concerning Security Provisions of 1970 designated the Regional Commander as "a competent authority" for the purposes envisaged in article 73. Section 43 of the Order states:

There shall be no appeal against judgment to a judicial instance but the convicted person may make appeals and applications to the Regional or District Commander, as the case may be, concerning conviction or sentence. The Military Court which sentenced the defendant shall bring to his knowledge his right under this section.

This point was dealt with by the military court in the case of *Military Prosecutor v. Raid Salman el Hassan el Hatib*, where it was held³⁶ that:

In the opinion of the Court, any person reading Article 73 and interpreting it in the ordinary way cannot but come to one conclusion alone: where the Occupying Power does not under its instruments provide for the possibility of appeal, it will nevertheless fulfil its obligation if it sets up some other body to which appeal or other requests can be made, and that was done by section 39 (s. 43) of the Security Provisions Order. Accordingly, the court rejects this submission.

It should be stressed that the right of appeal is granted only to a convicted person and not to the prosecutor.

In addition, a sentence by a three-judge military court must be confirmed by the Regional Commander under section 41 of the Order concerning Security Provisions. Section 42 of the Order provides that the Regional Commander on confirming the sentence may set aside the decision of the court and acquit the defendant, or confirm the conviction and reduce the punishment, or order a new trial. The Regional Commander may also, at any time after confirming the sentence, review at his own initiative, or upon application, a military court judgment and commute the sentence or pardon the convicted person³⁷.

The power of the Regional Commander to review sentences is confined to mitigating them and in no circumstances may he increase them³⁸.

Despite the fact as detailed above that there exists no obligation to establish a military court of appeal, proposals to replace the powers of the Regional Commander with such an instance have been considered from time to time, due regard having been given to many important factors, not least of which is the financing of such a change. As the matter remains under serious consideration, the possibility that a court of appeal may still be established is not to be excluded.

(c) Trial of Offences Committed Prior to Entry of the IDF into the Region

It has been contended that under the Order concerning Jurisdiction in Criminal Offences, 1967³⁹ the military courts were given jurisdiction over offences committed before the IDF entered the Region — which supposedly conflicts with the Fourth Geneva Convention, and in particular with article 70 which provides that:

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation... with the exception of breaches of the laws and customs of war.

However, the purpose of article 70 is to prevent a situation where local people are tried by a military government for political activities carried out prior to its establishment, and not to prevent trial under existing local law for previously committed offences. As Pictet⁴⁰ puts it:

The inhabitants of the occupied country had been punished for having helped their own country's troops or those of its allies, for having belonged to a political party banned by the occupying authorities and for having expressed in the Press or in broadcasts political opinions which conflicted with the occupant's views.

The purpose of the Order concerning Jurisdiction in Criminal Offences, which was enacted immediately after the entry of the IDF into the Region, was to ensure that the judicial system would continue to function efficiently and that pending cases would not be discontinued by reason of the change of administration. As stated above⁴¹, prior to the Order's enactment, all the practising lawyers

in the Region went on strike and many of the judges refused to carry out their functions. The Military government, therefore, had reasonable grounds for believing that it would not be possible to rely on the local courts to discharge their functions. Not only does the Order not conflict with the Fourth Geneva Convention, but it rests on the general powers of the military government to restore proper public order, including the continued functioning of the judicial system. In this regard, the British Manual lays down that⁴²:

The ordinary courts of justice and the laws they administer should be suspended only when the refusal of the judges and magistrates to act, or the behaviour of the inhabitants, makes it necessary. In such cases, the Occupant must establish courts of his own and make their establishment known to the inhabitants.

The above powers include that of replacing, whenever necessary, the local courts by military courts where the pre-existing local law would be applied⁴³.

It must be pointed out that in practice no charges were ever brought before a military court for offences committed before June, 1967 since it soon became apparent that the local courts were prepared to start functioning again and were able to go on handling pending cases, despite the change in administration.

(d) Right to Legal Representation

Article 72 of the Fourth Geneva Convention vests detainees with the right to counsel, but this right is qualified, in that it does not oblige the occupying power to allow communication with a lawyer if the offender is suspected of grave and hostile security offences⁴⁴.

Nevertheless, even within the first few months of its administration, the military government, in the Order concerning Prison Installation, 1967⁴⁵ gave detainees the right to meet with counsel of their choice. Section 11 of this Order provides:

Where a prisoner wishes to meet a lawyer and the governor is convinced that the request was made for the purpose of dealing with the legal affairs of the prisoner, he shall permit the meeting in the prison environs provided there is no obstacle from the point of view of security to holding the meeting, and the meeting will not impede the course of the investigation.

This right was later extended by the Order concerning Defence in a Military Court, 1970⁴⁶, providing that, when his case comes to trial, the accused should have the choice of being represented by counsel, rather than conducting his own defence (section 2); while section 4 imposes an obligation on the court to appoint defence counsel in serious offences when the accused himself has not done so. In that event, section 10 provides that the cost of counsel be borne by the military government.

(e) Visits by the International Committee of the Red Cross

On the initiative of the Israeli authorities, delegates of the International Com-

mittee of the Red Cross (hereinafter "ICRC") are permitted to visit security detainees in absolute privacy during the period of their investigation. The first visit may be made within fourteen days of arrest.

In addition, doctors approved by the ICRC are permitted to examine detainees who complain of improper treatment. Their reports are investigated by boards of enquiry whose findings are reported to the ICRC.

This arrangement with the ICRC is unique and without precedent, as was emphasised by the organization's President at a press conference on 1st February, 1978. He pointed out that, since it is exceptional for the ICRC to have access to detainees under interrogation, and since one of the important duties is to check the state of health of detainees, more delegates, especially medical delegates, and preferably Arabic speaking, would be required⁴⁷.

(f) Evidence Required for Conviction

As has already been stated, the rules of evidence obtaining in Israeli courts are applied in the military courts of the Region. These rules are based, for the most part, on the common law, with one important distinction: while under the common law (and in many other legal systems) an accused may be convicted on the strength of his own admission, in Israel the courts require some additional evidence in order to find an accused guilty.

The reason for demanding additional evidence, as held by the Israeli Supreme Court on numerous occasions, is to remove all possible suspicion that the accused might be confessing to a crime he did not actually commit. The additional evidence must, therefore, be independent of the confession, and may consist of any of the following: a) proof that only the accused could possibly have committed the offence; b) proof that the implements with which the offence was committed were indeed in the accused's possession; or c) proof that the accused had knowledge that only the person committing the offence could have possessed⁴⁸.

If the accused retracts his confession, on the grounds that it was obtained by improper means, the burden rests on the prosecution to prove that the confession was not obtained under coercion or duress, in a "trial within a trial." If the prosecution fails to discharge this burden, the court will rule that the confession is inadmissible⁴⁹.

(g) Stay of Proceedings

The rights of the accused in a military court are further protected by the Order concerning the Closing of Files 1980⁵⁰, which empowers the Regional Commander, the legal adviser to the military government, or the Military Advocate-General to close the police file or to stay proceedings in court if no public interest would be served by proceeding them. The same Order enables the Military Advocate-General or the legal adviser to the military government to stop proceedings on the grounds of insufficient evidence.

It has been contended⁵¹ that the provisions of this Order obstruct the due process of law. Such criticism is surprising in view of the fact that this procedure is common to all systems of law which recognize the institution of *nolle prosequi*. The main purpose of this institution is to avoid the trial of a person likely to be acquitted, or of a person whose conviction would serve no public interest. The Order is intended, therefore, to enhance the rights of the accused and not to violate them in any way.

CONCURRENT JURISDICTION OF THE LOCAL AND MILITARY COURTS

The local courts may try any offence contrary to local Jordanian law as well as offences specified in the Regional Commander's enactments for which they have been given express jurisdiction. The military courts may try any offence under the Regional Commander's enactments and the local Jordanian law⁵². It is therefore apparent that the local and military courts have concurrent jurisdiction in criminal cases.

This could constitute a problem in view of the fact that the local prosecution is independent of the military government and may initiate proceedings in the local courts without any prior approval of, or consultation with, that government. It would thus be possible for both the military prosecution and the local prosecution to initiate proceedings in their respective courts for the same offence. Any such eventuality must naturally be prevented and accordingly section 2 of the Order concerning the Closing of Files, 1980⁵³ provides that:

Where an investigation file concerning an offence against the law is transferred by the police to the Military Prosecutor, or the Military Prosecutor requests in writing that the above investigation file be transferred to him, then from the time of transfer or on receipt of the request, whichever is the case, the file will be subject only to proceedings under the security legislation.

The above section is based on international practice described by Von Glahn as follows⁵⁴:

In general, the old maxim of *inter arma leges silent* might be applied in a very liberal interpretation of 'in time of war the civil authorities yield to the military' in territory under belligerent occupation, whenever conflicts of parallel jurisdiction are claimed to exist.

According to internal police regulations, where there is concurrent jurisdiction investigation files must be handed over to the military prosecution in two cases: a) where the offence is of a security nature; and b) where the accused is an Israeli citizen⁵⁵.

It should be noted that according to the law of Israel⁵⁶, Israeli citizens may be tried in Israeli courts and according to Israeli law for offences committed in the

Region. This law was enacted in order to prevent Israeli citizens from evading Israeli law by transferring their activities to the Region.

THE LEGAL PROFESSION

Upon the establishment of the military government in 1967, local lawyers declared a strike, withheld all legal services and refused to appear in the courts (except the religious courts)⁵⁷.

To circumvent this development, the military government initiated legislation in accordance with its obligations under international law, to assure the continued and orderly provision of legal services to the local population. The Order concerning Appearance in Court by Israeli Lawyers (Emergency) of 1967⁵⁸, enabled Israeli lawyers to represent litigants in civil and criminal matters before the local courts. The validity of the Order was originally limited to a period of six months, but at the end of this period the military government, finding that local lawyers still had no intention of resuming practice, extended the validity of the Order until such time as the Regional Commander would be satisfied that it was no longer required for the purpose of ensuring the continued working of the local courts and of providing proper professional legal services to the population.

The military government's efforts to encourage local lawyers to resume practice brought no response, as the Jordanian Bar in Amman induced them to continue striking by subsidizing them and even threatening them with loss of citizenship or with charges of treason.

Chapter Five

THE ISRAELI HIGH COURT OF JUSTICE

Since the establishment of the military government in 1967, residents of the Region have been able to bring before Israeli courts claims against the State of Israel, the military government and all its authorities. Access to Israeli courts was made possible by a decision of the Government of Israel not to oppose applications and claims by raising legal arguments regarding the right of Israeli courts to judge such suits¹. The decision applied both to civil suits in the ordinary courts and to petitions to the Supreme Court sitting as a High Court of Justice.

Such a position, allowing residents of administered areas access to the courts of the occupying power, is unprecedented in international practice². At first, the Supreme Court was troubled over the question of its jurisdiction in cases of this kind³. However, with the passage of time and the increasing number of petitions by residents of the administered areas dealt with by the court, the question has now become one of purely academic interest.

Israel has maintained its stated policy consistently for the past fourteen years. Moreover, given the tendency of the Supreme Court to exercise its jurisdiction wherever justice so demands, it seems unlikely that, even were this policy to change in theory, the court would find that it lacked the power to entertain the petitions of residents of the Region against the military government⁴.

Different approaches to the question of whether it is desirable that the Supreme Court consider such petitions are to be found among the Israeli public. Such uncertainty usually increases after a Supreme Court judgment having political implications. However, the prevailing opinion has always been that the Supreme Court must be open to residents of the Region so as to assure the rule of law.

Since the Supreme Court deals with petitions by residents of the territories in exactly the same way as it deals with petitions by residents of Israel, it is important to survey first of all the principles under which the Supreme Court operates.

THE PRINCIPLES OF OPERATION OF THE HIGH COURT OF JUSTICE

The Supreme Court of Israel, in addition to its function as an appellate court in criminal and civil appeals from judgments of the District Courts, also sits as a High Court of Justice.

This court's jurisdiction is laid down in section 7(a) of the Courts Law, 1957⁵:

The Supreme Court sitting as a High Court of Justice shall deal with matters in which it deems it necessary to grant relief in the interests of justice and which are not within the jurisdiction of any other court or tribunal.

The High Court differs from other courts in Israel in that its jurisdiction is primarily directed to litigation between the individual and the government. Its particular function is to safeguard the preeminence of the rule of law in the State by judicial review of the actions of public authorities, ensuring that the latter carry out their functions properly, neither exceeding nor misapplying their powers.

The Israeli High Court of Justice is built on the framework of similar institutions in the English legal system, as opposed to the Continental system, which separates administrative and ordinary law and has separate administrative and ordinary courts, e.g., the French Conseil d'Etat.

The procedure followed by the High Court is designed to ensure a speedy and efficient trial. Any person who considers that he has been prejudiced by an act over which the High Court of Justice has jurisdiction may, upon payment of a small fee⁶, petition the Court for an order nisi (temporary order). Such a petition is heard before a single judge of the Supreme Court, usually *ex parte*. If the judge is of the opinion that the petition is *prima facie* well founded, he will grant an order nisi requiring the respondents (the Government or one of its authorities) to appear in court and show cause why they should not perform, or refrain from performing, a certain act. The order nisi also specifies the period within which the respondents may file a reply (usually thirty days). At the same time, the court may, if requested by the petitioner, also grant an interlocutory order either prohibiting or requiring the continuance of a particular act until the final decision of the Court.

When a declaration in reply has been filed by the respondents, the full hearing takes place before the Court, which, after hearing both sides, will either annul the order or make it absolute, i.e., require the respondents to act in the manner prescribed in it.

The High Court of Justice is empowered to grant the following remedies:

- (a) Writ of *habeas corpus*, aimed at obtaining the release of a person alleged to be illegally detained in custody.
- (b) *Mandamus*, an order requiring an authority that is not properly fulfilling its duty to do so.

- (c) *Certiorari* and Prohibition, orders against inferior judicial bodies prohibiting them from dealing with a matter outside their jurisdiction, or invalidating a judgment given by them.
- (d) *Quo warranto*, an order forbidding a person who has not been lawfully appointed to a certain office to exercise the powers granted to the holder of such office.
- (e) Declaratory Order, declaring that a certain act is lawful or unlawful.

To obtain an order of *mandamus*, the petitioner must prove that one of his legal rights has been infringed. In a long line of cases, the High Court has recognised, *inter alia*, the right to employment, freedom of speech, freedom of the press and freedom of association. *Mandamus* orders are mainly given in the following cases:

- (a) where the government authority has acted unlawfully;
- (b) where the authority has failed to perform an act which it is obliged to perform;
- (c) where the authority has wrongfully applied the discretion with which it is endowed;
- (d) where the authority has acted in breach of the rules of natural justice (e.g., if a person liable to be adversely affected by an administrative act is not given the opportunity to be heard);
- (e) where the authority acts in a discriminatory manner.

PETITIONS BY RESIDENTS OF THE REGION TO THE HIGH COURT OF JUSTICE

In the first few years of Israeli administration of the Region, only a handful of petitions was addressed by residents to the High Court of Justice. With time, they have come to know of the powers of the Court and its mode of operation, and the number of petitions has progressively increased, to the point where between five and 10 per cent of all petitions filed annually in the High Court are now lodged by residents of the Region.

In 1979-80, for example, 91 petitions were filed⁷, of which five were successful; in 28 cases the military government either reached a compromise or itself annulled the act on which the petition was based and in 42 cases, judgment was given in the military government's favour. Six petitions were withdrawn and 10 cases are still pending.

Petitions have related to matters ranging from personal affairs, such as employment redundancies⁸, to the military government's exercise of its right to acquire the concession of the Jerusalem District Electricity Company which was considered by the High Court very recently⁹. In all these cases, residents of the Region have been able to present their arguments in the same way as any resident of Israel.

There is, however, one difference in the way in which the High Court considers petitions originating in Israel and those originating in the Region. In the former, the Court tests the legality of the governmental act in the light of the provisions of the authorising law alone¹⁰; in the latter, it subjects the governmental act to a dual test:

- (a) according to the existing laws, including local Jordanian law and Orders of the Regional Commander;
- (b) according to the rules of international law which have been incorporated in Israeli law, i.e., customary international law. The court is also prepared to consider rules of conventional international law which have not been so incorporated¹¹.

Petitions by residents of the Region tend to be based on two grounds, namely, the validity of administrative acts of the military government performed under local Jordanian law or in accordance with Orders of the Regional Commander, and the validity of the Orders themselves. In the case of administrative acts, there arose a question as to whether these had to undergo the dual test or whether legality according to international law alone was sufficient.

In 1978, in *Al Taliah Weekly Magazine v. Minister of Defence*¹², a petition was filed against the refusal of the respondent for security reasons to allow a newspaper published in Israel to be distributed in the Region. The question arose as to how to reconcile the provisions of international law, which do not recognise the principle of freedom of the press in occupied territories, with the provisions of Israeli administrative law, which does recognise that principle. Shamgar J. ruled as follows¹³:

The duty to safeguard security and public order and to ensure the safety of residents of the Region gives the military administration the power, among others, to prohibit political activity and to limit and even prohibit political publications. The opinion of international law experts in this matter is clear and decisive...

As can be seen from the facts and arguments before us, the military government did not exercise the powers given it under international law to their full and stringent extent, but rather sought to limit their use, as far as possible, to those methods which are absolutely necessary for the preservation of security and public order. In so acting, it displayed, both in theory and in practice, a tendency not to be satisfied with the rule of law in the purely formal sense of the term, but rather to adopt our attitudes regarding the rule of law in its substantive form....The exercise of the respondents' powers will be tested by the standards which this court applies in reviewing the act or omission of any other arm of the executive branch, while, of course, taking into consideration the duties of the respondents arising from the nature of their functions, as described above.

Having found the act of the military government to be lawful under both international law and Israeli administrative law, the court dismissed the petition.

The rule laid down in this case, then, is that every administrative act of the military government must stand up to the combined test of international and Israeli administrative law. In practice, its effects are more far-reaching than would appear at first sight. Not only does the rule give residents of the Region a forum before which they can appeal against the acts of the military government, but the very act of providing access to the Supreme Court automatically gives them all those rights enjoyed by Israeli residents and included within the framework of Israeli administrative law (such as freedom of expression, freedom of the press, freedom of employment). As a corollary, the duty has been imposed on the military government to respect those rights which reflect the democratic principles on which the Israeli legal system is based and are additional to those granted to residents of the Region by international law.

The same problem of validity under Israeli law arose in connection with Orders issued by the Regional Commander, albeit from a different angle. His legislation comprises Orders and secondary legislation based on these Orders and on the local Jordanian law. As regards secondary legislation, there is no doubt that the Supreme Court is entitled to invalidate it, just as it may invalidate Israeli regulations which exceed the limitations of the main statute, or which are unreasonable. The question raised, however, was whether the Supreme Court was also entitled to invalidate the actual Orders of the Regional Commander.

A preliminary question that had to be decided was how the Israeli Supreme Court should regard these Orders. Were they to be seen as ordinary statutes which the Supreme Court is not authorised to review, or as secondary norms open to its review. In *Hilu v. Government of Israel*¹⁴ the judges of the Supreme Court were divided on this problem. Landau J., presently the President of the Supreme Court, distinguished between the validity of the Regional Commander's Orders in the courts of the Region, for which such Orders have the force of primary legislation, and their validity for the Supreme Court for which only the legislation of the Knesset (the Israeli Parliament) is binding. He added¹⁵:

If we are to examine the acts of the military government according to the standards laid down in the Orders of that same government....then we must perform that examination in the same way as we check the actions of an administrative authority according to norms which that authority set for itself of its own volition and not on the basis of a statute which empowered it to establish such norms. The comparison I would make in this regard, even though it is not a perfect one, is that of internal guidelines which the authority has established for itself, without any basis in statute law. In such a case, even without the statutory basis, this court exercises its supervisory jurisdiction so as to require the authority to act in accordance with these guidelines.

