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AN ANALYSIS OF THE SCOPE AND ADEQUACY OF THE LAWS OF WAR APPLICABLE TO THE CONFLICT IN THE MIDDLE EAST BETWEEN ISRAEL AND THE RESISTANCE MOVEMENT OF THE PALESTINIAN PEOPLE

by

William Abraham Crane

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William Abraham Crane

B.A. 1960 The Ohio State University

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Thesis directed by

William Thomas Mallison, Jr.

Professor of Law

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I. INTRODUCTION: THE CURRENT ISRAELI DILEMMA

After their blitzkrieg victory over the Arabs during the so-called "Six-Day War" in June of 1967, Israeli hopes for peace were high. Arab military forces had been shattered and Israel held the Sinai Peninsula, the Gaza Strip, the west bank of the Jordan River, and Syria's Colan Heights. The closing of the Suez canal served to deprive Egypt of an important source of revenue. Jordan was reduced to a rump desert. In Syria, the Israeli army was encamped just a short drive away from Damascus. It seemed that from its position of strength, the Israeli government would be in a good position to dictate peace terms to the Arabs, who would be anxious to retrieve as much of their lost real estate as possible.

But peace did not come. "The war is over," said Moshe Dayan, Israeli Minister of Defense, "Now the trouble begins." [1] This view has been proven more realistic than Israeli expectations for peace. Instead, the June 1967, hostilities have only hardened the will of the Arabs in their confrontation with Israel. The Soviet Union has replaced most of the Arab armament lost during the fighting. Not only is Israel still surrounded by increasingly efficient Arab armies, but with the more distant frontiers that must be defended and the longer lines of communication and supply, Israeli armies no longer have the mobility that they once had and which was of such decisive importance in their previous armed clashes with the Arabs.

In addition to the administrative problems and expenses faced by Israel as a result of the necessity of administering and defending the occupied

territories, Israel is being confronted with a constantly increasing tempo of Palestinian refugee guerrilla activities. The June 1967 defeat of the Arab armies on the battlefield, the subsequent occupation of the Arab lands, and Israeli retaliatory raids in response to guerrilla campaigns and border incidents have acted as a catalyst to fuse Arab support behind these resistance movements of the Palestine refugees.

As of mid-May 1969, since the conclusion of open hostilities, 274 Israeli soldiers and 48 civilians had been killed and 1,343 Israelis had been wounded in Arab guerrilla attacks. This toll is constantly being pushed higher by the almost daily attacks of these resistance forces. [2]

In their quest for political control of Palestine, both peoples have paid dearly in the destruction of human values. Thousands of lives have been lost and many persons have been seriously wounded. Over three-quarters of a million have been made homeless and have been forced to live in abject poverty in squalid refugee camps. Forecasts for the future in the Middle East fortell of no end to this unfortunate tale of human suffering for many years to come.

As the continuing guerrilla raids extract a higher and higher toll, the Israeli government is under constantly increasing pressure to take military action designed to put a halt to such activities. This could well mean a renewed total assault on the surrounding Arab countries. However, not only would such a renewal of full scale hostilities again result in widespread

destruction of lives and bring untold misery and suffering to additional hundreds of thousands of people, but it could also trigger a nuclear confrontation between the world's major powers, with its attendant widespread devastation.

II. THE CENTRAL LEGAL POLICY ISSUES

What is the scope and adequacy of the limitations imposed by international law on claims to the use of intense coercive measures by the participants in hostilities involving a resistance movement such as has developed in the Middle East following the Israeli occupation of Arab lands? In view of the constantly increasing number of resistance or liberation movements taking place in many parts of the world today, the answers to issues raised by this question are of significance not only in the limited context of the Arab-Israeli conflict, but many of the principals involved are equally applicable to these other coercive situations.

Three central legal policy issues are involved in the basic question. First, are resistance forces such as those engaged in the conflict with Israel entitled to the protections of the Geneva Prisoners of War Convention of 1949? This question is deliberately posed first as it should be considered in a context devoid of any claims as to the justness or legality of the causes of the resistance movement. The second legal issue is whether the conduct of the Israeli occupation, if in violation of accepted rules of

international law, gives the Palestinian people the right to resort to self-defense. Subsidiary to this issue is the question of what the world community can and should do to ensure compliance with the laws of war which set minimum standards for the conduct of a belligerent occupation. The third legal issue is what are the levels of violence that should be permitted in the conduct of hostilities involving resistance movements? These legal issues will now be examined seriatim.