Witkon J. did not accept this distinction. In his view¹⁶:

We must first recognise that, according to both Israeli law and international law, the Regional Commander, and no one else, is the sovereign legislator (since the sovereignty of a foreign sovereign is suspended, so long as its territory is occupied by the occupying army). This fact binds us as well and, therefore, if we can presume to have any jurisdiction at all in this matter...we must regard ourselves as serving as a high court of justice sitting in the administered areas itself... For this reason alone it seems to me that we must judge in accordance with the Orders emanating from the military authority, with no possibility of considering them from the point of view of international law.

Kister J. chose a third approach¹⁷:

I do not think that the court needs to examine whether, for the purpose of the case before us, such legislation is in the nature of primary legislation, or what the place of such legislation is according to the tests of Kelsen and his students.

I will content myself with a presentation of the issue under the existing positive law. A state which is at war and enters into a territory which was not hitherto under its rule, has the duty and the authority, through the military commander operating in the territory, to ensure order and orderly administration in that territory. And if the military commander issues Orders, he need not show the source of his authority so to act; it may be said that he himself is the source of authority. This authority of the military commander has also been recognised by international law, and from this point of view one can regard the Orders of the Military Commander as primary legislation. In his actions, however, the commander is subject to the instructions of his superiors. Furthermore, the Military Commander in any enlightened state must act in accordance with the rules of international law which set limits to his authority.

No later judgment has clarified the matter. However, the willingness of the Supreme Court to examine the validity of Orders of the Regional Commander in the light of the rules of international law in the case of *The Christian Society for the Holy Places v. Minister of Defence*¹⁸, suggests that the court has in effect adopted the judgment of Kister J. Orders of the Regional Commander are to be regarded as primary legislation, but the Supreme Court has the jurisdiction to examine and even nullify his Orders if they do not conform to the rules of international law regarding the legislative powers of the Regional Commander.

Thus, it will be seen that the Supreme Court tests the legality of administrative and legislative acts of the military government under both Israeli law and the rules of international law. This double test naturally limits the freedom of action of the military government as compared with the Israeli government's freedom of action. In other words, not every action that the court would consider lawful if

carried out in Israel will necessarily be considered lawful if carried out in the Region.

Indeed, the High Court so decided in *Jerusalem District Electricity Company Ltd. v. Minister of Energy and Infrastructure and the Regional Commander of Judaea and Samaria*¹⁹. In this case notice was served on the East Jerusalem Electricity Company of the intention to acquire its concession, which extends over areas both in the Region and in Israel. The notice of acquisition was made on the basis of the concession itself, which enables the Government to acquire it. The Minister of Energy served notice with regard to the area of the concession within Israel, and the Regional Commander with regard to the area within the Region.

The company turned to the High Court of Justice, and in its judgment the court ruled that the notice of acquisition of the concession in Israel was lawful, but refused to approve the parallel notice of the Regional Commander. The court said²⁰:

From the very nature of military government in an administered territory... it is clear that it is intrinsically temporary, and its principal function is to do its utmost to maintain public order and security, bearing in mind war and defence needs... The provision concerning respect for the existing law requires that the Regional Commander refrain from initiating changes of this kind in the Region, unless there are special reasons for doing so. Even if these changes do not alter the existing law, they will have a long-lasting and far-reaching effect on the situation in the Region beyond the time when the military rule in the Region comes to an end in one way or another. Such changes can only be permitted if they are for the benefit of the residents of the Region.

So far, we have considered the Supreme Court's attitude to administrative and legislative acts of the military government and of the Regional Commander. The Court is also authorised to review the actions of legal tribunals and quasi-judicial acts of the military government, including decisions of the military courts in the Region. Here, the scope of Supreme Court intervention is more limited than in other fields, and it will interfere with the judgment of a military court only if it displays a patent error or if a clear injustice has been done to the petitioner²¹.

JURISDICTION OF THE HIGH COURT OF JUSTICE TO HEAR PETITIONS OF RESIDENTS OF THE REGION

Since there is no precedent for the courts of an occupying power hearing petitions of residents of occupied territory, the judges of the Israeli Supreme Court were at first doubtful about their authority in this direction. The problem arose in particular in light of section 7(b) of the Israeli Courts Law, 1957²², which limits the High Court's jurisdiction to review the actions of officers of state authorities in the exercise of their duties.

In *Hilu v. Government of Israel*²³ Landau J. said²⁴:

Does this court have the jurisdiction to review administrative acts of state authorities, and in particular its military forces, in the territories ruled by the military government? And if such jurisdiction does exist, what is its source and upon what basis is it to be exercised? As in earlier cases... [the state did not dispute] the jurisdictional issue, and in the absence of any submission on this point, we shall again assume, without deciding the matter, that jurisdiction does exist over individual officers of the military government, who are part of the executive branch of the state, as "persons exercising public functions by virtue of the law" and subject to the supervision of this court under section 7(b)(2) of the Courts Law, 1957.

Witkon J. was more sceptical²⁵:

Counsel for the respondents consented to our jurisdiction in this case, and undoubtedly did so in order to enable the petitioners to come before the court and to permit a substantive hearing of their grievance. Yet the further we delve into the problem, the more I perceive that the generous consent of counsel for the respondents...leads to a confusion of issues and of the legal rules in this matter.

In the end, the Supreme Court did not decide the issue in this case nor did it reconsider the matter in later cases. As has already been noted, the question has now become one of academic interest only.

In conclusion, it may be pointed out that the ability of residents of the administered areas to petition the Israeli High Court of Justice does more than anything else to guarantee the maintenance of the rule of law. The authority and impartiality of this institution ensure respect for its judgments on the part of the military government and its functionaries. The knowledge that any resident may approach the Court ensures further that the military government plans its actions in accordance with the criteria acceptable to the Supreme Court — criteria which combine the rules of international law with Israeli law, which itself subscribes to the democratic norms recognized in all the countries of the free world.

Chapter Six

PUBLIC AND PRIVATE LANDS

In this chapter the issue of land in Judaea and Samaria will be discussed, with specific reference to the attitude and powers of the military government regarding the different categories of land which exist, and their related problems.

PUBLIC LAND

Article 55 of the Hague Regulations describes the occupant's powers in relation to public land as follows:

The occupying State shall be regarded only as administrator and usufructuary of public buildings, landed property, forests, and agricultural undertakings belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of such properties, and administer them in accordance with the rules of usufruct.

The Regional Commander, basing himself on this provision, enacted the Order concerning Government Property, 1967¹, according to which a competent authority was designated to take possession of and administer government property, which is defined as property belonging to an enemy state, including public land and chattels². According to records and surveys, about one third of the land in the Region is public land.

Article 55, in addition, entitles the occupant to enjoy the usufruct of government property. Feilchenfeld observes that³:

... the belligerent occupant may lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines...

The Order accordingly enables the competent authority to act in this manner⁴.

It should be emphasised that not merely does the occupant have a right to take possession of government property and enjoy its usufruct, but it has a duty so to

do in order to safeguard the property, as provided in article 55. With regard to immovable property, this duty relates primarily to the obligation to prevent any encroachment upon public land.

The complex and detailed procedure of distinguishing between public and private land was laid down in guidelines issued by the Attorney-General to the Israeli Government. According to these guidelines, the competent authority is prohibited from taking possession of any public land unless a thorough investigation by a committee of land experts, headed by a senior representative of the Attorney-General, has established beyond any doubt that the land in question is indeed public land according to local Jordanian law⁵.

The committee begins its investigation with an on-site inspection of the land in question. It then studies aerial photographs taken at different times in previous years, to establish whether the land was cultivated in the past. It then consults the land registration and land transaction records as well as the land settlement records and maps, in order to ascertain whether the land has been settled. "Land Settlement" in this context means the official registration of rights to a parcel of land in the name of a specified person, corporation or other body⁶. In addition, the committee enquires whether there are holy places, antiquities, graves, protected woods or nature reserves on the land. At the end of the investigation, a detailed report of the committee's findings is drawn up, together with a legal opinion prepared by the senior representative of the Attorney-General as to the status of the land.

If it is established beyond doubt, that the land in question is public land, permission is given to the competent authority to take possession of it. If it is established that the land is subject to other property rights, the competent authority may not take possession.

If the legal opinion concludes that the land is almost certainly public but that certain doubts remain, the procedure is as follows:

- (a) The competent authority issues a notice stating that the land, as marked in an attached map, is government property and that it intends to take possession thereof.
- (b) The land itself is marked by distinguishing features, in order to enable people living in the vicinity to see the precise extent of the area in question.
- (c) The notice specifies that anyone who claims a right in the land in question may lodge an appeal⁷.
- (d) The Mukhtars (appointed heads)⁸ of the surrounding villages are informed of the contents of the notice, and are taken by the District Commander to the site in order to be made aware of its actual location.
- (e) It is then the duty of the Mukhtars to bring the above facts to the attention of the local villagers, and to inform them of their right to appeal against the notice. This obligation is laid down in section 26(4) of the Jordanian Law

concerning the Administration of Villages, 1944⁹, which states that one of a Mukhtar's functions is:

to publicize within the borders of the village all notices, proclamations, and other official documents that are sent to him for publication by the... [Civilian District Commissioner]... or the administrative official.

- (f) In addition, copies of the notice are deposited in the offices of the Regional and District Commander and in the office of the representative of the competent authority in the district.

If no appeal is lodged, the competent authority may take possession of the land.

If an appeal is lodged, it is the duty of the Appeals Board to determine whether the land is public or private land. It should be noted that the Board may issue an interim order prohibiting any further action by the competent authority regarding the site pending final determination of the matter¹⁰.

The procedure before the Appeals Board is laid down in Section 2(c) of the Order concerning Government Property, which places the onus on the appellant to prove that the contested land belongs to him. This provision is based both on general principles of civil law and on practice in occupied territories. Von Glahn points out¹¹:

... the Hague Regulations do not define state property or supply a test of state ownership. General practice among modern occupants indicates that if doubt exists concerning the nature of the ownership of property, it is held to be publicly owned until and unless private ownership is established.

PRIVATE LAND

Expropriation of Private Land for Public Purposes

Article 46 of the Hague Regulations provides, *inter alia*, that:

... private property ... must be respected. Private property may not be confiscated.

This article is subject to rules of international law enabling the occupying power, for reasons either of public welfare or military necessity, to make use of private property or to limit the owners' use of it.

Accordingly, an exception under article 46 is the expropriation of privately owned land, according to local law procedures, to meet public needs. Thus, Feilchenfeld writes¹²:

The laws of the occupied state will usually provide for the power to expropriate private property provided it is needed and compensation is paid. During an occupation the occupant's right and duty to maintain public order and safety may involve expropriation. As measures for the benefit of the occupied country they differ, of course, from requisitions.

All the scholars who have dealt with the subject agree that the expropriation of

private property is permissible provided that three conditions are fulfilled: that it is effected in accordance with local law; that full compensation is paid to the owners; and that the expropriation is for public purposes.

The military government has used the power to expropriate private land for public purposes sparingly, and in all instances has done so in strict compliance with the above conditions. Expropriation has been effected for general public purposes only, under the local Jordanian law¹³, full compensation having been offered in accordance with that law¹⁴.

It should be noted that Section 2 of the Jordanian Land (Acquisition for Public Purposes) Law¹⁵ defines a public purpose as:

any purpose which the Government has, with the consent of the King, decided is a public purpose.

Section 7 of the law provides:

... a notice published by the Government... shall be deemed to be decisive evidence that the undertaking for which the land is expropriated is an undertaking for the benefit of the public.

Despite the broad terms of these provisions, the military government restricts itself to making use of the local law for strictly public purposes, such as road construction and widening, erection of public buildings and the like.

Contrary to repeated allegations to this effect, Israel does not expropriate private land for the purpose of establishing Israeli settlements. Such settlements may only be established on public land after a thorough investigation, conducted in the manner described above, has clearly shown that the land in question is not in any way privately owned¹⁶.

Furthermore, the military government will only expropriate private property situated beyond village and town boundaries. The power of expropriation within such boundaries is left, in accordance with the local law, to the local municipal authorities which may, in this regard, act with the approval of the military government¹⁷.

Land Transactions

The Order concerning Land Transactions, 1967¹⁸, requires that previous approval be obtained for any land transactions in the Region.

On this matter, Von Glahn writes¹⁹:

Many modern occupants have forbidden all transfers of real (immovable) property, at least during the early stages of their occupation, in the invaded area; the normal purpose behind this prohibition being the prevention of hardships through forced sales to speculators or even to members of the occupant's own forces. While a purely temporary measure, such a prohibition is recommended

because it subjects one of the worst consequences of past occupations to an initial prohibition; and facilitates the working out of subsequent reasonable and fair controls by the occupying state.

It should be stressed that at no time has it been the policy of the military government to prohibit land transactions in the manner envisaged by Von Glahn. The Order is intended to enable supervision of transactions and to authorise those transactions which do not adversely affect the rights of absentee owners or public land. These controls are incontestably "reasonable and fair."

The following figures serve to underline this policy:

In the year 1978/1979, out of 2789 transactions submitted for approval to the military government:

2489 were approved; 55 were rejected; 3 were withdrawn; 242 are still under consideration.

In the year 1979/1980, out of 2889 transactions submitted for approval to the military government:

2637 were approved; 78 were rejected; 8 were withdrawn; 166 are still under consideration.

Land Settlement Proceedings

The Order concerning Water and Land Settlement, 1968²⁰ temporarily halted land settlement proceedings in the Region. Such proceedings, which are based on the provisions of the Jordanian Law concerning Water and Land Settlement²¹, determine, in a final and binding manner, rights in land. Because these proceedings are very complex and protracted, the Jordanian authorities only managed to settle a third of the land in the Region between 1949 and 1967.

In Israel, where a similar law applies, land settlement has also not yet been completed. The reason for freezing land settlement proceedings in the Region was that the military government did not wish to prejudice the rights of the inhabitants of the Hashemite Kingdom east of the River Jordan or of absentee landlords.

The mere fact that some of the land has not yet undergone land settlement proceedings does not in any way prejudice any existing rights in such land. According to the Jordanian law, any registered right in land, even though the land is not settled, is completely protected. Moreover, unregistered rights in land which has not undergone settlement may be proven by the testimony of neighbours, land contracts, probate and succession orders, and similar methods. On the other hand, if the land in question is settled, title is determined only on the basis of entries in the Land Registry, which are final and binding.

Absentees' Property

Immediately upon establishment of the military government, the Regional Commander enacted the Order concerning Absentees' Property, 1967²², the purpose of which is to protect the property of those who fled the Region and abandoned their property as a result of the war. By enacting this Order the Regional Commander fulfilled the duty, laid down by international law, to protect private property, including that abandoned by its owner. The provisions of the Order are based on international practice in various countries. For example Greenspan states that²³:

According to the United States Manual, civil affairs and military government personnel are charged with:

(1) Custody and administration of all property and enterprises owned wholly or in part by an enemy government, or by enemy nationals of countries other than that occupied. Presumably the enemy nationals referred to would be absent owners, not persons present in the territory and in a position to deal with their own property.

Under the above Order²⁴, the Regional Commander appointed a Custodian of Abandoned Property to take over possession and management of all abandoned property in the Region. It should be emphasised that according to the above Order, the mere absence from the Region of the owner does not enable the property to be vested in the Custodian; there must also be no other person in the area entitled to administer or possess the property in any lawful manner²⁵.

Regarding the management of the property, Section 8(a) of the Order provides:

The Custodian shall take care of the abandoned property himself, or through others with his consent in writing, in order to preserve the abandoned property or its full value as far as possible for the owner or occupier, as the case may be.

It should be noted that it is the policy of the Custodian to lease immovable property, where possible, to a person who has some family connection with the absentee owner, on the assumption that in this way, the property will be taken care of in the best possible manner.

Section 13(a) of the Order goes on to provide:

Should the person who was the owner or lawful occupier of the abandoned property return to the Region and prove his ownership in the property or his right to possess it, as the case may be, the Custodian shall transfer the property or its value to him, and upon the same being done the property shall cease to be abandoned property and every right that any person had in such property before it was vested in the Custodian shall be returned to that person or his successor in title.

Section 13(c) of the Order requires the Custodian to return to the owner or occupier all the income from the property after deducting management expenses.

Although the Order provides that the abandoned property be returned to its rightful owner or possessor only upon his return to the Region, the policy of the Custodian has been to return it where the absent owner or possessor resides in a country maintaining diplomatic relations with Israel. In such case, the property is returned upon the submission by the representatives of the absentee of a duly authorised power of attorney.

The Order concerning the Non-Applicability of Tenant Protection Legislation in Certain Cases, 1969²⁶, provides that the tenant protection laws do not apply to abandoned property leased by the Custodian. This measure is designed to protect the owners of abandoned property, the primary task of the Custodian, in his capacity as trustee being to preserve the property until possession can be restored to its rightful owner. This aim would clearly be frustrated if the tenant to whom the property is leased could not be obliged to vacate it.

Requisition of Private Property for Military Purposes

The Legal Background

The rules of international law distinguish between confiscation of private property, which is forbidden by article 46 of the Hague Regulations, and requisition of such property, which is permitted by article 52. This article states:

Requisitions in kind and services shall not be demanded from local authorities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

Oppenheim comments on this²⁷:

... confiscation differs from the temporary use of private land and buildings for all kinds of purposes demanded by the necessities of war.

Schwarzenberger defines the word "requisition" as follows²⁸:

Requisition may ... be described as an act of State, authorised on conditions laid down by international law, by which a belligerent occupant may deprive a private person or local authority of ownership in movables and possession in immovables.

Although it might appear that article 52 refers to the possibility of requisitioning only movable property, Schwarzenberger is of the opinion that²⁹:

... the wording of Article 52 is sufficiently wide to include immovables.

Other authorities consider that the occupying power may make use of private land, by virtue of the principle of military necessity rather than on the strength of article 52 of the Hague Regulations. Thus Von Glahn writes³⁰:

Under normal circumstances an occupant may not appropriate or seize on a permanent basis any immovable private property, but on the other hand a temporary use of land and buildings for various purposes appears permissible under a plea of military necessity.

Oppenheim is of a similar opinion³¹:

If necessary,... (private buildings) may be converted into hospitals, barracks, and stables without compensation for the proprietors, and they may also be converted into fortifications.

The authorities who recognise the power of the occupant to requisition private property on the plea of military necessity, as opposed to article 52, hold that there is no liability to pay compensation in such circumstances, but only an obligation on the occupant to give the owner a note certifying the property's use³². Regarding the scope of the term "military necessity justifying the requisition of private land," it has been held that it is for the commander in the field to determine whether such military necessity exists³³.

Israeli Practice in the Region

The Regional Commander indeed exercises this power by issuing specific orders with respect to the use of private land for military purposes, such as construction of military camps, establishment of training areas, firing ranges and fortifications. The Regional Commander personally signs every such Order, which remains in force for the period prescribed therein, or until revoked by a later Order.

Standing Orders of the IDF General Staff lay down the following directives:

- (a) Every Order concerning the requisition of land for military purposes must be approved by the Chief of the General Staff.
- (b) Compensation must be paid to the owner, including periodic payment of rent and reimbursement for any damage to property.
- (c) As a rule, preference must be given in requisitioning land to public as opposed to private land.
- (d) If there be no alternative but to use private land, preference must be given to fallow and rocky land rather than to cultivated and fertile land.
- (e) If in the last resort cultivated land has to be requisitioned, advance notice of the intended date of requisition must be given to the owners and they must be given every opportunity to complete the harvest.

A special problem was dealt with by the Israeli Supreme Court in the cases of *Ayyub v. Minister of Defence* (Beit-El case)³⁴ and *Dweikat v. Government of Israel* (Eilon Moreh case)³⁵. In these cases the Supreme Court, sitting as a High

Court of Justice, examined the question of whether an Israeli settlement may be established on land requisitioned for military purposes³⁶.

In the Beit-El case, the High Court dealt with a petition, submitted by several residents of the Ramallah and Nablus districts, challenging the legality of an order of the Regional Commander requisitioning their private land. The land in question is adjacent to an Israeli military camp which had been similarly used by the Jordanian army. The requisition order was issued in 1970 and the site was subsequently used as a military training area for the camp. Eight years later, the owners of the land observed that construction was being carried out on the land for the purpose of establishing an Israeli settlement. The owners thereupon petitioned the High Court claiming, *inter alia*, that the establishment of an Israeli settlement cannot be regarded as a military purpose.

The High Court issued an interim order against the military government forbidding any further activity on the land pending the outcome of the petition. After hearing the pleadings of both sides, the High Court cancelled the interim order and upheld the legality of the Regional Commander's requisition order.

The judgment, delivered by Landau J. is worth quoting at length³⁷:

It is not in dispute that if the settlement does not serve military requirements, it is not justifiable from the point of view of Israeli municipal law. For the requisition order itself was made, because, as stated in its preamble, the military commander considered that the whole of the area on which the Beit-El camp stands, and on the fringe of which the civilian settlement has now been established, is required for essential and urgent military purposes. As to this, it will be best to quote the text of a portion of Major-General Avraham Orly's answering affidavit. In paragraph 16 thereof we read:

(a) ... The respondents contend that the establishment of the settlement in the area of Beit-El camp not only does not contradict but actually serves military purposes, being part of the security concept of the Government, which bases its defence system, *inter alia*, on Jewish settlements. According to this concept, all Israeli settlements in areas occupied by the IDF are part of the latter's regional defence system. Moreover, these settlements are classified as supremely important within the framework of that system, a fact which is expressed in standard allocations of manpower and funds. In times of tranquillity, these settlements mainly serve purposes of "presence" and control in vital areas, of observation and the like. Their importance is particularly great in wartime, when the regular military forces are usually moved from their bases for operational purposes and the settlements are the principal factor of "presence" and security control in the areas in which they are located.

(b) Beit-El camp is situated in a site of great importance from a security point of view. This is corroborated by the fact that a Jordanian camp was also located there.

The settlement itself is on an elevation commanding the vital intersection of the

longitudinal Jerusalem-Nablus route and the transversal route from the Coastal Plain to Jericho and the Jordan Valley. In addition, the site controls infra-structural systems (water, power, communications) of great importance to large areas.

For these reasons, the place was selected for the establishment of the settlement of Beit-El. Moreover, for the said reasons and because the settlement of Beit-El is part of the IDF regional defence system, the Defence Establishment intends to construct a system of fortifications in the settlement...

...I accept the detailed explanation given by Major-General Orly in paragraph 16 of the affidavit, as quoted above...

...It has further been contended before us that the inhabitants of a civilian settlement are not subject to army discipline and that, therefore, the establishment of a civilian settlement cannot be justified by military reasons. But Major-General Orly's affidavit indicates that a civilian settlement such as Beit-El is intended to be integrated into the regional defence which is part of the IDF's military set-up, and it is common knowledge that, in time of need, since the IDF is for the most part a reservists' army, the inhabitants of a civilian settlement are under military command, even as individuals. Major-General Orly's affidavit further explains that precisely in a time of emergency, when the regular forces move to the front, a civilian settlement of this kind fulfils a definite military function of control in the area surrounding it.

Referring to the purely security aspect of the case, Witkon J. said³⁸:

... as regards the pure security aspect, it cannot be doubted that the presence in occupied territory of settlements — even "civilian" ones — of citizens of the occupying power, contributes appreciably to security in that territory and makes it easier for the army to carry out its task. One does not have to be a military and security expert to realise that terrorist elements operate more easily in an area inhabited only by a population that is indifferent, or is sympathetic, towards the enemy, than in an area where there are also persons likely to look out for them and to report any suspicious movement to the authorities. Such persons will offer them no hideout, assistance or supplies. The matter is simple and needs no elaboration. Let us mention only that, according to the affidavits of the Respondents, the settlers are subject to army control, either formally or by the force of circumstances. They are there as of right and with the permission of the Army. I therefore still adhere to the view I held in the Rafiah Approach case that, as long as a state of belligerency exists, Jewish settlement in occupied territory serves actual security purposes.

A year later, a similar question arose in the Eilon Moreh case. In that case land near Nablus was requisitioned in order to establish an Israeli settlement. As in the Beit-El case, an interim order was issued prohibiting any further activity on the land until the conclusion of the proceedings. After hearing the detailed submissions of the parties, the court was convinced that, in spite of the fact that the

military government had taken into consideration the security factors involved, the dominant motive behind the requisition had been political, and therefore the court upheld the petition, annulled the requisition order, and ordered the removal of the settlers, their effects and any constructions on the land. The court further ordered that the possession of the land be restored to the owners.

Landau J. in his judgment stated³⁹:

Now the way is open for a discussion of the main question: can the establishment of a civilian settlement at the site under discussion be justified legally, if for that purpose privately owned land was requisitioned? In the Beit-El case we gave an affirmative answer to a similar question, both according to internal, municipal, Israeli law and according to customary international law, because we were convinced that the requirements of the Army obligated the establishment of the two civilian settlements discussed in that case at the places where they were established. It is self-evident — and Mr. Bach [the State Attorney] also informed us that this was clearly explained in the Cabinet's discussions — that in that judgment this court did not give legal authorization in advance for *every* requisition of private land for civilian settlement in Judaea and Samaria; rather, each case must be examined to determine whether military purposes, as this term must be interpreted, in fact justify the requisition of the private land...

The principle of protection of private property also applies in the laws of war, finding their expression in this matter in Article 46 of the Hague Regulations. A military administration seeking to prejudice private property rights must show legal authority...⁴⁰

... the question which is before this court in this petition is whether this view justifies the taking of private property in an area subject to rule by military government — and, as I have tried to make clear, the answer to this depends on the correct interpretation of Article 52 of the Hague Regulations. I am of the opinion that the military needs cited in that article cannot include, according to any reasonable interpretation, national security needs in their broad sense, as I have just mentioned them. I shall cite Oppenheim (Section 147, p.410):

“According to Article 52 of the Hague Regulations, requisitions may be made from municipalities as well as from the inhabitants, but so far only as they are really necessary for the army of occupation; they must not be made in order to supply the belligerent's general needs”⁴¹.

Accordingly, after the judgment was given, the settlement was removed and the land restored to its owners.

It should be noted that in this case the High Court of Justice did not reverse its previous decision reached in the Beit-El case, but distinguished it on the grounds of different circumstances. However, since the judgment in the Eilon Moreh case, the military government has refrained from requisitioning private land for the purpose of establishing settlements. When additional settlements are established

they are located only on public land, in accordance with the intricate process described above⁴².

Israeli Settlements in the Region

A related issue, discussed but not resolved in the Beit-El and Eilon Moreh cases, was the question of the legality of establishing Israeli settlements in the Region, whether on private or public land, in the light of article 49 paragraph 6 of the Fourth Geneva Convention. In this connection, the High Court held that since the Geneva Convention is conventional international law, it is not part of Israeli municipal law as is the case with customary international law. Therefore, a contention by a petitioner based on this article, cannot be relied upon before an Israeli Court⁴³.

Article 49, which is headed "Deportations, Transfers, Evacuations" provides as follows:

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

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory, except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

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

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

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

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

It is clear that the above article does not prohibit the establishment of settlements but that its purpose is to protect the local population from deportation and displacement. It is apparent that the movement of population into the territory is prohibited only to the extent that it involves the displacement of the local population.

This conclusion finds expression in Oppenheim⁴⁴:

The occupying power must not deport or transfer parts of its own civilian population into the territory occupied by him — a prohibition intended to cover cases of the occupant bringing in his nationals for the purpose of displacing the population of the occupied territory.

For the same reason, Prof. Eugene Rostow is of the opinion that the Israeli settlements in the Region are not in contravention of Article 49. According to him⁴⁵:

... the provision was drafted to deal with individual or mass forcible transfers of population, like those in Czechoslovakia, Poland, and Hungary before and after the Second World War. Israeli administration of the areas has involved no forced transfers of population or deportations.

Bearing in mind both the provisions of article 49 and its legislative history, it is clear that the situation so envisaged by it does not apply to the Israeli settlements in question. Arab inhabitants have not been displaced by Israeli settlements.

It should also be pointed out that article 49 paragraph 6 refers to State actions by which the government in control transfers parts of its population to the territory concerned. This cannot be construed to cover the voluntary movement of individuals, as is the case with the Israeli settlers who live in these new settlements, not as a result of State transfer but of their own volition and as an expression of their personal choice.

Building Restrictions

According to Section 2 of the Order concerning Supervision of Construction, 1970⁴⁶, the Military Commander may prohibit or halt the construction of building or impose conditions, if he is of the opinion that this is required for the security of the Israeli forces in the Region, or to ensure public order.

This power is exercised by the military government in respect of very narrow strips of land, no more than a few hundred metres at most, surrounding army camps, various military installations, training grounds or main traffic axes used by the IDF. The purpose of the Order was to prevent building close enough to such sites, as to expose them to surveillance and possible sabotage by hostile elements.

The military government could have requisitioned such private land adjacent to military installations in accordance with the rules of international law described above⁴⁷. However, in order not to prejudice the rights of the land owners, it was decided merely to restrict building without affecting all their other rights, including the possession of the land and its use for any other purpose, such as cultivation and grazing.

Similar restrictions are imposed in Israel, and in many other countries, with regard to the construction of buildings in the vicinity of military installations, as

well as aerodromes, harbours and other sites of a security nature. Furthermore, since, in general, the Israeli military installations are located outside town and village limits, construction may in any event be controlled under the local Jordanian planning legislation.

Chapter Seven

ECONOMIC DEVELOPMENT AND PROVISION OF PUBLIC SERVICES

THE LEGAL BACKGROUND

The administration of the Region is, of course, not limited to the maintenance of public order and security, but concerned with matters of everyday life, including the economic development of the Region and the efficient functioning of services to the public.

International law on the subject of the economy of occupied territory is based on the principles formulated in articles 42 to 56 of the Hague Regulations, which deal with taxation, contributions, and private and public property. These rules relate mainly to the maintenance of the *status quo* and not to any dynamic economic development of the territory, and there are no clear guidelines for such a policy. Feilchenfeld summarized this situation as follows¹:

... the Hague Regulations protect private property, but do not deal adequately with other economic interests. They do not safeguard coherently the whole economic life of a region. In accordance with the trends of the last century, their emphasis is "static" rather than "dynamic", on "having" rather than on "doing" or even "obtaining," on vested rights rather than on economic function or opportunity.

With the aim of both duly observing the Hague Regulations and responding to the needs of modern economic development, Israel has, throughout its administration, promoted the commerce, industry, agriculture and other branches of the Region's economic life, while at the same time refraining from disturbing the existing economic infrastructure.

To achieve such a balance, a certain amount of intervention and supervision has naturally been necessary, varying in accordance with the circumstances and the subject concerned.

Of the general legislative power of the occupant in this connection, Feilchenfeld goes on to observe²:

Practically every analytical field of law, from administrative law to economic and so-called private law, may be affected by such regulations, and the whole economic process, including production, distribution, finance and consumption becomes subject to permitted changes.

With regard to the management of the economy, Greenspan adds³:

The economic life of the territory will engage the close attention of the invaders, both from the standpoint of making the country self-supporting and that of supplying their own forces...

[They] may exercise rigid control over the entire economy of the territory, including its currency... banking, commodities, prices, and rationing. Industry and manufacturing facilities may be developed, commerce and trade regulated... Maximum agricultural production may be encouraged by various means, including land reforms. Restrictions or conditions may be placed on all commercial relations with the territory; or existing restrictions (such as customs tariffs) may be removed.

With regard to the last point, Von Glahn expresses his opinion thus⁴:

The occupant possesses a right, based on logic, to regulate all trade between an occupied area and the outside world. This privilege extends even to a complete suspension of all foreign trade if conditions were to make such a step appear desirable. Should the occupant so choose, trade could be permitted under certain conditions: the usual practice appears to be to stop all exports of gold, precious metals, jewels, and securities from occupied territory; normally, also, all commercial relations between the area and its allies as well as the remainder of its sovereign's territory are suspended as soon as occupation becomes effective.

ISRAELI PRACTICE IN THE REGION

While thus having the power to control the local economy rigorously and to prohibit or restrict commercial ties with Jordan, Israel has nevertheless preferred to pursue a liberal policy in this respect, and has both removed the tax and customs barriers between itself and the Region, and facilitated continuing commercial relations with Jordan, and via Jordan with other Arab countries, by means of the "open bridges" policy⁵.

As a result of this policy there is general freedom of movement for people and merchandise⁶, commercial and other economic business with Israel, and unrestricted passage of goods from the Region to Israel.

The policy of facilitating contacts between Israel and the Region has of necessity involved problems in matters in which there is a difference in the two economies, for example in agriculture and the water system.

Israel has been anxious to reduce unemployment by enabling residents of the Region to find work in Israel and by setting up training centres for instruction in such fields as building, carpentry, metalwork, handicrafts, and bookkeeping. There is also a variety of courses for women, including needlework, embroidery and beauty culture. Every year some 3,500 persons are awarded certificates by

these training centres, thus improving their opportunities for regular employment. Accordingly, the unemployment rate has declined from 13% in 1968 to 3% today, which is in fact less than the prevailing rate in Israel. This policy has also led to a significant increase in *per capita* income, a rise in real terms by 11%. Private demand has risen by 9% and the Gross National Product has risen since 1967 by an annual average of 13%⁷.

Appreciable improvements have also been made in education. In 1979-80, the military government provided funds for the upkeep of 942 out of a total of 1,320 educational institutions, the others being privately maintained. Since 1967, 26 vocational training centres, previously non-existent in the Region, have been set up in 19 towns. Similarly, four higher education institutions have been established. The number of educational institutions has increased by a third, and whereas the population has increased only by about 20%, the number of pupils has gone up by 80%.

Agriculture in Israel is subject to strict control and supervision through, *inter alia*, production quotas, marketing and export boards and regulated national haulage, all of which is intended to ensure stable markets, maintain prices and avoid gluts. Producers in the Region wishing to export their produce to Israel, and from Israel to other countries, are therefore required to conform to the Israeli system of controls, including the conditions and quotas affecting Israeli farmers⁸.

The military government took steps to set up an infrastructure of such services as water and electricity supplies which, before 1967, did not exist in many parts of the Region. Thus, prior to the commencement of the Israeli administration, there was no national or regional electric grid except in the concession area served by the Jerusalem District Electricity Company. Water supplies were dependent on local pumping stations, which generally did not meet the requirements.

The economic advancement and consequent rise in the standard of living from 1967 onwards led to an increasing demand for water and electricity in places which had not had them hitherto. For example, a number of towns and villages in the Region were connected to the Israeli electric grid. They included Kalkilya, Tulkarem, Hebron, Faraun, Bala-Zita, Dir el Jessin, Anbata, Nir Shams, Bet-Omar and the Baraka Hospital. In addition, work has almost been completed on the "Electrify Samaria" project, which is designed to make electricity available throughout the Region.

Similarly, waterworks, reservoirs, pipe-lines and roads have been constructed throughout the Region.

WATER

The utilization and development of regional water resources had an immediate effect on the Israeli water system. The small number of subterranean catchment areas that exist are common to Israel and the Region. Any increase in the amount

of water taken by one side reduces the amount available for the other, and can sometimes lead to permanent salination. To maintain the quantity and quality of water and avoid excessive use, restrictions have been placed on water-drilling, pumping and agricultural consumption in Israel, principally by imposing quotas. To balance the situation, a similar system of control was introduced in the Region. It should be remembered that even before 1967, a form of control existed, under local Jordanian law⁹.

When the military administration was established in 1967, the water supply was insufficient, inefficient and of low quality. Water was pumped from local springs or pits into rain-water reservoirs, in close proximity to crude sewage systems, giving rise to disease, including cholera and typhus. In order to prevent epidemics, the military government therefore set about reinforcing the municipal water systems and regulating the supply of water to those places which previously had not been part of the existing network, which had only served some of the larger towns.

In order to adapt the water network to the rate of economic development, a master plan was prepared in which new waterworks set up in Herodian, Dotan, Beit Iba, A-Zariya, Bitunia, Dir Shar, Tubas and Bidan complemented the existing sources. In rural areas, 10 pools with a capacity of 9,850 cu.m. were added to the existing pools, whose capacity was only 1,000 cu.m. In 1967, there were 45 km. of pipe-lines in the Region; by 1980 they had more than quadrupled to 200 km. Prior to 1967, only 12 villages had public water-taps, some of which were not connected to dwellings. By 1980, the houses in 43 villages were directly connected to the main water system. The annual domestic consumption in this period had risen from 5.4 million cu.m. to 15 million cu.m.

Three aspects of this water control policy have come under some criticism, and thus require clarification: the issuing of permits for drilling wells for agricultural purposes; utilization of regional water resources by Israel; and the amendment of local Jordanian law dealing with water rights.

Drilling Permits

Under international law, the right to regulate the use of water rests with the occupying power as part of its general power to control economic resources. The occupying power is responsible for the extraction, supply and distribution of water to the local population and for fixing its price. The right of control includes the power to limit the utilization of water, as stated by Greenspan¹⁰:

Water, fuel and lighting may be made the subject of restrictions where necessary.

Israel has always had to contend with the problem of its limited water resources, and has accordingly developed methods of exploitation, irrigation and cultivation that will ensure both the proper irrigation of wide tracts of land and

the economic use of the water that is available. The technology has been extended to the Region for the benefit of the local residents and for the development of agriculture generally. In particular, drip irrigation has been introduced; instruments have been installed in wells in order to precisely ascertain water utilization; and a network of special wells has been established for measuring underground water.

The introduction of new methods of cultivation and irrigation has made it unnecessary to drill new wells for agricultural purposes. Nevertheless, the area under cultivation has increased by 160% and agricultural income has risen from \$32.5m. per year in 1967-68 to \$73.3m. in 1977-78. These figures alone demonstrate that agriculture in the Region has not been adversely affected by limiting the issue of new drilling permits.

In fact, every farmer is able to secure his water requirements from the existing water network and, if necessary, may even be connected to the Israeli pipeline system. Furthermore, in place of wells which have collapsed or become unusable, the military government has facilitated the digging of "rescue wells" — alternative wells nearby of equal depth and circumference. In any event, the cost of drilling a well is very expensive — about IS 5m., a sum which few of the local population can afford. In 1979, one drilling permit was issued for agriculture, three for "rescue wells" and three for drinking water.

It has been alleged¹¹ that the Israeli authorities caused the El Auja spring to dry up by drilling for water in its immediate vicinity — an allegation which was proved groundless by a delegation of experts from the United States which inspected the site in August 1980. The new well had been drilled at a depth of 210 metres below the depth of the spring, so that the two sources of water were entirely unconnected, as was confirmed by the difference in the quality of the water from the two sources. There was, therefore, no possibility that the new well could have affected the spring in any way.

The reduction in the flow of water from the spring during July-November, 1979 was, in fact, due to two cumulative factors — low rainfall in 1976 and 1978, and a very steep decline in rainfall during the 1978-79 season, as a result of which the volume of water diminished by 70-80%.

The allegations fail to add that plentiful rainfall in December, 1979 replenished the El Auja spring and renewed its flow — a fact supporting the conclusion of the U.S. delegation that the drilling had not affected the spring. On the other hand, Jordanian records show that the spring also dried up during droughts in 1944 and 1964 — long before the Israeli administration was established.

Water Utilization by Israel

It has been alleged¹² that Israel exploits regional water resources for its own requirements at the expense of the local population. In fact, since 1967, Israel

has transferred no less than 2,188,000 cu.m. of its own water to the Region.