III. FACTUAL BACKGROUND OF THE ON-GOING PROCESS OF COERCION IN THE MIDDLE EAST

The coercive situation that prevails in the Middle East today is not something that developed suddenly. The roots of the conflict go back many years. Considering this fact, the very nature of the conflict, the long-standing history of the use of coercive means by those directly concerned in the struggle, and the many conflicting claims of the participants, it is not possible to make a rational appraisal of the legal significance of the present-day coercive measures being taken by these participants without first making a systematic inquiry into the fundamental factors that have led up to and are responsible for the conflict. The resistance movement of the Palestine refugees is but a symptom of the basic conflict between the opposing forces of political Zionism and Arab Nationalism. These symptoms should not be viewed in a vacuum. Rather, they must be examined in the context of all of the relevant facts and circumstances that preceeded and, in effect, caused

the development of the present-day Palestine refugee resistance movement.

The historical account that follows does not purport to cover every event in the development of the Arab-Israeli confrontation. However, an attempt has been made to touch on the most significant events and factors that have led up to and are involved in the present conflict.

A. Factual Background of the Establishment of the State of Israel and the Creation of the Palestine Refugee Problem

1. Jewish Historical Connection With Palestine

After struggling for centuries with the Canaanites, the Phoenicians, the Armaeans, and the Philistines, the Hebrews finally managed to secure a kingdom of their own in Palestine. In 1000 B.C. a Hebrew dominion under King David stretched from Damascus to Arabia. After King Solomon's death in 935 B.C., the kingdom was split into Israel and Judea. During the following centuries, the Hebrews lost their hold on most of Palestine and in 70 A.D. Roman legions captured Jerusalem, the Hebrew's last stronghold, killed a large number of Jews, and burned Solomon's temple. An unsuccessful revolt in 137 A.D., led by Simon Bar Kochba, was the last major attempt for many centuries to create a Hebrew state. With hope for the re-establishment of such a state gone, Judaism shifted its emphasis to spiritual rather than secular salvation. The idea of a return to the Holy Land became a spiritual rather than a practical goal.[3] Palestine was thought of as a center of Jewish religion and culture rather than as a land over which it was necessary or desirable for the Jews to obtain political control.

2. The Advent of Political Zionism

Although a sort of cultural or emotional Zionism, a fondness or longing for the land of David, had been an integral part of the heritage of Judaism since the Diaspora (scattering of the Jews throughout the old world, generally dated from the destruction of Solomon's temple), it wasn't until the latter part of the nineteenth century that serious suggestions that a Jewish homeland be founded in Palestine began to be advanced. The growing persecution of Jews in Russia convinced many that the only hope for Russian Jews lay in immigration. From time to time, various Zionist movements advocated immigration of Jews to Palestine. However, these movements did not gain widespread support among Europe's Jews. Those in Eastern Europe preferred immigration to the United States, while those in Western Europe were relatively assimilated, felt no threat to their welfare, and so had no real desire to immigrate to the somewhat barren Middle East.[4]

The founder of the Zionist movement that ultimately resulted in the creation of the State of Israel was Theodor Herzl, a lawyer-journalist, who came from a wealthy Jewish family in Budapest. As a result of his observance of the trial of Captain Alfred Dreyfus, Herzl reached the conclusion that assimilation of Jews was impossible and that the only answer to anti-Semitism was for the Jews to return to Palestine and establish an independent state. Despite the fact that Dreyfus was subsequently completely vindicated, Herzl continued to maintain these beliefs. It was under Herzl's stimulus that in 1897, the World Zionist Movement came into being at the First Zionist Congress held in Basel, Switzerland.[5]

The depth of Herzl's belief that anti-Semitism is inevitable and inescapable is illustrated in his statement that:

> . . . . The Jewish question exists wherever Jews live in perceptible numbers. Where it does not exist, it is carried by Jews in the course of their migrations. . . . This is the case in every country, and will remain so, even in those highly civilized—for instance France—until the Jewish question finds a solution on a political basis. The unfortunate Jews are now carrying the seeds of Anti-Semitism into England; they have already introduced it into America. [6]

As a solution to the problem of anti-Semitism, Herzl proposed:

> Let the sovereignty be granted us over a portion of the globe large enough to satisfy the rightful requirements of a nation; the rest we shall manage for ourselves.
>
> The creation of a new State is neither ridiculous nor impossible. We have in our day witnessed the process in connection with nations which were not in the bulk middle class, but poorer, less educated, and consequently weaker than ourselves. The Governments of all countries scourged by Anti-Semitism will be keenly interested in assisting us to obtain the sovereignty we want. [7]