It has also been alleged¹³ that Israel has amended the Jordanian Law regarding water control¹⁴ to the detriment of holders of permits by adding to the list of waterworks requiring operating licences, a new category termed "water establishment." In fact, the Regional Commander's amending Order¹⁵ merely consolidated the provisions of the Jordanian Law and the regulations made thereunder, and used the term "water establishment" in order to consolidate and re-define the categories used in the original enactment.

Allegations that the amending Order empowers a "Staff Officer for Water" arbitrarily to cancel or refuse to issue a licence, are equally unfounded¹⁶. Discretion in granting or refusing licences is no novelty and is based on Regulation 9 of the relevant Jordanian regulations. The Staff Officer is, of course, bound to have regard to practical considerations in making his decision; but any refusal or cancellation for other reasons is subject to challenge in the judicial and quasi-judicial tribunals existing for such purposes, including the Israeli High Court of Justice¹⁷.

HEALTH AND WELFARE SERVICES

The standard of health and social welfare services in the Region has improved beyond recognition.

In 1967, the medical services were of a low standard. Doctors were few and treatment out of date; hospitals were poorly equipped; epidemics could not be controlled; and the child death-rate was relatively high.

Soon after 1967, a comprehensive reorganization was instituted. Modern practice was introduced by a group of Israeli doctors; graduate and post-graduate training of physicians was expanded; new hospitals, health centres and nursing schools were established; new equipment was provided for existing hospitals; inoculation was extended to the whole Region; and mother and child clinics were set up in various places. A number of medical insurance schemes were introduced, whereby, for \$4 deducted from his monthly wage, every worker could receive treatment in clinics and hospitals either in the Region or in Israel.

Social welfare services before 1967 were confined to the distribution of food and money. The policy of the military government has, from the first, been directed towards rehabilitation, the establishment of child-care institutions, and provisions for the retarded. By training social workers and helping to make the local residents capable of undertaking paid jobs, the number of those requiring welfare (excluding refugees) has been reduced from 312,000 in 1968 to 135,856 in 1979¹⁸.

EXPORTS

The export of goods — apart from agricultural produce — from the Region to Israel is regulated by an Order¹⁹ which permits any goods to be exported under a

general licence, provided that excise duty is paid on goods manufactured in, or lawfully imported into the Region, or customs duty has been paid in accordance with Israeli law. There is therefore a free flow of merchandise from the Region to Israel.

Trade in agricultural produce between Israel and the Region in both directions is regulated by the Order concerning Transfer of Agricultural Produce, 1967²⁰. Permits from the competent authorities are required for this two-way traffic and not only for traffic from the Region to Israel. Indeed, the permit for the latter is not designed to restrict export, but primarily to facilitate statistical control of the quantity of produce entering Israel from the Region.

Permits are thus granted in a routine manner, as required by the arrangements made between the local farmer and the Israeli merchant or marketing board. The only restriction exists, in fact, with regard to grapes and plums during the two months when the Israeli market is flooded with these fruits. The purpose is not to prohibit export but to fix quotas. For the rest of the year, there are no restrictions or quotas for any type of produce.

In this context, it is perhaps worth noting that the centralised agricultural cultivation, marketing and export limitations and controls existing in Israel do not exist in the Region, where there are no fixed quotas or production and marketing restrictions.

Since 1967, not only have markets not been closed to Regional exporters but new markets have been opened up. Their produce has been marketed through Agrexco (the central Israeli corporation for the export of agricultural produce), in Western Europe, and has gone directly to the Gaza District, which, until 1967, was closed to produce from the Region. The market in Jordan, and thence to Eastern Europe, is open to all exports²¹.

In the context of the movement of goods between the Region and Israel, claims have been made that Israel makes use of the Region for offloading substandard goods prohibited from sale in Israel²². An example that has been given is that of aerated-water bottles which have the tendency to explode and cause injury. Legislation in Israel imposes conditions that include protective treatment of the bottles in accordance with specific standards²³. Since not only the sale but also the production of bottles not conforming to these standards is forbidden, the marketing of such bottles in the Region is impossible, and thus the claim is untenable.

IMPORTS

A general licence issued in the Region²⁴ permits any resident to import goods from Israel into the Region provided that such goods are lawfully acquired, having been lawfully manufactured in, or imported into, Israel. Consequently, there is

no need for a special permit for each import from Israel into the Region, and a free flow of commodities is guaranteed.

— Goods imported into the Region from abroad through Israel come within the Israeli import licensing system on imports. Under the Israeli Law²⁵, however, most goods, including industrial equipment, do not require a licence. Import of the remainder is subject to statutory conditions as to quality, marking and standards; if these conditions are fulfilled, the competent authority is bound to grant a licence. Only in the case of a few goods, the import of which is liable to endanger public security and public health, does the Law require special licences.

In practice, residents of the Region usually obtain goods imported into Israel from Israeli agents and are thus not considered importers for the purposes of the Law. All goods obtained in this manner may accordingly be imported into the Region under the general licence referred to above.

CO-OPERATIVE SOCIETIES

The establishment and registration of new co-operative societies falls within the competence of the Staff Officer for Labour Affairs, who acts in accordance with the Jordanian Co-operative Societies Law of 1956²⁶. That law defines a co-operative society as one consisting of at least seven persons, which is designed for the purpose of conducting their economic life on a co-operative basis and enhancing their social conditions. It may be registered if it complies with the Law and the regulations made thereunder.

There are 532 co-operative societies in the Region, of which 368 existed before 1967 and 164 have been established since then. They are concerned with such matters as electricity, water, housing, agriculture, transport, savings and loans, and schools. Recently, with the encouragement of Jordan, there has been a considerable increase in house-building in the Region, and the number of housing co-operatives has increased from six before 1967 to 16 in 1980.

When the Israeli administration was established in 1967, the local staff of the Jordanian Government's Co-operative Division refused to return to work. For two years, therefore, the co-operatives were virtually inactive and no more than 12 persons were required to staff the Division, which operated within the framework of the office of the Staff Officer for Labour Affairs. Among the services provided by the Division are the regular publication of guidance pamphlets and the organisation of refresher and other courses in various subjects relating to the establishment and working of co-operative societies.

BANKS

One of the important functions of the military administration is the efficient management of the Region's currency. The banks in the Region, it should be

remembered, were branches of Jordanian banks with their headquarters in Amman. When the IDF entered the Region, it was found that many bank employees at all levels had fled, and that the deposits of local residents were either held permanently in Amman or had been transferred there during the hostilities. As a result, the local branches were almost without funds and could not continue to operate. In order to protect local depositors, the military government ordered the closure of the banks²⁷.

Although the local branches in the Region were controlled from Jordan — still in a state of belligerency with Israel — and were, legally, abandoned property, since the proprietors and management had fled the Region, the military government was prepared to allow the banks to resume operations, provided that the deposits were returned to the Region and that the banks proved that they had sufficient funds of their own to carry on business. In an effort to restore economic life, the military government entered into negotiations with a number of branches but the negotiations failed and the branches refused to reopen.

That refusal was apparently motivated, in part at least, by political considerations. Two local branches of foreign banks did reach an agreement with the military government to renew their operations for the purpose of collecting and paying their debts. When this purpose was achieved, they ceased operating.

In order not to cause undue hardship to the residents of the Region as a result of the absence of banking facilities, Israeli banks were permitted to carry on business in the Region.

Chapter Eight

SECURITY MEASURES

In both the Hague Regulations and the Fourth Geneva Convention an attempt is made to strike a balance between security considerations of the military government and humanitarian considerations with respect to the local population. Indeed, one of the Regional Commander's major preoccupations is to achieve a proper compromise between the two. Thus where, for example, there is a deterioration in public order or a threat to security, the Regional Commander must intervene if he is to fulfill his duty under article 43 of the Hague Regulations. As will be shown below, his intervention is subject to various judicial, quasi-judicial and administrative safeguards, which ensure that, in each specific case, a balance between security and humanitarian considerations is achieved, without having necessarily to sacrifice one for the sake of the other.

THE DEFENCE (EMERGENCY) REGULATIONS, 1945

Most of the security measures adopted by the military government in the Region are based upon the local Jordanian legislation of which the Defence (Emergency) Regulations¹ (hereinafter in this Chapter "the Regulations") form part. The Regulations were enacted by the British mandatory government in 1945 and applied to the whole area under the mandate. They are still in force in Israel today.

On 24th May, 1948, the Military Commander of Jordan's Arab Legion issued a proclamation² to the effect that all laws and regulations which had been in force in the Region upon the termination of the British Mandate would continue to apply as long as they were not inconsistent with existing Jordanian legislation.

When the Region was annexed by Jordan, all enactments then in force were declared to remain in full force and effect³.

In 1952, a new Jordanian constitution⁴ was promulgated, under section 128 of which:

All laws, regulations, and other enactments in force in the Hashemite Kingdom of Jordan at the time of entry into force of this constitution, shall remain in force until abolished or amended by a law issued in accordance with this constitution.

The question as to whether the Regulations are still in force in the Region was recently examined by the High Court of Justice when dealing with petitions concerning deportation orders.

In *Abu Awad v. the Regional Commander of Judaea and Samaria*⁵ the Court concluded that the Regulations had remained an integral part of the local Jordanian law by virtue of the 1948 proclamation and the new constitution of 1952. Further, in accordance with the accepted rules of interpretation, section 128 of the constitution takes precedence over section 9, which lays down that no Jordanian citizen may be deported from the Hashemite Kingdom of Jordan.

In reaching these conclusions, the Court referred to several judgments of the Jordanian High Court of Justice. These included the judgment in *Al Hadidi v. Inspector-General of the Press*⁶, in which the court held in 1954 that the Regulations must be deemed to remain in force until expressly repealed; and that in the earlier case of *Al Faruki*⁷, in which the Jordanian court upheld a preventive detention order issued under the Regulations and reaffirmed those Regulations by virtue of section 128 of the new constitution⁸.

The High Court of Justice reached similar conclusions in the subsequent case of *Kawasma and Milchem v. the Minister of Defence*⁹.

DEPORTATION

Regulation 112 of the Regulations empowers the Regional Commander to deport persons from the Region for reasons of security. According to this regulation, a person against whom a deportation order has been issued is required to remain outside the Region for the duration of the order.

The powers of the Regional Commander are limited by regulation 108 of the Regulations to those cases in which the presence in the Region of the person against whom the order has been issued might endanger security.

Any person against whom a deportation order has been issued may appeal to a special Board which is authorised by regulation 112(8) of the Regulations to recommend to the Regional Commander either that he implement the order or that he set it aside. The appellant may petition the High Court of Justice against the recommendation of the Appeal Board or against the subsequent decision of the Regional Commander¹⁰.

The Regional Commander exercises his powers to issue deportation orders only in the most extreme cases, where no other measures can effectively restore and maintain security in the Region. In fact, in the last five years, only six persons were deported from the Region. One of them has already returned pursuant to the Regional Commander's permission.

In both the *Abu Awad* case and the case of *Kawasma and Milchem* referred to above, the question arose as to whether article 49 of the Fourth Geneva Conven-

tion sanctions the issue of deportation orders under existing legislation in the Region.

In the former case, the Israeli High Court held¹¹ that:

The directive in Regulation 108(1), teaches us that the powers granted to the authority due to the emergency situation, are given to it for one purpose alone, that is, for ensuring the public order and security. Dr. Pictet also regards this purpose as a legitimate one. It has nothing to do with the deportations for forced labour, torture and extermination that occurred in the Second World War. Furthermore, the objective of the Respondent was to remove the applicant from the country and not to bring him to Israel, to prevent the danger he constitutes to the safety of the public, and not to make use of his manpower by exploiting him for the benefit of Israel.

In this context attention should be drawn to an observation made by then Israeli Attorney-General Meir Shamgar, now a justice of the Israeli Supreme Court¹²:

Immediately upon their arrival in the East Bank, some of the deportees have publicly boasted of their subversive activities in the West Bank. Indeed, the Government of Jordan, in recognition of their services, has promoted some of the deportees to its highest positions, including the Cabinet¹³.

DEMOLITION AND SEALING-UP OF HOUSES

The Legal Background

Article 53 of the Fourth Geneva Convention explicitly envisages the possibility of houses being demolished for security reasons, stating:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other authorities, or to public, social or co-operative organisations is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Pictet sheds light on the last clause of this article¹⁴:

The prohibition of destruction of property situated in occupied territory is subject to an important reservation: it does not apply in cases "where such destruction is rendered absolutely necessary by military operations." The occupying forces may therefore undertake the total or partial destruction of certain private or public property in the occupied territory when imperative military requirements so demand.

Furthermore, it will be for the Occupying Power to judge the importance of such military requirements.

"Imperative military requirements" have been further defined as follows¹⁵:

Military requirements can be of two kinds: on the one hand, there is the necessity to destroy the physical base for military action when persons are discovered com-

mitting hostile military acts, and, in this respect, a house from which a grenade is thrown is a military base, not different from a bunker in other parts of the world. On the other hand, there is the necessity to create effective military reaction. The measure under discussion is of utmost deterrent importance, especially in a country where capital punishment is not used against terrorists who kill women and children¹⁶.

Under the Regulations, houses may be demolished, in certain circumstances, for reasons of security. Regulation 119(1) of the Regulations provides that:

A Military Commander may by order direct the forfeiture to the Government ... of any house, structure or land from which he has reason to believe that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, detonated, exploded or otherwise discharged, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed or attempted to commit or abetted the commission or have been accessories after the fact to the commission of any offence against these Regulations involving violence or intimidation or any Military Court offence; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything in or on the house, the structure or the land.

Israeli Practice in the Region

Although this provision gives wide powers to the Regional Commander, it has been used with extreme caution and has been invoked only where houses were used to prepare explosives and store ammunition or as bases for the use of arms and the throwing of grenades, and generally only where terrorist acts have resulted in the murder of innocent people.

Furthermore, every effort is made to avoid demolition, especially if this might damage neighbouring houses or might affect residents of the house having no connection with terrorist activity. Instead a section of a house is sealed-up which also makes it possible to revoke the measure at some future date.

Contrary to allegations made in this respect, the number of houses demolished or sealed-up is small and has decreased still further in recent years in the light of this policy. Thus, over the last four years, only 28 houses have been demolished and 17 sealed-up.

In order to illustrate the basis of the above figures, two examples will be given, both from the year 1979. In one, a house was demolished and, in the other, a part of a house was sealed-up.

Ataf Ahmed Ataf Yusuf of Janiya village near Ramallah became a member of the terrorist organisation Al-Fatah in 1977, and then underwent military training in Syria. She was sent back to the Region to carry out terrorist activities. Over a period of eight months from September 1978 to May 1979, she placed no less than three bombs and actively participated in the placing of at least three more.

All were planted in public places in Israel and in the Region, and those that exploded caused the death of four civilians and injured a further 35. In May, 1979, Yusuf was arrested in the act of planting an explosive device at Jerusalem's central bus station. Explosive materials were found in her house, which was subsequently demolished. Yusuf was sentenced to 10 years' imprisonment.

Juma'ah Ibrahim Uthman of Ibwan village near Ramallah was found guilty by the Ramallah Military Court on three charges: membership in the terrorist organization Al-Fatah, forbidden under Regulation 85(1)(a) of the Regulations; sheltering a terrorist who had planted a bomb in a public place in Jerusalem knowing he had committed an offence under the Security Provisions Order¹⁷; and using his room as a hiding place for a sack of explosives.

He was sentenced to five years' imprisonment.

In *Sahwil and Uthman v. the Regional Commander*¹⁸, the High Court dismissed Uthman's mother's petition for an injunction against an order for sealing-up her son's room in her house.

In so holding, the court explained¹⁹:

We have no need to rule on the question whether the respondent is obliged to act in accordance with the Fourth Geneva Convention, and even if this had been the case, there is no contradiction between that Convention... and between the use of the power by the Respondent, given him by the statutory provisions that were in force in Judaea and Samaria under Jordanian rule, and which have remained in force in Judaea and Samaria to this day.

ADMINISTRATIVE DETENTION

The Legal Background

Administrative detention has been defined²⁰ as:

... the internment of individuals by administrative proceedings — that is, not on the basis of conviction and sentence by a criminal court following regular criminal proceedings, nor on the basis of a judicial order of arrest issued with a view to initiate such proceedings. Administrative detention is the confinement of individuals by the administrative authority according to an administrative process.

Underlying the above definition is the need to restrict a person's liberty for reasons of public order and security of such an imperative nature that resort to normal judicial procedures would not be effective.

The rules of international law regarding administrative detention or internment are straightforward. Article 78 of the Fourth Geneva Convention states *inter alia*:

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Pictet in his commentary on the above article distinguished between internment for reasons of security and arrest for a particular offence. He states²¹:

Unlike the Articles which come before it, Article 78 relates to people who have not been guilty of any infringement of the penal provisions enacted by the Occupying Power, but that Power may, for reasons of its own, consider them dangerous to its security and is consequently entitled to restrict their freedom of action.

The local Jordanian law applicable in the Region set out in regulation 111 of the Regulations, provides for similar measures.

Israeli Practice in the Region

The Regional Commander introduced slight changes in that regulation in order to bring its provisions into conformity with the substance of article 78. These changes are contained in the Order concerning Security Provisions, 1970, as recently amended²², which also provides further significant judicial safeguards designed to control the exercise of the power to intern at its various stages. In order to put the whole question of administrative detention in its proper perspective, it should be stressed that there were, at the time of going to press, only four administrative detainees in the Region.

Section 87(a) of the Order concerning Security Provisions, 1970, states:

Where the Regional Commander has reasonable ground for believing that the detention of a person is necessary for reasons of regional or public security, he may, by an order signed by himself, order the detention of that person, for the duration of the period stated therein, which shall not exceed a period of six months.

The District Commanders may, in addition, for the same reasons, issue detention orders, which, however, are restricted to a period of 96 hours²³, and may only be extended by the Regional Commander. The Regional Commander may not delegate these powers.

Every detention order must be reviewed by a military judge not later than 96 hours after it is issued. The judge may confirm, cancel or shorten the period of the detention²⁴, and if for any reason the Order is not brought before a judge within the allocated time, the detainee will be discharged forthwith. The judge is empowered by Section 87B(b) to cancel the order if he is satisfied that it was not issued for reasons of regional or public security, or in good faith or on the basis of relevant considerations. If the order is confirmed in its original form or as amended by the judge, it must be reviewed once again after three months or within a shorter period if so prescribed by the judge. If the order is not submitted for such review, the detainee will be released, even though the period of detention in the original order, signed by the Regional Commander, has not expired.

When orders are brought before a military judge for confirmation and subsequent review, the usual rules of evidence obtaining in the courts are applied, unless the judge is of the opinion that departure from such rules would be more effective in establishing the truth or ensuring a fair trial. Whenever a judge decides to depart from the rules of evidence, his reasons for doing so must be stated in the records of the trial.

Section 87D(c) provides that the judge may examine confidential evidence in the absence of the detainee or his advocate, if its disclosure could be detrimental to regional or public security. It should be emphasised that detention orders are in virtually all cases issued on the basis of intelligence information submitted to the Regional Commander. Such information, by its very nature, is either inadmissible in court under the strict rules of evidence pertaining to hearsay, or consists of classified material, the disclosure of which could lead to exposure of sources of intelligence and endanger the lives of such sources or Israeli operatives.

The procedure outlined in Section 87 D(c) constitutes a necessarily delicate compromise between judicial and security requirements. On balance, it ensures that the detainee has ample opportunity to have the evidence against him judicially evaluated.

A detainee has a right of appeal against decisions of the military judges to the President of the military court. This right of appeal replaces the earlier procedure according to which an advisory committee presided over by a judge reviewed detainees' cases every six months, and recommended to the Regional Commander either that they be released or that they be left in detention for the duration of the orders issued against them.

Chapter Nine

BASIC FREEDOMS

The Legal Background

The basic democratic rights, such as freedom of speech and expression, were formulated in the Universal Declaration of Human Rights of 1948 and several other international human rights conventions.

These fundamental freedoms are enjoyed by citizens of each subscribing state, but are concomitant on the existence of peace as expressly recognized by Article (4)1 of the 1966 International Covenant on Civil and Political Rights:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation...

This condition is more explicit in the European Convention on Human Rights of 1950, Article 15(1) of which provides:

In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Von Glahn summarizes the provisions of international law regarding belligerent occupation as follows¹:

The occupant will naturally alter, repeal, or suspend all laws of a political nature as well as political privileges and all laws which affect the welfare and safety of his command... Second in importance, in most cases, are all laws relating to travel in the affected zone, the right of assembly ... suffrage laws, and the local legislation affecting free speech.

Israeli Practice in the Region

The military government has tried throughout the last fourteen years to ensure normal day-to-day life for the residents of the Region, who have enjoyed a degree of freedom hitherto unknown under any military administration.

Even newspapers hostile to the military government are permitted, as are political assemblies protesting against its actions; freedom of movement between Israel and the Region is virtually unlimited; free municipal elections are encouraged; strikes are tolerated.

We deal here with only a few of the rights that are protected by the military government.

FREEDOM OF ASSEMBLY

The Legal Background

The American Manual states that one of the types of laws that an occupant may alter, repeal or suspend is²:

legislation dealing with political process, such as laws regarding the rights ... of assembly.

According to Von Glahn, the power of an occupant to control political assemblies and meetings is well-founded³:

Public meetings of all kinds are subject to the control of the occupant. Normally all political meetings as well as all other political activities, regardless of purpose, will be forbidden, although occasional exceptions have been recorded. The common system eventually instituted in occupied areas requires permits to be issued by local occupation authorities for all meetings and parades, with full information concerning every conceivable aspect of gathering, route, and so forth being required on the application forms.

The local Jordanian Law itself gave the police in the Region power to disperse assemblies or demonstrations by the use of arms. Section 4 of the Public Security Law, No. 38 of 1965 states⁴:

Dispersal of an assembly or demonstration of at least seven participants may be carried out, if public security is endangered, by the use of arms where a police officer... so orders, and must be obeyed.

Israeli Practice in the Region

The Regional Commander, in Order No. 101 concerning the Prohibition of Incitement and Hostile Propaganda of 1967⁵, did not prohibit assemblies or demonstrations but made them conditional on obtaining an appropriate permit from the military government. This is the accepted practice in many states which

fully respect civil and political rights. If from the application it is clear that the assembly or demonstration will cause incitement or hostile propaganda, the permit is withheld. Following are some examples of political demonstrations that were permitted during 1979-80⁶:

- 14th November, 1979 — demonstration at the Frères Bethlehem University calling for the release of Bassam Shak'a, Mayor of Nablus.
- 19th December, 1979 — political assembly of mayors at Bir Zeit University.
- 21st December, 1979 — mass demonstration of 3,000 people against the requisition of land at Beit Amar.
- 24th December, 1979 — demonstration of solidarity with Bir Zeit University at Al Najah National University, in which Bassam Shak'a and 1,000 people participated.
- 17th February, 1980 — conference at Nablus in which mayors, heads of local councils, and representatives of the Chamber of Commerce, trade unions, professional associations, women's organizations, charitable organisations, educational institutions and centres, participated.
- 25th March, 1980 — demonstration at Bir Zeit University in protest against the decision of the Israeli Cabinet regarding settlements in Hebron and the closing of Abu Dis College.

FREEDOM OF SPEECH AND EXPRESSION

The Legal Background

As explained above, political freedom is of necessity restricted⁷. Such restriction is upheld by Von Glahn, with particular reference to the displaying of flags and emblems⁸:

In line with the customary rights of an occupant to prohibit anything tending to promote or stimulate a spirit of resistance or of hostility on the part of the inhabitants against the new authorities, the playing or singing of all songs disrespectful or hostile to the invader is usually forbidden and the singing of the national anthem of the occupied territory and display of its national flag are commonly proscribed.

Regarding the rights of the military government to restrict political activities, the Israeli High Court of Justice, in *Arnon v. Attorney General*, held⁹:

... no doubt has been cast on the capacity of the military administering authority to restrict or even totally prohibit political activities in administered territory; and, in any event, it is empowered to resort to criminal law sanctions against those who infringe the prohibition.

Israeli Practice in the Region

Despite these powers entrusted to him under international law, none of the prohibitions imposed by the Regional Commander's Order No. 101¹⁰ is absolute in character but merely requires a permit to be obtained for such activities as conducting marches or convening meetings, displaying flags or emblems, and printing and publishing political matter. The only absolute prohibition is of hostile incitement and propaganda which may endanger public order.

FREEDOM OF THE PRESS

The Legal Background

The nature of military government involves a limited form of censorship with respect to newspapers and books, in order to prevent incitement, disorder and hostile activity.

As to newspapers, the British Manual states¹¹:

Existing press laws need not be respected. The publication of newspapers may be prohibited, or may be permitted subject to restrictions. The circulation of newspapers issued in unoccupied parts of the country and in neutral countries may be stopped.

Von Glahn, referring to books, writes¹²:

Importation of any book, newspaper, or pamphlet containing such material is commonly forbidden, and all material published within the occupied area or imported is subject to prior inspection and approval by the authorities of the occupant.

The Israeli High Court of Justice, in dealing with the question of the Regional Commander's authority to restrict the freedom of expression with respect to publication of newspapers in the case of *Al-Talia Weekly Magazine v. Minister of Defence*, held that¹³:

The duty to ensure safety and public order... vests in the military government, *inter alia*, the authority to prohibit political activities and to limit or even prohibit political publications, and the opinion of jurists of international law on that point is clear.

Israeli Practice in the Region

In practice, censorship is applied only with regard to passages which clearly incite to hatred and disorder, thereby constituting a threat to security and day-to-day life.

Despite the very liberal censorship system, newspapers licensed in the Region¹⁴ often fail to comply with the requirements of the Defence (Emergency) Regulations of 1945¹⁵ (which apply equally to all newspapers and journals in Israel).

Thus, *Al Fajr* and *Al Sha'ab*, have on numerous occasions refrained from submitting their articles to censorship prior to publication, as required by the local Jordanian law. In May, 1980 the publication of these two newspapers was

suspended for two weeks, after they had published headlines extolling and encouraging terrorism and strikes and calling for "armed struggle" and continued acts of murder¹⁶.

It has been alleged that "thousands of books have been banned under the censorship rules contained in the Defence (Emergency) Regulations"¹⁷.

The supervision of books is designed to control the import into the Region of contentious material published abroad. In fact, during the fourteen years of Israeli administration, the import of only 648 such books — all of which were published in countries which are still in a state of war with Israel — has been prohibited. An example is an adaptation for children of Shakespeare's play, "The Merchant of Venice," which was clearly aimed at inciting children to anti-Semitism. This was distorted by various critics into an allegation that the play itself had been banned. In fact, the authentic version of the play has always been readily available in the bookshops of the Region.

THE RIGHT TO STRIKE

In conformity with the power to control or bar certain political activities, the Regional Commander is entitled under international law to restrict the right to strike, where a particular strike takes on a political character. If that is the case, and the strike cannot be regarded as an "industrial" or "economic" stoppage by means of which employees are genuinely endeavouring to obtain higher wages or better working conditions, the Regional Commander will intervene¹⁸.

Furthermore, according to Jordanian law government employees are not allowed to declare a strike without the prior consent of the government¹⁹.

It is true that a situation could be envisaged in which a political strike contains within it economic elements, but that would not deprive the strike of its essential political character.

In prohibiting any strike directed purely against the military government and threatening to endanger public order, the Regional Commander is carrying out his obligation to safeguard "la vie publique" as stipulated in article 43 of the Hague Regulations.

ACADEMIC FREEDOM

The Legal Background

The requirements of international law as regards academic freedom are comparatively strict, but Israel adopts a liberal attitude and does not in fact exercise all its legitimate powers.

The British Manual describes the situation regarding the continued functioning of schools, thus²⁰:

... schools and educational establishments must be permitted to continue their ordinary activities, provided that the teachers refrain, if so required by the Occupant,

from referring to politics and that they submit to inspection and control by the authorities appointed. If these conditions are not complied with, the establishments may be closed.

The U.S. Judge Advocate General Service provides²¹:

... schools must be permitted to continue their ordinary activity provided that the teachers refrain from references to politics and submit to inspection and control by the authorities appointed. Schools may be closed temporarily if military necessity requires, especially during the operational phase of the war. Further, schools may be closed, if the teachers engage in politics or refuse to submit to inspection.²²

By virtue of the 1967 Order concerning Powers in Educational Affairs,²³ the Military Commander assumed authority on education in the Region and, largely owing to the encouragement and assistance of the Israeli authorities, the scope of Arab education and culture has widened considerably.

Israeli Practice in the Region: The School System

The Regional school system is staffed by several thousand Arab teachers, inspectors and administrative personnel. Whereas in 1967-68 the system had 14 Israeli employees as against 913 local employees, in 1979-80 the numbers were 14 Israeli and 8,364 local employees.

The following table demonstrates how the system has grown during the years of Israeli administration. Whereas the population in the Region increased by about 20% during this period, the number of classes went up by 72%, the number of girls receiving schooling more than doubled, and the number of boy pupils went up by about two-thirds:

	1967-68	1979-80
Pupils	142,175	259,537
	(55,162 girls)	(112,228 girls)
Teachers	5,316	8,927
Classes	4,400	7,598

The public educational system in the Region follows in principle the Jordanian curriculum, thereby enabling graduates to continue their studies at universities in Israel, in the Region, in Jordan or in any other country recognising the Jordanian qualification. Therefore, the textbooks used in the schools are largely Jordanian. After the war of 1967, a joint committee of representatives of the local educationists and of the Israeli Ministry of Education was set up to consider all the books used and to agree on the changes to be made in books which included manifestly anti-Israeli or anti-Semitic matter. Very few textbooks were banned and a small number were reprinted with appropriate amendments²⁴.

Israeli Practice in the Region: Universities

In June, 1967 there was not a single higher education institution in the Region. In fact, the only university in Jordan was the University of Amman, established in 1964 by a special law, the Jordanian University Law²⁵, which had placed it under the ownership and supervision of the Government. Such a practice is common in Arab states, where university institutions are not permitted to be privately owned.

In response to requests made to the military government for permission to establish institutions of higher education in the Region, the authorities agreed over the years to the setting up of four private institutions:

- Bir Zeit University
- Al Najah National University
- The Frères Bethlehem University
- The Centre for Islamic Studies (al-Shahryah College)

These institutions functioned independently of any organized legal or administrative framework — in fact, legally speaking, in a vacuum. The reason was that the Jordanian University Law applied only to the University of Amman, while the Education and Culture Law²⁶ applicable to educational institutions in the Region applied only to pre-academic institutions, and not to universities²⁷, and thus did not enable them to award academic degrees.

With the increase in the number of institutions of higher education in the Region and their natural desire for growth and development, and in view of requests for the establishment of further institutions, it eventually became obvious that a legal framework was essential.

A special commission composed of lawyers and experts in the field of education was accordingly set up, and it considered three possible courses of action: applying the provisions of the said Jordanian University Law; adapting the Jordanian Education and Culture Law to cover institutions of higher education; or drafting new legislation based on Israeli law.

In pursuance of the practice established by the Israeli authorities of retaining Jordanian law as far as possible, the second alternative was adopted. The rationale for this choice was the fact that the Jordanian University Law provides for rigorous supervisory measures by the Jordanian Government, whereas the Education and Culture Law includes a chapter on private educational institutions, over which the supervision is less rigorous. Since the higher education institutions established in the Region since 1967 are all privately owned, it was considered that amendment of the Education and Culture Law would be the most suitable course.

Accordingly, in 1980, an Order was issued by the Regional Commander²⁸ extending the application of the Education and Culture Law to institutes of higher

education in the Region — a classic example of the obligation of an occupant to amend the local law to meet a changing situation²⁹.

During the deliberations on the establishment of this legal framework, the question of security supervision was a minor factor compared with the educational considerations taken into account. Thus, the provisions already in force in the Region enabling the military government to take measures required to ensure and maintain public order and safety in accordance with the rules of international law, apply in any event to educational institutions.

Order No. 854 extends the meaning of the term “institution” from the previous pre-academic level to include any higher academic level³⁰.

The Jordanian Law in its original form enables the issuing of regulations for the appointment or transfer of teachers³¹. The amendment makes it possible to include in these regulations provisions regarding teachers who have been convicted of security offences or held in administrative detention.

As required by the rules of international law, power to issue licences for the establishment of private institutions of learning³² is placed in the hands of the “competent authority” appointed by the Regional Commander. In fact, the “competent authority” fulfilling this function is the representative in the Region of the Israeli Ministry of Education and Culture — a civilian, not a military officer.

The article of the Order dealing with the licensing of private institutions also provides, in the light of the obligation to ensure public order, for prior consultation with the Regional Commander and the Regional Police Commander³³.

To enable the four universities already established in the Region to continue functioning within the newly established legal framework, the Order provided that they were to be regarded as having received a licence for one full academic year, pending the issue of a permanent licence.

In addition to the provisions of the Order, separate general rules were issued enabling non-residents wishing to teach or study in the Region to do so, subject to a special permit. This requirement was based on the need to prevent the infiltration into the universities and colleges of “students” and “teachers” paid and instructed by hostile terrorist organizations with the purpose of disrupting the educational system, inciting to violence and fomenting disorder. The permit is granted as a matter of course to all non-resident students or teachers, unless specific intelligence information renders it necessary to prevent their entry. In fact, half of the staff of Bir Zeit University is non-resident, and in the academic year 1979-80, 81 of the total of 311 lecturers in the Region were non-resident. The number of permits refused, for security reasons, was minimal.

It should be pointed out that the Jordanian legislation itself forbids political activity by teachers, thus³⁴:

Teachers are prohibited from becoming members of political parties, or from any party political activity either within or without the educational institutions.

In the academic year 1980-81, Bir Zeit University was attended by 1,387 students, Al Najah 1,982, Bethlehem 811 and the Centre for Islamic Studies 473, making a total of 4,653, as against a total of 3,616 students for the year 1979-80. Similarly, the number of teachers increased from 248 to 311.

As a result of the expansion of these universities, not only do fewer residents of the Region seek to leave for neighbouring Arab countries for their higher education, but 1,152 students from those countries are pursuing their studies in the Region. Nor should the two-way student traffic between the Region and Israel be forgotten. In the current academic year, 2,061 students from Israel are registered at the universities in the Region, and there are students from the Region enrolled in universities in Israel.

In addition to the schools and the universities, there now exist in the Region three other professional higher education institutions, established since 1967:

Al Arubah Agricultural School in Hebron, providing a two-year course for instructors and having in 1979-80 77 students and 13 teachers;

Kadouri Agricultural School in Tulkarem, which runs a similar course and had in 1979-80 295 students and 23 teachers;

the Hebron Polytechnic, with two-year courses in various branches of engineering, and having in 1979-80 240 students and nine teachers.

People wishing to undertake academic research in the Region are also able to enter, and are free to conduct their research without limitation, unless this is considered undesirable for security reasons.

All the universities are free to import such academic books, journals, periodicals and equipment as they consider appropriate, subject only to security requirements. As to customs and other duties on imported goods, the authorities apply the same principles to the universities in the Region as they do to those in Israel.

Academic freedom does not embrace the freedom to disturb public order by extreme violence, incitement and threats. Indeed, so long as student activity does not imperil public order, the military government avoids interfering with educational or cultural activities in the educational establishments, although international law gives it power to do so. However, when the Regional Commander is completely satisfied that security or public order is likely to be endangered, he will act to prevent such disruption. A popular form of demonstration by students is to burn tyres in a main road so that traffic cannot pass. When the security forces arrive to remove the tyres, they are met by a barrage of rocks, stones and Molotov cocktails. It is against this kind of breach of the peace and order that the Regional Commander is obliged to take action without any relation to the academic context.

Similarly, under Jordanian law, student activities of a political or social charac-

ter were subject to government restrictions. Thus, in March, 1956 the Jordanian Minister of Education empowered head teachers to impose disciplinary measures upon students behaving in a manner prejudicial to morality and socially harmful, including political and party activities and participation in disturbances and demonstrations. The most severe punishment meted out to students taking part in political activity was exclusion from school on a temporary or permanent basis or removal to a school in another area.

FREEDOM OF MOVEMENT

The Legal Background

International law accords absolute power to an occupant to restrict freedom of movement. The British Manual is explicit in this context³⁵:

The Occupant may forbid individuals to change their residence, may restrict freedom of internal movement and forbid visits to certain districts...

The American Manual follows the same lines, stating³⁶:

The occupant may withdraw from individuals the right to change their residence, restrict freedom of internal movement, forbid visits to certain districts...

Von Glahn observes in relation to this³⁷:

The occupant possesses a right to regulate the circulation of persons in the occupied enemy territory and ordinarily imposes a strict curfew at night ... Quite often additional regulations prohibit travel beyond a certain distance from a person's domicile, except on passes granted by the occupation authorities.

The Defence (Emergency) Regulations of 1945, which form part of the local Jordanian law, authorise the Military Commander to prohibit, restrict or regulate the use of roads and to declare areas to be closed, thereby forbidding entrance to or exit from them³⁸.

It is therefore clear that the Regional Commander has unimpeachable power to restrict and control movement in the Region.

Israel Practice in the Region

In practice, however, there are no restrictions on the movement of the local population, visitors and tourists, apart from a few imposed for security reasons. Thus, visitors and tourists may also enter Israel without any permit, and residents of the Region are free to travel abroad across the Jordan bridges or through all Israeli ports and airports.

Freedom to Enter Israel and the Gaza District

Soon after the Six Day War, movement into and out of the Region was enabled by a general permit³⁹ whereby, under section 2:

... a resident of the Region is permitted to leave the Region for Israel... and also to enter the Gaza District after leaving Israel under this permit without requiring a personal exit permit.

In practice, local residents make frequent and regular use of this general permit for purposes of employment or business and for visiting relatives and other social reasons. Travel from the Region to Israel is completely unrestricted, whether by public or by private transport.

Although the general permit does not permit residents of the Region to remain in Israel overnight, the Israeli authorities have been very accommodating in issuing special permits according to personal needs. In 1979, for example, some 11,300 such permits were granted. It must be borne in mind that the great majority of those working in Israel live within no more than 30 kilometres of their place of employment, and the question of travelling long distances does not therefore generally arise. Indeed, large numbers travel by transport organized by the employers.

The "Open Bridges" Policy

The bridges across the Jordan river were opened in 1967 so that people and merchandise could pass from the Region to Jordan and thence to other countries.

A local resident wishing to leave for Jordan is entitled to receive an exit card at any post office in the Region, to fill in the required particulars, and to leave at any crossing point. No prior approval is necessary; the stamping of the card on leaving the Region constitutes the approval. This privilege is unique, since international law does not confer on inhabitants of occupied territory a right to leave, particularly to go to a state at war with the occupant⁴⁰. The American Manual, for example, gives an occupant the power to forbid the emigration of the local population⁴¹.

The following figures concerning the movement of residents of the Region, Israeli Arabs, visitors, and tourists, across the bridges to and from Jordan illustrate the situation very clearly. In 1968, the total number of people entering and leaving the Region was 248,605. By 1979, it had increased to 1,231,760.

In exceptional cases, the Regional Commander may restrict certain people from leaving, but this is done solely for manifest security reasons. Incidentally, contrary to Israeli policy, Jordan refuses to allow Israelis other than Arabs to cross the bridges.

The Israeli Government introduced a very liberal policy regarding pilgrims and other tourists crossing the River Jordan. A tourist coming to Israel and wishing to visit Jordan may do so by crossing the river, but the Jordanian authorities will not allow him to return to Israel, and he will therefore have to return home by a different route. On the other hand, a tourist crossing to the Region or Israel from

Jordan via the bridges may return to Jordan by the same route without let or hindrance on Israel's part.

This imbalanced state of affairs, which has existed since the bridges were opened for tourists, is clearly economically discriminatory against Israel. Nevertheless, the Israeli Government has so far not chosen to alter its open bridges policy.

Family Reunification

For humanitarian reasons, the Regional Commander approves the reunification of families, members of which chose to leave the Region as a result of the Six Day War or who found themselves unable to return to the Region because of the hostilities. The estimated number of such persons is about 150,000-200,000. The number of persons who have already returned to the Region in accordance with this policy is about 50,000⁴².

The Framework for Peace in the Middle East, which is part of the Camp David Accords, provides:

During the transitional period, representatives of Egypt, Israel, Jordan and the self-governing authority will constitute a continuing committee to decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza in 1967...

The implementation of that provision will, hopefully, finally settle the problem.

Identity Cards

With respect to the duty to carry identity cards and produce them on request, the British Manual provides that⁴³:

The Occupant.... may insist on all persons providing themselves with an identification pass.

The American Manual⁴⁴ expresses the same basic theory⁴⁵.

Many countries require their residents to carry identity cards. In Israel, every adult, Arab and Jew alike, is obliged to carry an identity card at all times. Taking into account the religious prohibition against the photographing of Muslim women, the military government in the Region only requires adult males to hold identity cards⁴⁶.

Other Measures

The requirements of security and public order involve some specific restrictions in freedom of movement in the Region:

The right to control traffic in occupied territories is a logical requirement of a

military administration. This right was implemented by means of road blocks, the primary purpose of which is to serve as checkpoints for apprehending suspects and preventing the passage of arms and forbidden propaganda material. Persons and vehicles in the Region are thus searched, but this is not done haphazardly or with the intention of holding up traffic unnecessarily. The checkpoints also serve as a means of preventing illegal demonstrations and political gatherings which threaten to endanger public order. Roadblocks are also set up in Israel to assist in the prevention of terrorism and crime.

Soldiers have express instructions regarding procedures to be followed at checkpoints and the military government does everything possible to enforce them. In the exceptional case where a breach does occur, the soldier concerned is tried and, if found guilty, punished.

House arrests and orders confining people to their place of residence are administrative measures authorised under the local Jordanian law⁴⁷ and are fully consistent with article 78 of the Geneva Convention, which provides:

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Pictet observes in his commentary on this article⁴⁸:

Unlike the Articles which come before it, Article 78 relates to people who have not been guilty of any infringement of penal provisions enacted by the Occupying Power, but that Power may, for reasons of its own, consider them dangerous to its security and is consequently entitled to restrict their freedom of action.

The application of restriction orders is limited by regulation 108 of the Defence (Emergency) Regulations, 1945 and section 84A of the Order concerning Security Provisions, 1970⁴⁹, and the Regional Commander may not invoke them unless he is of the opinion that they are essential for reasons of security. In practice, restriction orders are extremely rare and, where they are issued, the person affected has a right to bring his case before an Appeals Committee presided over by a senior officer, who must be a legally qualified judge of long experience. The Committee, the composition of which complies with the requirements of article 78 of the Geneva Convention, must review every case once in six months, whether the person concerned has himself appealed or not.

Curfews are a method adopted by a government for the purpose of exercising control over the population⁵⁰ in circumstances endangering public order and security.

Regulation 124 of the Emergency (Defence) Regulations, 1945, empowers the

authorities to impose a curfew in specific circumstances. This has proved an effective method in the investigation of terrorist attacks, affording a means for apprehending suspects as quickly as possible with the minimum disturbance of the population. A curfew is also a speedy method of restoring order when breaches of the peace occur during demonstrations. Naturally, the use of this measure is restricted appropriately in accordance with strict functional provisions.

As has already been established, international law recognises the absolute power of an occupant to restrict and control the movement of residents in occupied territories⁵¹.

An Order⁵² issued by the Regional Commander prescribes that any area designated by him may be declared a closed area, and that anyone wishing to enter or leave it must carry an appropriate permit. To obtain a permit, application is made to the Regional Commander, who will examine the matter on its merits. The Order allows for the issue of general permits for particular groups of persons and for arrangements to be made for carrying on agricultural work in the area. A closing order cannot of itself expropriate land.

Closed areas are generally not densely populated, and their closure does not cause hardship to residents. They are mainly army training grounds, bunkers and strongpoints, or areas that might present a danger to the public, (e.g., a strip of land along the border with Jordan, which is mined and fenced with barbed wire as a deterrent to terrorists attempting to cross into the Region or escape from it).

Chapter Ten

ELECTION TO LOCAL AUTHORITIES

A military government is vested by international law with the authority to amend the local law in so far as it deals with a political process. Thus, the American Manual states that one of the types of local laws that an occupant may "alter, repeal or suspend" is¹:

(b) Legislation dealing with political process, such as laws regarding the rights of suffrage and assembly².

As regards local municipal elections, it is accepted practice that these be held only after a sufficient period of time has elapsed to enable the military government to create a working relationship with the local authorities³.

THE LOCAL JORDANIAN LAW

Under the local Jordanian law⁴, the term of office of a municipal council is four to five years⁵, and it is left to the discretion of the Minister of Interior to fix the number of council members, as long as there are no less than seven and no more than twelve⁶.

The right to vote is granted by Jordanian law only to males over the age of twenty-one who have resided within the municipal area for at least one year and have paid local taxes of more than a specified amount⁷. Women are denied the franchise and the right to be elected.

Under Jordanian law the Council of Ministers appoints the mayor, on the recommendation of the Minister of the Interior⁸. As the Minister has the power⁹ to appoint two additional members to a municipal council (with the same rights as elected members), and the Council of Ministers may dismiss the mayor if the "welfare of the municipality so requires"¹⁰, the Jordanian Government was able to appoint anyone as mayor even though he had neither been elected nor otherwise won local support.

THE POSITION SINCE JUNE, 1967

Under Jordanian law, municipal elections were due to be held within four months of June, 1967. However, in the interest of maintaining public order, the Regional Commander extended the terms of office of the municipal authorities pending further notice¹¹.

Elections to the municipal councils in the Region were first held in 1972¹² and again, with a wider electorate, in 1976.

Until the elections in 1972, the local Jordanian law was left in force, save only for the following two changes:

- (a) the powers previously held by the Jordanian administrative authorities were transferred to the Regional Commander¹³;
- (b) the powers of the local municipal authorities were extended¹⁴.

No appointments were made by the Regional Commander to the local councils. On the contrary, provision was made for the councils to continue in office even with less than the legal number of members prescribed¹⁵.

Following the elections of 1972 and 1976, the military government continued its policy of non-intervention, allowing the elected councils to appoint mayors from among their number and confirming such appointments. The military government also refrained from nominating additional council members.

However, certain amendments were made in the local Jordanian law in the interests of the welfare of the local population. Thus, in 1975, the Regional Commander extended the franchise to women¹⁶, who voted for the first time in the elections of 1976.

Further amendments were introduced with a view to assisting the development of the local municipalities in the Region and improving their services. Amongst other things, the municipalities were empowered to issue bye-laws, so as to enable them to run their own affairs more effectively.

Following the Camp David Accords, negotiations have been taking place in order to reach an agreement granting full autonomy to the residents of the Region and the Gaza District. As these negotiations are still in progress, it was decided to postpone the municipal elections due to be held in 1980, and to hold them after an autonomy agreement has been concluded. In the meantime, the existing councils have remained in office¹⁷.

Chapter Eleven

APPOINTMENT OF TRADE UNION OFFICIALS IN THE REGION

THE LOCAL JORDANIAN LAW

Allegations have been made that the military government, by changing the local Jordanian law, has severely restricted the field of possible candidates for the executive committee of a trade union¹.

The Jordanian Labour Law² governed, *inter alia*, the details of election to an executive committee of a trade union. The following provisions are relevant:

- (a) No persons other than workers or those employed full-time by a trade union can be elected to its executive committee (section 83).
- (b) No person convicted of a felony punishable by more than three years' imprisonment³ or of offences involving public disgrace can be a member of the executive committee of the union (section 83).
- (c) A clerk authorised by the Jordanian Minister of Labour and Social Affairs is empowered to issue orders taking measures against anyone acting contrary to the provisions of this Law (section 4 (1)).
- (d) The local courts are empowered to try any person acting contrary to this law (section 114).
- (e) They are further empowered to issue orders requiring the offender to cease from acting contrary to the Law, and in default may impose a fine (section 114).

The purpose of section 83 was to protect workers from being represented on an executive committee by people not fit to do so, particularly those who had been convicted of serious offences.

THE POSITION SINCE JUNE, 1967

About 70,000 residents of the Region work in Israel every day, and many others enter Israel often for a variety of business and social reasons.

In view of this, the Regional Commander, in February, 1980 amended⁴ section 83 to extend the prohibition to anyone convicted of similar offences by an Israeli court or by a military court in the Region (even though the punishment for a felony under Israeli Law is a term of imprisonment exceeding five years, and not three as under Jordanian law).

A further amendment to the same section enables the competent authority to strike out from the list of candidates the name of any person disqualified as mentioned above. This amendment has been misconstrued and it has been alleged that it gives the competent authority absolute powers to prevent anyone from standing as a candidate. Clearly this is not the case as it merely repeats the terms of the Jordanian Law referred to above and in particular the provisions set out in (c), (d) and (e) above.

Chapter Twelve

TAXATION IN THE REGION

TAXATION IN GENERAL

Article 48 of the Hague Regulations permits an occupant to raise taxes from the local population and to use them to meet the costs of the occupation. The text of the article is as follows:

If, in the territory occupied, the occupant collects the taxes, dues and tolls payable to the State, he shall do so, as far as is possible, in accordance with the legal basis and assessment in force at the time...

Some scholars go even further and suggest that the occupant may utilise taxes so raised for its own purposes. According to Feilchenfeld¹:

Occupants... may collect and have collected customs in occupied countries, sometimes even on their own account and for their own benefit

In any event, the occupying power may utilise the balance left after administration costs have been met, for its own purposes. Thus, the British Manual provides²:

...The Occupant is entitled to appropriate to the use of his army any balance remaining over after the disbursement of these expenses...³

Another legitimate way of raising monies from the local population, not included within the framework of taxes and customs duties, is the levying of contributions for the needs of the army under article 49 of the Hague Regulations, which provides that:

If in addition to taxes... the occupant levies other money contributions in the occupied territory, they shall only be applied to the needs of the army or of the territory in question⁴.

Not only has Israel declined to use surplus taxes raised in the Region for its own purposes or to levy money contributions or to use the taxes to support the maintenance of its army in the Region, but it has chosen a contrary policy: it

complements the budget of the Region with its own funds whenever necessary⁵.

All international law scholars agree that an occupant may increase the rates of taxation prescribed by local law. Stone says that article 48 of the Hague Regulations "does not, despite contrary opinion, forbid increases in taxation"⁶.

Von Glahn takes the same view but makes it subject to one condition⁷:

...the wording of the Hague Regulations does not prohibit the increase in rates when such increase may be justified truthfully as being in the interest of public order and safety.

Feilchenfeld takes an even broader view⁸:

The provision [Article 48] would not seem to exclude as has been asserted, taxation increases, particularly such changes as have been made desirable through war conditions or, in the case of an extended occupation, general changes in economic conditions.

The enormous economic changes that have taken place in the world in general, and not in the Region alone, since 1967, have undoubtedly necessitated an increase in taxation. Such an increase was required especially in the rates of indirect taxes, including customs duties, in order to bring them into line with those applicable in Israel, taking into account the interdependence and integration of the two economies.

VALUE ADDED TAX

Its Nature and Object

The amendment to the local Jordanian law contained in the Order concerning the Excise on Local Manufacturers Law⁹ was issued for similar reasons. This Order introduces Value Added Tax (hereinafter "VAT"), which is imposed on the sale of all goods excluding fresh fruit and vegetables, the rendering of services and the import of goods. VAT may be passed on to the purchaser, who is entitled to a receipt for the VAT paid. The purchaser, reselling the goods or rendering services to a third party, may deduct from the VAT imposed on the new transaction, the amount of VAT previously paid. The same process continues in all further transactions.

It should be pointed out that exporters of goods and services are entitled to reclaim from the tax authorities all VAT paid on such items prior to the export transaction.

The object of VAT is not only to raise revenue but also to serve as an economic tool for promoting exports and reducing imports, to encourage the keeping of proper books of account, to assist in the supervision of the collection of the true tax at each stage of production and to encourage capital investment. The rate of VAT is currently 12%.

Factual Considerations

Immediately prior to the introduction of VAT in Israel in 1975, the question arose as to whether a similar arrangement was necessary in the Region in view of

the close economic ties that had developed over the years between Israelis and the local population.

In order to examine this question, two committees of economists were set up, one by the Ministry of Defence and the other by the Ministry of Finance. Both these committees came to the conclusion that the same arrangement in this regard should apply to both Israel and the Region, primarily to avoid causing economic harm to the merchants and traders in the Region.

More particularly, it seemed to the committees that if such an arrangement were not applied in the Region, the following results would ensue:

- (a) Exporters in the Region would not be entitled to recoup the VAT in the same way as Israeli exporters.
- (b) Israelis accustomed to purchasing goods or services in the Region would cease to do so because they could not deduct from the VAT chargeable on their subsequent transactions the taxes, other than VAT, that had been paid by the residents of the Region. Consequently, the Israelis would look for alternative sources in Israel so as to obtain such tax benefits.
- (c) Residents of the Region accustomed to purchasing goods or services in Israel would pay the VAT in Israel, but would not be able to offset such tax on a subsequent transaction in the Region. As a result, they would effectively be making a smaller profit than their counterparts in Israel, particularly where the sale price is fixed.
- (d) All Israeli Government companies are prohibited from purchasing goods and services other than those included in the VAT system. As the activities of Government companies in Israel are very extensive, great harm would be caused to those residents in the Region who had been selling them goods and services.
- (e) VAT was introduced in Israel within the framework of reform of indirect taxation, and, as a result of its introduction, many other indirect taxes, especially purchase tax, were substantially reduced. Therefore, had VAT not been introduced in the Region, indirect taxes there would have been appreciably higher than in Israel.

Legal Considerations

The question posed by the committees' findings was whether the considerations forming the basis of their recommendations could justify, from the legal point of view, the introduction of VAT in the Region.

VAT, as has been observed, is designed not only to raise public revenue but also to serve as a means of controlling and directing the economy. An occupant may interfere in the economic field to a greater extent than in other fields¹⁰, particularly insofar as the regulation of economic relations between the territory of the occupant and the occupied territory is concerned. It would appear that this principle is especially applicable to the case of VAT arrangements.

Article 48 of the Hague Regulations is qualified by the proviso "as far as is

possible.” It would appear that in the particular circumstances described by the economists, there was no other choice but to apply simultaneously the same VAT arrangements in the Region as those applicable in Israel.

Furthermore, the proviso in article 48 is wider than the qualification in article 43 which prohibits changes “unless absolutely prevented.” It has already been shown how this phrase has been construed by the authorities on international law and in the military manuals¹¹.

Moreover, in accordance with article 43, the main concern of the occupant should be the welfare of the local population, whilst the obligation under article 48 on the subject of levying taxes is secondary to, and deriving from, this primary obligation. The immediate question is how to reconcile these two obligations where there is an apparent conflict — that is, where refraining from imposing a new tax would have more serious effects than its imposition. It seems that in such a case, the occupant should give preference to his primary duty rather than to his secondary one.

The Hague Regulations of 1907 are based on the similar Hague Regulations of 1899. In both, article 48 is the same, and is based in turn on the terms of article 47 of the Oxford Manual of 1880. Thus, the prohibition on new taxes in occupied territory is based on a nineteenth century doctrine in which the principal taxes were property tax and income tax and the various indirect taxes of today were in their infancy or even unknown (Value Added Tax, for example, was first introduced in the twentieth century). According to the view prevailing at that time, the only function of taxation was to fill the coffers of the state. In the meantime, new conceptions as to the function of taxation have evolved, particularly with regard to the use of indirect taxation as a means of directing the development of the economy.

Economies that were once largely free have in the present century, with the evolution of the modern welfare state, become subject to regulation by central governments. None of these developments finds expression in the Hague Regulations, which, from an economic viewpoint, are obsolete¹².

It is true that most scholars who have expressed any opinion on the subject have taken the view that an occupying power may not impose new taxes, but none has dealt with the question in any depth. Feilchenfeld, the only scholar to make a comprehensive study of the economic aspects of belligerent occupation, reached an opposite conclusion¹³:

It is not equally clear that the occupant may introduce new taxes and customs duties. There have been several instances of such practices. Article 48 does not authorize them expressly, but they may be justifiable in individual cases under the occupant's power to restore and ensure public order. The revenue laws of an occupied country may provide for inadequate revenue; the amount of revenue produced by any one tax may change materially in wartime; new needs may call for new revenue; if the occupation lasts through several years the lawful sovereign

would, in the normal course of events, have found it necessary to modify tax legislation. A complete disregard of these realities may well interfere with the welfare of the country and ultimately with "public order and safety" as understood in Article 43.

In light of the above considerations, the military government concluded at the time that the imposition of VAT in the Region is fully in accordance with modern international law. However, this conclusion has recently been challenged, in a petition submitted to the High Court of Justice by several merchants in the Region just before going to press. Whatever the eventual decision of the High Court may be on this issue, it will naturally be honoured by the military government.

CONCLUSION

The foregoing chapters have dealt with various legal aspects of the Israeli administration in the Region of Judaea and Samaria. The tenor of this work has been to place before the discerning legal public, in an open and practical manner, both the relevant principles of international law and the activity of the Israeli administration in the light of the circumstances and considerations lying behind that activity. This has been done in the hope that it will in some way dispel the misunderstandings and misinformation which have been prevalent in this context.

It is clear that the Israeli administration in the Region has endeavoured to give to the local residents the opportunity to conduct their day-to-day affairs with minimal intervention by the authorities — a policy qualified only by the duty to maintain public order and security.

The system of legal checks and balances built into the Israeli administration in the Region, together with the supervisory functions performed by the Israeli High Court of Justice ensure the maintenance of the Rule of Law as laid down by international law and by the liberal norms of the Israeli legal system.

The impartiality and scholarship of the High Court of Justice are beyond question and are, moreover, acknowledged, in particular, by the increasing number of local residents (including several of the administration's harshest critics) which petition this Court for redress. The very fact that they are able to petition the High Court of Justice in this way, is perhaps the most meaningful expression of the Rule of Law in the Region.

FOOTNOTES

Chapter One: THE ASSUMPTION OF ADMINISTRATIVE AUTHORITY BY ISRAEL

¹ As to the legislative functions see p.5 *et seq.*

² Oppenheim, p.436.

³ See also Stone, p.697.

In positive terms, and broadly stated, the Occupant's powers are . . . to continue orderly government...

Civil Affairs, provides at p.161:

Civil affairs operations may be performed in territory of an enemy occupied by a military force. In such case, governmental powers are normally vested in the commander of the occupying force, limited only by the rules of international law.

Greenspan states at p.223:

Where hostile territory is occupied, all functions of the enemy government — legislative, executive, or administrative, general, provincial, or local — cease, or continue only with the sanction, express or implied, of the occupant. In their place the invader sets up his own administration. No matter what name he applies to his government, whether it is termed military or civil, the circumstances in which it arose alone determine its true nature and as a military occupant he is bound by the relevant rules of international law .

⁴ Von Glahn, pp.33-34.

⁵ HCJ 97/72, *Piskei Din*, Vol. 26, Part I, (1972), p.574. For summary in English see 2 IYHR, (1972), p.354 *et seq.* See also *Shurfa v. Vexler*, Civil Appeal 211/73, *Piskei Din*, Vol. 28, Part I, (1974), p.517; and *Bank Leumi v. Hirshlag*, Civil Appeal 179/77, *Piskei Din*, Vol. 32, Part I, (1978), p.62.

Chapter Two: LEGISLATION OF THE REGIONAL COMMANDER

¹ See p.1.

² Schwarzenberger, p.180, note 7.

³ J. Westlake, *International Law*, Vol. II *War* (1913), p.95.

⁴ Schwenk, p.398. See also Gerson, p.8:

Scholars have pointed out that the word "safety" as used in the English text of article 43 of the Hague Regulations, appear as an inadequate rendition of *vie publique*

employed in the authoritative French text. "*Vie publique*", it has been claimed, cannot refer simply to physical safety which is embraced in the preceding "*ordre publique*" (public order), but must refer to allowing the life of the occupied country to find continued fulfillment even under the changed conditions resulting from occupation.

⁵ See Von Glahn, p.97.

⁶ See also Oppenheim, p.446; British Manual, p.145, paragraph 522; Stone p.699. For general discussion on the power to alter the local Jordanian law in Judaea and Samaria see:

- (a) T.S. Kuttner, "Israel and the West Bank, Aspects of the Law of Belligerent Occupation," 7 IYHR, (1977), pp. 166, 186.
- (b) Y. Dinstein, "The International Law of Belligerent Occupation and Human Rights," 8 IYHR, (1978), pp. 104 on pp.114-116.
- (c) T. Meron, "Applicability of Multilateral Conventions to Occupied Territories," 72 American Journal of International Law, (1978), pp.548-550.

⁷ Feilchenfeld, p.86-87, paragraph 314. See also G.J. Westlake, "Contributions, Requisitions and Compulsory Service in Occupied Territory," (1917), 2 American Journal of International Law, p.85.

⁸ Greenspan, p.221.

⁹ See also Schwenk, p.399.

¹⁰ HCJ 337/71 *Piskei Din*, Vol. 26, Part 1, (1972), p.574. For summary in English see 2 IYHR, (1972), p.354.

¹¹ *Ibid.*, p.582.

¹² *Ibid.*, p.588.

¹³ See article 154 of the Fourth Geneva Convention and Pictet, p.613.

¹⁴ Pictet, p.337.

¹⁵ See generally M. Drori, "The Legal System in Judaea and Samaria," 8 IYHR, (1978), p.144, 148-9.

¹⁶ Order concerning Adjudication of Interest (No. 624) (Gaza District), 1979. Published on 11th November, 1979.

¹⁷ Order concerning Compensation for Road Accident Victims (No. 677), 1976, C.P. & O., Vol. 39, p.260.

¹⁸ Road Accident Victims Compensation Law, 1975, 29 LSI, p.311.

¹⁹ *Op. Cit.*, Section 5.

²⁰ *Ibid.*, Chapter Three.

²¹ 27 LSI, p.288.

²² Order No. 600, C.P. & O. Vol. 36 p.1481.

²³ Law No. 21, Jordanian Official Gazette, No. 49 of 21st May, 1960.

²⁴ Order concerning Work Injuries, No. 622 of 1976, C.P. & O., Vol. 38, p.196.

²⁵ *Ibid.*, Sections Two and Three.

²⁶ *Ibid.*, Section Twelve.

²⁷ For a more detailed discussion, see below p.33.

²⁸ Order No. 133, C.P. & O., Vol. 7, p.258.

²⁹ "Official Publication" is defined in section 1 of the Order as follows: "Collection of Proclamations, Orders and Appointments and every other publication issued by the Regional Commander in the area of Judaea and Samaria".

Chapter Three: JURISDICTION OF THE LOCAL COURTS IN ACTIONS AGAINST THE ISRAELI AUTHORITIES

- ¹ Raja Shehadeh assisted by Jonathan Kuttab, *The West Bank and the Rule of Law* (hereinafter called "Shehadeh"), p.36.
- ² Von Glahn, p.108 and similarly at p.112.
- ³ Greenspan, p.254-255.
- ⁴ See the authorities cited by Greenspan, *ibid.*, note 143; see also British Manual, p.145, paragraph 522, the American Manual, p.143, paragraph 374 and Schwarzenberger, pp.183-190.
- ⁵ Order No. 104, C. P. & O., vol. 8, p.333.
- ⁶ See e.g., Greenspan, p.255:
However, it is usually necessary that occupation troops should comply with various regulations imposed on the local population by the military administration, for example, regulations concerning traffic control, disposal of army material to civilians, currency, exchange, banking, price-fixing, and other economic matters. Since proclamation law would not apply to the troops, it would be necessary to incorporate such regulations in the military code by some such method as issuing to the troops local military orders corresponding to the proclamation law.
- ⁷ General Staff Order No. 33.0140 of 1st August, 1967.
According to Israel Military Justice Law of 1955 (section 13), a soldier may be court-martialled for an offence committed in the administered areas. (9 LSI, 1955, p.184).
- ⁸ For criminal jurisdiction over Israeli citizens, see p.32 below.
- ⁹ Ordinance No. 36, published in the Official Gazette No. 1321, Supplement No. 1, p.93.
- ¹⁰ Law No. 73 of 1953, published in the Jordanian Official Gazette No. 1158, p.738.
- ¹¹ *Ibid.*, sections 2 and 3, according to which:
2. Every person who has suffered physical injury and claims that the injury was suffered by some action of the Jordanian army or of a member of army personnel is entitled to submit a request for compensation by way of settlement to the Minister of Defence.
 3. The military authorities affected by the matter shall investigate any case in which a settlement is requested in order to determine whether or not the army was responsible for the injury and the appropriate amount of compensation shall be estimated in accordance with the circumstances of the case, provided that the compensation does not in any event exceed a sum of 500 Dinar.
- ¹² *Ibid.*, section 4.
- ¹³ *Ibid.*, section 5.
- ¹⁴ In 1958 another Jordanian Law, the Claims Against the Government Law, No. 25 (Jordanian Official Gazette, No. 1385, p.546), enabled claims to be made against the Government in a limited number of cases (e.g., contractual and quasi-contractual) but the general rule of government immunity, particularly in torts, was not affected. Section 5 of that Law provides that the courts shall entertain no action against the Government, including counter-claims.
- ¹⁵ Order No. 271: C.P. & O., Vol. 14, p.541.
- ¹⁶ 7 LSI, 1953, p.124, at p.127.
- ¹⁷ Von Glahn, p.113.

- ¹⁸ See below p.35.
- ¹⁹ Order No. 677, C.P. & O., Vol. 39, p.260.
- ²⁰ For a more detailed discussion of this Order, see below p.9,10.
- ²¹ See p.1 *et seq.*
- ²² Order No. 172, C.P. & O., Vol. 9, p.350.
- ²³ Published in Supplement No. 3 to C.P. & O., p.74.
- ²⁴ See for example Shehadeh, p.33.
- ²⁵ See generally p.35 *et seq.*

Chapter Four: THE COURTS SYSTEM IN THE REGION

- ¹ See e.g. Oppenheim, p.446 and Stone p.699.
- ² See above p.2, 3.
- ³ Section 3 of the Order concerning Israel Courts, No. 412 of 1970, provides that "judicial proceedings will be carried out, and judgments will be given in the name of law and justice..." C.P. & O., Vol. 25, p.954.
- ⁴ Section 9 of the Structure of Regular Courts Law, No. 26 of 1952, Official Jordanian Gazette, No. 1105 of 1952.
- ⁵ See for example Dinstein:

If the legislation in force grants a right of appeal from the local courts in the occupied territory to a higher instance in an unoccupied area in the enemy country, it is obvious that the occupant is entitled to put an end to this dependence on the enemy ("Belligerent Occupation and Human Rights," 8 IYHR, (1978), p.104, at p.115.)

See also C. Fairman, "Asserted Jurisdiction of the Italian Court of Cassation over the Court of Appeal of the Free Territory of Trieste," 45, American Journal of International Law, (1951), pp.541, 548.

- ⁶ Pictet, p.308.
- ⁷ Von Glahn, p.136. See p.135 for the power to dismiss judges and public officials. See also Stone on the power to interfere with local courts at p.702;

... though the [Fourth Geneva] Convention forbids the Occupant to alter the status of public officials or judges or to apply sanctions or other measures of coercion and discrimination against them, for abstaining from fulfilling their functions on grounds of conscience, it still reserves the Occupant's power to remove public officials from their posts.

Greenspan states at p.260:

The occupying power has the right to remove public officials from their posts. This is specifically recognized by Article 54 of the Fourth Geneva Convention, 1949. It also has the corollary right to install officials.

British Manual provides at p.162, paragraph 583:

The Occupant, being the administrator of the country, can remove and install officials. Even judicial functionaries may be deposed if they refuse obedience to the Occupant.

See also Oppenheim, p.447.

- ⁸ Order concerning the Judicial Independence Law, No. 310 of 1969, C.P. & O., Vol. 18, p.635.
- ⁹ C.P. & O., Vol. 9, p.337.
- ¹⁰ One of the prominent lawyers consulted was Mr. Aziz Shehadeh.
- ¹¹ See further discussion below at p.33.
- ¹² *Op. cit.*, Order No. 310, section 3A.
- ¹³ Shamgar, *op. cit.*, p.267; see also Greenspan, p.256.
- ¹⁴ Von Glahn, p.100. See also p.110.
- ¹⁵ F. Morgenstern, "Validity of the Acts of the Belligerent Occupant," 28 British Year Book of International Law (1951), p.306.
- ¹⁶ In the case of *Muhammed Amin al-Ja'bari v. Ahmad Ya'qub Abd al-Karim al-Awiwi*, 42 International Law Reports, 484. See also Kuttner, *op. cit.*, p.189-191.
- ¹⁷ See generally Y.Z. Blum, "The Missing Reversioner: Reflections on the Status of Judaea and Samaria, 3 ILR, (1968), p.279 at pp.297-299.
- ¹⁸ Civil File 44/67, being the case cited at footnote 16 which was heard at Hebron District Court on 5th February, 1968.
- ¹⁹ No. 145 of 1967, C.P. & O., Vol. 8, p.306.
- ²⁰ See Blum, *op. cit.*, at p.280.
- ²¹ For the background to this Order, see below p.9.
- ²² *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 11 (1942-3), at p.604. See also Gerson, pp.126-127 and a review of the practice of local courts in notes 57-61 at p.187.
- ²³ See above p.13 *et seq.*
- ²⁴ See above p.13 *et seq.*
- ²⁵ This immunity is secured by the Order concerning Local Courts (Status of IDF Authorities), No. 164 of 1967, C.P. & O., Vol. 8, p.337.
- ²⁶ Order concerning Local Courts (Death Penalty), No. 268 of 1968, C.P. & O., Vol. 14, p.537.
- ²⁷ See below p.25.
- ²⁸ No. 841 of 1980, published on 15th May, 1980.
- ²⁹ Greenspan, p.257.
- ³⁰ For detailed discussion, see p.57 below.
- ³¹ Order No. 378, C.P. & O., Vol. 21, p.733.
- ³² *Ibid.*, section 4(c)(1).
- ³³ Pictet, p.358.
- ³⁴ British Manual, p.159, paragraph 572.
- ³⁵ Von Glahn, p.117.
- ³⁶ 47 International Law Reports, pp.487, 489.
- ³⁷ Section 44, Order No. 378, C.P. & O., Vol. 21, p.733.
- ³⁸ Notwithstanding the explicit provisions for appeal, it is claimed by Shehadeh (p.23) that the military government is in breach of international law by denying this right. This allegation is based misguidedly on article 3(1)(d) of the Fourth Geneva Convention, which, in fact, prescribes minimum norms of behaviour during an "armed conflict

not of an international nature” and *inter alia* prohibits sentencing a person to death without prior conviction by a lawfully constituted court.

The article prohibits:

The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Pictet confirms (p.39) that article 3(1)(d) is intended to prevent a “field trial”:

We must be very clear about one point: it is only “summary” justice which it is intended to prohibit. No sort of immunity is given to anyone under this provision... and it leaves intact the right of the State to prosecute, sentence and punish according to the law.

Clearly, the provisions of article 3(1)(d) have nothing to do with the right of appeal against decisions of the military courts within the judicial system operating in the Region, and any allegation based upon it is consequently mistaken.

³⁹ Order No. 30, C.P. & O., Vol. 2, p.65.

⁴⁰ Pictet, p.348.

⁴¹ See p.33.

⁴² British Manual, p.146, paragraph 525.

⁴³ Greenspan writes at p.258:

It is the duty of the occupant to establish courts of his own where the courts which formerly existed in the country cease to exist. In such circumstances, the military courts of the occupant would have to undertake to enforce not only the proclamation law, but also the pre-existing law of the territory.

See also American Manual, p.143, paragraph 373.

⁴⁴ See article 5 of the Fourth Geneva Convention.

⁴⁵ Order No. 29, C.P. & O., Vol. 2, p.56, as amended.

⁴⁶ Order No. 400, C.P. & O., Vol. 25, p.933.

⁴⁷ Extract from a press conference given by the President of the ICRC on 1st February, 1978:

Après plus de dix ans de présence dans les territoires occupés par Israël nous avons pu, à la fin 1977, conclure un nouvel accord avec les autorités israéliennes. Nous avons, en effet, éprouvé le besoin, après ces dix années, de revoir l'ensemble de la situation et d'établir de nouveaux contacts avec le Gouvernement, qui a changé entretemps. Nous avons obtenu, suite à ces négociations, de pouvoir visiter les personnes résidant dans les territoires occupés arabes incarcérées pour une raison ou une autre à partir du 14ème jour suivant leur arrestation, une semaine même dans certains cas, ce qui est un grand progrès par rapport à la situation précédente. En effet, ces personnes se trouvent alors sous interrogatoire, et il est exceptionnel que les délégués du C.I.C.R. puissent avoir accès aux détenus durant cette période. Jusqu'à présent, il nous fallait en attendre la fin, soit un délai d'un mois à six semaines après leur arrestation. C'est un vœu que nous avons exprimé depuis fort longtemps, et qui s'est maintenant concrétisé. Naturellement, cela impli-

que pour nous de nouveaux efforts, ainsi qu'une augmentation sensible de notre activité. Nous aurons besoin d'avantage de délégués, ainsi que de délégués-médecins — l'une de nos tâches importantes étant de constater l'état de santé des détenus — parlant arabe de préférence car nous avons demandé et obtenu que ces entretiens se déroulent toujours sans témoin. La connaissance de la langue arabe est donc particulièrement importante dans ce cas. Comme nous sommes en train de nous organiser en conséquence, je ne puis encore parler de résultats. Nous sommes cependant très satisfaits de ces nouvelles possibilités d'action dans les territoires occupés par Israël.

- ⁴⁸ See for example Criminal Appeal No. 515/73, *Dahan v. State of Israel, Piskei Din*, Vol. 28, Part 1, (1974), p.460 and Criminal Appeal No. 855/77 *Sharf and Morrabin v. State of Israel, Piskei Din*, Vol. 33, Part 3, (1979), p.432.
- ⁴⁹ See Criminal Appeal No. 3/49 *Andalarski v. Attorney General, Piskei Din*, Vol. 2, (1949), p.589.
- ⁵⁰ Order No. 841, Published 15th May, 1980.
- ⁵¹ Shehadeh, p.40.
- ⁵² Section 7, Order concerning Security Provisions, 1970, *op. cit.*
- ⁵³ Order No. 841, published 15th May, 1980.
- ⁵⁴ Von Glahn, p.114.
- ⁵⁵ See also discussion on p.25 above.
- ⁵⁶ Emergency Regulations (Judaea and Samaria, Gaza Region, Golan Heights, Sinai and Southern Sinai — Criminal Jurisdiction and Legal Assistance) (Extension of Validity) Law, 1977, LSI, Vol. 32, p.58.
- ⁵⁷ In recent years, some lawyers have had second thoughts and have resumed their practice.
- ⁵⁸ Order No. 145, C.P. & O., Vol. 8, p.306.

Chapter Five: THE ISRAELI HIGH COURT OF JUSTICE

- ¹ M. Shamgar, "The Observance of International Law in the Administered Territories," 1 *IYHR* (1971) 262, p.273.
- ² See, for example, F. Morgenstern, *op. cit.*, p.291, n.1.
- ³ See the detailed discussion p.41.
- ⁴ See also the differing opinions of Supreme Court justices, footnote 3 above.
- ⁵ 9 LSI, 1957, pp. 157, 158.
- ⁶ The court fee is equivalent to \$5.
- ⁷ This figure does not include petitions by prisoners concerning the conditions of their imprisonment.
- ⁸ HCJ 147/78, *Al Hadi v. Minister of Defence and Regional Commander of Judaea and Samaria* (not published).
- ⁹ HCJ 351/80, *Jerusalem District Electricity Company Ltd. v. Minister of Energy and Infrastructure and the Regional Commander of Judaea and Samaria*, 16th February, 1981 (not yet published).
- ¹⁰ In Israel, as in England, there is no written constitution and the court therefore cannot judge the legality of statutes in the light of the constitution.

- ¹¹ See for example, HCJ 302, 306/72, *Hilu v. Government of Israel, Piskei Din*, Vol. 27, Part 2, (1973), p.169. (For summary in English, see 5 IYHR, (1975), p.384.
- ¹² HCJ 619/78, *Piskei Din*, Vol. 33, Part 3, (1979), p.505. For summary in English see 10 IYHR, (1980), p.333.
- ¹³ *Ibid.*, pp. 510, 511-512.
- ¹⁴ See footnote 11 above.
- ¹⁵ *Ibid.*, 176-177.
- ¹⁶ *Ibid.*, p.180.
- ¹⁷ *Ibid.*, pp.183-184.
- ¹⁸ HCJ 337/71, *Piskei Din*, Vol. 26, Part 1, (1972), p.574. For summary in English, see 2 IYHR, (1972), p.354. See the discussion of this judgment page 60.
- ¹⁹ See footnote 9 above.
- ²⁰ Kahan, J. page 19 of the judgment.
- ²¹ HCJ 397/76, *Al Awidah v. President of the Military Court in Judaea and Samaria* (not published).
- ²² See footnote 5 above.
- ²³ See footnote 15 above.
- ²⁴ *Ibid.*, at page 176.
- ²⁵ *Ibid.*, at page 179.

Chapter Six: PUBLIC AND PRIVATE LANDS

- ¹ Order No. 59, C.P. & O., Vol. 5, p.162.
- ² *Ibid.*, Sections 1, 2, 3.
- ³ Feilchenfeld, p.55.
- ⁴ *Loc. cit.* sections 1 and 3.
- ⁵ See especially sections 1 to 6 of the Ottoman Land Law, which is still in force in the Region.
- ⁶ For further discussion of Land Settlement procedures see p.47.
- ⁷ 17; and on the right of petitioning the Israeli Supreme Court, see detailed discussion p.37 *et seq.*
- ⁸ The functions of a Mukhtar are laid down in the Jordanian Law concerning Administration of Villages, No. 5 of 1954; Official Jordanian Gazette, No. 1169; p.77.
- ⁹ *Ibid.*
- ¹⁰ See footnote 7 above.
- ¹¹ Von Glahn, p.179. See also Schwarzenberger, p.308-309, Greenspan, p.292, British Manual, p.170, paragraph 614, and American Manual, p.149, paragraph 394.
- ¹² Feilchenfeld, p.50; see also Von Glahn, p.186; American Manual, p.158, paragraph 43 and Greenspan p.295.
- ¹³ No. 2 of 1953, published in the Jordanian Official Gazette, No. 1130 of 1st January, 1953, as amended by the Order concerning Land Law (Acquisition for Public Purposes), No. 321 of 1969, C.P. & O., Vol. 18, p.644.
- ¹⁴ *Ibid.*, Section 15.
- ¹⁵ See footnote 13 above.
- ¹⁶ See above pp.44-45.

- ¹⁷ See footnote 13, section 2 for definition of "promoter", and sections 3 to 5.
- ¹⁸ Order No. 25, C.P. & O., Vol. 2, p.51.
- ¹⁹ Von Glahn, p.187.
- ²⁰ Order 291, C.P. & O., Vol. 16, p.591.
- ²¹ Law No. 40 of 1952, Official Jordanian Gazette, No. 1113.
- ²² Order No. 58, C.P. & O., Vol. 5, p.158.
- ²³ Greenspan, p.306. See also Civil Affairs, p.30.
- ²⁴ Order No. 58 above, sections 2 and 4.
- ²⁵ *Ibid.*, section 1 (g).
- ²⁶ C.P. & O., Vol. 17, p.605.
- ²⁷ Oppenheim, p.403, paragraph 140.
- ²⁸ Schwarzenberger, p.288.
- ²⁹ *Ibid.*, p.269.
- ³⁰ Von Glahn, p.186.
- ³¹ Oppenheim, pp.403-404. See also Greenspan, p.285, British Manual, p.164, paragraph 592 and Y. Dinstein, *op. cit.*, p.134.
- ³² See, for example, British Manual p.164, paragraph 593.
- ³³ In *Re Flick and other*, Annual Digest and Reports of Public International Law Cases, 1947, pp. 266, 270.
- ³⁴ HCJ 606, 610/78, 1979 *Piskei Din*, Vol. 33, Part 2, (1979), p.113.
- ³⁵ HCJ 390/79, *Piskei Din*, Vol. 34, Part 1, (1980), p.1.
- ³⁶ Similar questions were raised in *Hihu v. Government of Israel*, HCJ 302, 306/72 *Piskei Din*, Vol. 27, Part 1, (1973), p.4, (for summary in English see 5 IYHR (1975), p.384, 169, and in HCJ 258/79 *Amira v. Minister of Defence*, *Piskei Din*, Vol. 34, Part 1, (1980), p.90 (for summary in English, see 10 IYHR, (1980), p.333. A further discussion and criticism of the Beit-El and Eilon Moreh cases appears in J. Stone's "Aspects of the Beit-El and Eilon Moreh cases" 15 ILR, (1980), p.476.
- ³⁷ Beit-El Case, translation, pp.16-17, 18 and 19-20. The extracts from the judgments in this and the Eilon Moreh case are taken from the published English translations.
- ³⁸ *Ibid.*, pp.8-9.
- ³⁹ Eilon Moreh case, p.12.
- ⁴⁰ *Ibid.*, p.19.
- ⁴¹ *Ibid.*, p.22.
- ⁴² See pp. 44-45.
- ⁴³ See Beit-El Case, pp.9-12, 20-23. Similar conclusions were reached in the Eilon Moreh Case, pp.18-19. See generally on the incorporation of customary international law J. Stone (*op. cit.* at footnote 36 above) and *Shtamperer v. Attorney General: Criminal Appeal 174/54*, *Piskei Din*, Vol. 10, Part 1 (1954), p.5 and *Custodian of Absentee Property v. Samara et al: Civil Appeals 148/55; 145/55 and 25/55*, *Piskei Din*, Vol. 10, Part 3 (1956), p.1825.
- ⁴⁴ Oppenheim, p.452.
- ⁴⁵ E. Rostow, "Palestinian Self Determination," Yale Studies in World Public Order, Vol. 5, (1979), pp. 147, 153.
- ⁴⁶ Order No. 393, C.P. & O., Vol. 23, p.815.
- ⁴⁷ See above pp. 49 *et seq.*

Chapter Seven: ECONOMIC DEVELOPMENT AND THE PROVISION OF PUBLIC SERVICES

- ¹ Feilchenfeld, p.13, paragraph 53.
- ² *Ibid.*, p.86, paragraph 314.
- ³ Greenspan, pp.230-232. See also British Manual, p.146, paragraph 530.
- ⁴ Von Glahn, pp.211-212. See also American Manual, p.144, paragraph 376.
- ⁵ For the "open bridges" policy, see p.86.
- ⁶ For freedom of movement, see pp.84 *et seq.*
- ⁷ The data and statistics appearing in this and other chapters are based on "Co-Ordination of Government Operations in Judaea, Samaria, Gaza District, Sinai, Golan Heights: A Thirteen-Year Survey (1967-1980)" published on 1st January, 1981.
- ⁸ See further p.62.
- ⁹ Shehadeh, p.113.
- ¹⁰ Greenspan, p.233.
- ¹¹ Shehadeh, p.62.
- ¹² *Ibid.*, p.66.
- ¹³ *Ibid.*, p.113.
- ¹⁴ Water Control Law, No. 81 of 1952, Jordanian Official Gazette, No. 1134 of 16th February, 1953, as amended until 1967; and regulations made thereunder — Control of Subterranean Waters Regulations, No. 88 of 1966, Jordanian Official Gazette, No. 1943 of 18th August, 1966.
- ¹⁵ Order concerning the Amendment of the Water Control Law, No. 31 of 1953, No. 158 of 1967, published in C.P. & O., Vol. 8, p.325.
- ¹⁶ Shehadeh, p.113.
- ¹⁷ See further above pp.35 *et seq.*
- ¹⁸ This does not include residents supported by international or private organizations.
- ¹⁹ General Licence No. 49/6 of 21st March, 1968, C.P. & O., Vol. 3, Supplement 3, p.217, issued pursuant to the Order concerning Closed Areas (Prohibition on Transfer of Goods), No. 49 of 1967, C.P. & O., Vol. 3, p.94.
- ²⁰ Order No. 47, C.P. & O., Vol. 3, p.93.
- ²¹ For the "open bridges" policy, see p.85.
- ²² See Shehadeh, pp.67-68 and 96, note 8.
- ²³ Order concerning Control of Commodities and Services (Marketing of Drinks), 1979, *Kovetz Ha'Takanot*, (Collection of Regulations), 1979, No. 4076, p.1844. (In Hebrew).
- ²⁴ General Licence No. 49/7 of April 1968, C.P. & O., Supplement 5, p.455, issued pursuant to Order No. 49, C.P. & O., Vol. 3, p.94.
- ²⁵ See Import and Export (New Version) Ordinance, 1979. Laws of the State of Israel (New Version) No. 32 of 29th March, 1979, p.625 (in Hebrew).
- ²⁶ Law No. 17, Jordanian Official Gazette, No. 1267 of 1st April, 1956.
- ²⁷ Order concerning the Prohibition of Commerce and Financial Transactions (Banks), No. 7 of 1967, C.P. & O., Vol. 1, p.27.

Chapter Eight: SECURITY MEASURES

- ¹ Official Gazette No. 1442, Supplement 2, p.855, as amended.
- ² Proclamation No. 2.
- ³ Section 2 of the Annexation of the West Bank Law, 1950, Jordanian Official Gazette, Vol. 1, p.52.
- ⁴ Jordanian Official Gazette, No. 1093 of 8th January, 1952.
- ⁵ HCJ 97/79, *Piskei Din*, Vol. 33, Part 3, (1979), p.309.
- ⁶ HC 51/54 published in the Jordanian Bar Journal, (1954), Vol. 1, p.726.
- ⁷ HC 43/52 published in the Jordanian Bar Journal, (1953), Vol. 1, p.54.
- ⁸ For further discussion on the validity of the Defence (Emergency) Regulations in the Region, see D. Shefi, "The Protection of Human Rights in the Areas Administered by Israel: U.N. Findings and Reality" 3 IYHR, (1973), pp.337 and 342-345.
- ⁹ HCJ 698/80 (not yet published).
- ¹⁰ As to proceedings before the High Court of Justice, see above p.37.
- ¹¹ *Op. Cit.*, footnote 5, per Sussman J. pp. 316-317.
- ¹² M. Shamgar, "The Observance of International Law in the Administered Territories," 1 IYHR, (1971), pp. 262, 275.
- ¹³ See also T. S. Kuttner, *op. cit.*, pp. 166, 216.
- ¹⁴ Pictet, p.302.
- ¹⁵ M. Shamgar, *op. cit.*, p.274.
- ¹⁶ See also A. Dershowitz' contribution at a Symposium on Human Rights, 1 IYHR, (1971), pp.361, 376-378.
- ¹⁷ *Op. cit.*
- ¹⁸ *Piskei Din*, Vol. 34, Part 1, (1980), p.464; for summary in English see 10 IYHR, (1980), p.345.
- ¹⁹ *Ibid.*, p.466.
- ²⁰ See Z. Hadar, "Administrative Detentions Employed by Israel," 1 IYHR, (1971), p.283.
- ²¹ Pictet, p.368.
- ²² See sections 87-87H, as amended by the Order concerning Security Provisions (Amendment No. 18), No. 815 of 1980, dated 13th January, 1980.
- ²³ *Ibid.*, Section 87(c).
- ²⁴ *Ibid.*, Section 87B.

Chapter Nine: BASIC FREEDOMS

- ¹ Von Glahn, p.98, see also Greenspan, p.223.
- ² American Manual, p.143, paragraph 371. See also British Manual, p.145, paragraph 519.
- ³ Von Glahn, p.140.
- ⁴ Jordanian Official Gazette, No. 1873 of 16th September, 1965, as amended by Law No. 50 of 1965, *ibid.*, No. 1883 of 26th October, 1965.
- ⁵ C.P. & O., Vol. 6, p.337.
- ⁶ The total number of political assemblies or demonstrations permitted in the period from 11th November, 1979 to 31st July, 1980 was 24.

⁷ Greenspan at p.223 writes:

Naturally, the occupant will suspend or amend laws which are essentially political in nature, and political or constitutional privileges, as well as laws which adversely affect the welfare and safety of his command. Examples are laws relating to... the right of assembly, the right to vote, freedom of the press...

⁸ Von Glahn, p.141.

⁹ HCJ 507/72, *Piskei Din*, Vol. 27, Part 2, (1973), p.233, at p.237; for summary in English, see 9 IYHR, (1979), p.334.

¹⁰ See footnote 5 above.

¹¹ British Manual, p.147, paragraph 533. See also American Manual, p.144, paragraph 377.

¹² Von Glahn, p.139.

¹³ HCJ 619/78, *Piskei Din*, Vol. 33, Part 3, (1979), pp. 505, 510. For summary in English see 10 IYHR, (1980), p.333.

¹⁴ Order concerning the Import and Distribution of Newspapers, No. 50 of 1967, C.P. & O., Vol. 3, p.96.

¹⁵ Regulation 88, Defence (Emergency) Regulations, 1945.

¹⁶ *Al Fajr*, 14th January, 1980, 2nd April, 1980 and 28th May, 1980.

¹⁷ Shehadeh, pp.85-86.

¹⁸ Concerning "Economic" strikes, Greenspan states, p.273:

Obviously collective bargaining for wages by trade unions cannot be allowed the same freedom under an occupation as in peace time, since the ultimate weapon of the worker in relation to the employer, withdrawal of his labour in the right to strike, would not be permitted by the occupant in any matter materially affecting the stability of his administration or the security of his forces. Neither would the occupant tolerate lock-outs by employers which carried the same effects.

¹⁹ The Defence Regulations No. 2 of 1952 (Strikes and Return to Work Orders) published on 24th April, 1952 in Official Gazette No. 1106 of 26th April, 1952, p.195, pursuant to section 40 of the Defence Law of 1935.

²⁰ British Manual, p.148, paragraph 537.

²¹ No. 11, p.66.

²² Greenspan attaches great importance to supervision in the following terms:

In these days of ideological warfare, the supervision of education is an important function of the occupant. Schools and educational establishments must be permitted to continue their work, but teachers must not indulge in political talk and activity detrimental to the occupant, under the guise of education... The occupant may revise textbooks, check curricula, and investigate the records of the instructors in order to prevent subversive or harmful instruction. Schools that will not submit to this control may be closed. This applies as much to private schools and institutions as to public schools. (p.234).

²² Von Glahn states:

General agreement appears to have been reached among writers as to the occupant's right to exercise supervision over the schools in occupied enemy territory...

There can be little doubt that the occupying power may prevent any and all teaching which serves to provoke hostility toward the occupant's forces, disrespect to the latter and to their commands, or passive resistance to the lawful orders given to the civilian population. (p.63).

²³ No. 91 of 1967, C.P. & O., Vol. 6, p.211.

²⁴ See Order concerning the Use of School Books, No. 107 of 1967, C.P. & O., Vol. 6, p.235.

²⁵ The Jordanian University Law, No. 17 of 1964, Jordanian Official Gazette, No. 1764 of June, 1964.

²⁶ No. 16 of 1964, Jordanian Official Gazette, No. 1763 of 26th May, 1964.

²⁷ See sections 2, 8(c) and 20 of the Education and Culture Law referred to in footnote 4 above.

²⁸ Order concerning the Education and Culture Law, No. 16 of 1964; No. 854 of 1980, 6th July, 1980.

²⁹ See pp.8, 9.

³⁰ Sections 2, 8(c) and 20.

³¹ Section 26.

³² Section 59.

³³ Section 59.

³⁴ Section 25.

³⁵ British Manual, p.147, paragraph 535.

³⁶ American Manual, p.143, paragraph 375.

³⁷ Von Glahn, p.141. Likewise, Greenspan states that restriction of movement is a usual method of exercising control:

Movement by civilians within the territory is restricted, and only allowed outside defined areas by a system of passes. (p.233).

³⁸ See Defence (Emergency) Regulations, 1945, part XIII.

³⁹ Latest version being the General Exit Permit, No. 5 of 1972, C.P. & O., Vol. 31, p.1230, which was issued pursuant to the Order concerning Closed Areas, No. 34 of 1967, C.P. & O., Vol. 2, p.40.

⁴⁰ Greenspan observes that the right to travel freely in occupied territory or to leave it are rights which, in the nature of things, are suspended by the occupant. He also states in his review of the normal modes of control by the occupant that "Entry and exit from territory is strictly regulated." (p.233).

⁴¹ American Manual, p.143, paragraph 375.

⁴² S. Gazit, "Early Attempts at Establishing West Bank Autonomy", Harvard Journal of Law and Public Policy, Vol. 3, (1980), p.129, at p.132, records:

[The population of the Region] at the time of the war was about 850,000. Afraid that they might be indefinitely separated from their families on the East Bank, immediately after the cessation of hostilities some 150-200,000 refugees left their West Bank houses and moved to the East Bank. Most were joining relatives who worked on the East Bank or in Kuwait, Saudi Arabia or the other Gulf Emirates.

⁴³ British Manual, p.147, paragraph 535.

⁴⁴ American Manual, p.143, paragraph 375.

- ⁴⁵ See further, Von Glahn, p.141, and Greenspan, p.233.
- ⁴⁶ See Order concerning Identity Card and Population Register, Order No. 297 of 1969, C.P. & O., Vol. 17, p.609.
- ⁴⁷ Defence (Emergency) Regulations, 1945, Part X.
- ⁴⁸ Pictet, p.368.
- ⁴⁹ No. 378 of 1970, C.P. & O., Vol. 21, p.733.
- ⁵⁰ See, for example, Civil Affairs, p.122, Greenspan p.233, and Von Glahn, p.140.
- ⁵¹ See p.75.
- ⁵² See, for example, the Closing Order (Sebastia area), No. 411 of 1970, C.P. & O., Vol. 25, p.953.

Chapter Ten: ELECTIONS TO LOCAL AUTHORITIES

- ¹ P.143, paragraph 371.
- ² See further Von Glahn, p.141 "...normally all voting privileges are suspended for the duration of the invader's stay, with the possible exception of certain types of local elections."
- ³ See Von Glahn, p.141 above referred to and M. Drori, "Municipal Elections in Occupied Judaea and Samaria," 9 ILR, pp. 97, 100.
- ⁴ Town Municipalities Law, No. 29 of 1955. The Jordanian Official Gazette, No. 1225, 1st May, 1955.
- ⁵ Article 8(1).
- ⁶ Article 7.
- ⁷ Article 12.
- ⁸ Article 34.
- ⁹ Article 27.
- ¹⁰ Article 34, such decision being final and non-appealable.
- ¹¹ Order concerning the Extension of Term of Office of the Administrations of Local Authorities, No. 80 of 1967, C.P. & O., No. 6, p.200.
- ¹² In accordance with the Order concerning Municipal Elections, No. 454 of 1971, C.P. & O., No. 19, p.1099.
- ¹³ Order concerning the Town Municipalities Law, No. 194 of 1967, C.P. & O., No. 10 of 25th February, 1968, p.384; Order concerning the Town Municipalities Law (Amendment No. 1), No. 236 of 1968, C.P. & O., No. 12 of 16th June, 1968 p.482, and Order concerning the Town Municipalities Law (Amendment No. 2), No. 312 of 1969, C.P. & O., No. 18 of 18th May, 1969, p.636.
- ¹⁴ Order concerning the Town Municipalities Law (Amendment No. 3), No. 331 of 1969, C.P. & O., No. 19 of 20th October, 1969, p.667, and Order concerning the Town Municipalities Law (Amendment No. 4), No. 394 of 1970, C.P. & O., No. 23 of 30th August, 1970, p.816.
- ¹⁵ Section 3 of the Order concerning the Extension of Term of Office of the Administrations of Local Authorities, *op. cit.* See footnote 11 above.
- ¹⁶ Order concerning the Town Municipalities Law (Amendment No. 9), No. 627 of 1975, C.P. & O., No. 36 of 1st September, 1976, p.54.

- ¹⁷ Order concerning the Extension of the Appointment of Town Councils, No. 830 of 1980, dated 8th April, 1980.

Chapter Eleven: APPOINTMENT OF TRADE UNION OFFICIALS

- ¹ See, for example, Shehadeh, p.119.
² Labour Law, No. 21 of 1960, Jordanian Official Gazette, No. 1491 of 1960.
³ Jordanian Criminal Law, No. 16 of 1960, sections 20, 21.
⁴ Order concerning the Labour Law No. 21 of 1960 (Amendment), No. 825 of 1980, 20th February, 1980.
⁵ Section 50(c)(3), Security Provisions Order, No. 378 of 1970, C.P. & O., Vol. 21, p.773; for English translation see 1 IYHR (1971), p.421 *et seq.*

Chapter Twelve: TAXATION IN THE REGION

- ¹ Feilchenfeld, p.83.
² P.146, paragraph 527.
³ See also Von Glahn, p.150 and Greenspan, p.228.
⁴ On the right of the occupying power to utilise money contributions for the needs of its army, see Oppenheim, p.412, paragraph 148; Stone, p.713; Feilchenfeld, p.41, and Von Glahn, pp.161-162.
⁵ For a general discussion on taxation in the areas administered by Israel, see D. Shefi, "Taxation in the Administered Territories," 1 IYHR, (1971), p.290 *et seq.*
⁶ Stone, p.712.
⁷ Von Glahn, p.151.
⁸ Feilchenfeld, p.49.
⁹ Order No. 658 of 1976, C.P. & O., Vol. 38, p.182.
¹⁰ See p.57.
¹¹ See p.5 *et seq.*
¹² See, in general, Feilchenfeld, p.24.
¹³ Feilchenfeld, p.49. Stone endorses the same view on pp.712-713.

This study by the Israel National Section of the International Commission of Jurists is designed to acquaint the international legal community with the true facts about Israel's administration of the areas which came under her control following the war waged against her by Jordan in 1967. It does so by detailing the international law on the subject and the opinions of judicially recognised authorities.

It puts into perspective the measures adopted by the military government for ensuring public order and security and for promoting the wellbeing of the local inhabitants, with special attention to the role played by the Israeli High Court of Justice as "an exacting watchdog."