The primary goal of the Zionist movement was the creation of a Jewish state which was to be a national home for the Jewish people. Zionism offered a specific ideology concerning the nature of Jewishness in the modern world, in which the Jewish nation would play a key role. [8] Zionism differed from the usual nationalistic movements in that the members of the group aspiring to sovereignty were scattered rather than concentrated in a particular geographical area. Like most nationalistic movements, though, Zionism created a strong sense of social cohesion among its adherents through a common myth;

in this case, identification with a religious-historical Jewish heritage and the belief in a revived Jewish creativity in Palestine. [9]

Working diligently on the idea of a Jewish state, in 1901 and again in 1902, Herzl tried to persuade Abdul Hamid, Sultan of the Ottoman Empire, to designate Palestine as a home for the Jews. While the Sultan permitted the entry of individual Jews, he rejected Zionist proposals for mass immigration. Failing in those attempts, Herzl negotiated with the British and ultimately secured an offer of territory in Uganda, which was then a British protectorate. However, while Herzl pressed hard for the acceptance of the Uganda offer, the Seventh Congress of the World Zionist Organization, held in 1906, two years after Herzl's death, definitely rejected the proposal. Zionist sentiment was now solidified, resolutely and uncompromisingly, behind the concept that the Jewish state must be in Palestine. [10]

In 1906, when the World Zionist Organization decided to press for a Jewish Home in Palestine, there were about 50,000 Jews living there. At that time, Palestine was a land of basic religious tolerance and tranquility. For several centuries, religious peace had been the rule, and animosity the exception. [11]

The die having been cast, the Zionists stepped up their efforts to promote immigration to Palestine, which was still under Turkish domination. By 1914, on the eve of World War I, the Jewish population had risen to 84,700 out of a total 689,000. [12]

After the outbreak of World War I, prior to engaging in military campaigns in the Middle East against Turkey, the British made political overtures to both the Jews and the Arabs, looking towards the eventual independence of both Jewish and Arab states. [13] In return, the British hoped for and did receive both Arab [14] and Jewish [15] cooperation in their conflict with the Axis.

As the war progressed, British Zionist leaders found the British Cabinet willing to turn a sympathetic ear toward their cause, which was persuasively advocated by Dr. Chaim Weizmann. On November 2, 1917, after several months of difficult negotiations, Foreign Minister Arthur Balfour sent to Lord Rothchild the following communication: [16]

Foreign Office,
November 2nd, 1917.

Dear Lord Rothschild,

I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet

'His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country'

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

Yours
(signed)
A. W. James Balfour

The Balfour Declaration, as finally issued, was the product of many drafts, revisions, and much compromise. In addition to the political promise clause sought by the Zionists, it contained two safeguard clauses designed to protect the rights of the Palestinian Arabs and of the Jews in countries other than Palestine. These safeguard clauses were included principally through the efforts of anti-Zionist Jews, Edwin Montague and Claude Montefiore. The resulting document was highly ambiguous. The terminology used, especially in the political promise portion, was not precise, either in a legal or in a literal sense.[17]

The Declaration mentions a "national home" for the Jewish people. Does this mean a Jewish state or simply a Jewish settlement or community? Who are the "Jewish people" that the document refers to? The location of the home is to be "in Palestine." Does this mean that the home is to be in a portion of Palestine or is the entire country to constitute the home? What are the borders of the Palestine referred to in the Declaration? What would be the effect of a violation of the safeguard clauses?

The foregoing and many other questions that might be raised about the Declaration did not cause the Zionists undue concern. Their attitude towards the entire document is well summed up in a statement made by Dr. Weizmann regarding the safeguard clauses: "It would mean exactly what we would make it mean . . . neither more nor less."[18]

Despite the loose wording and the ambiguities, the Balfour Declaration proved to be a formidable instrument in the hands of the Zionists, who regarded it as a contract binding Britain to support the founding of a Jewish state in Palestine. Interpreting the Declaration as being without safeguards, they claimed that they had the charter that Herzl had dreamed of and, as subsequent events would show, they made very effective use of it.

3. The Mandate Years

After the Turkish surrender in 1918, a British Military Administration was set up in Palestine. At San Remo, in 1920, the League of Nations agreed to grant a mandate to Great Britain, which established a civil government in Palestine on July 1, 1920.[19] At the conclusion of the war, in the Treaty of Lausanne, which was signed on July 24, 1923, Turkey renounced all rights to territories outside its borders, as established in the treaty, leaving the future of these territories to be settled "by the parties concerned."[20] On September 29, 1923, the League of Nations formally ratified the mandate.

In Article 22 of the League of Nations Covenant it was provided that the wishes of the communities formerly belonging to the Turkish Empire must be a principal consideration in the selection of the Mandatory. However, the Middle East mandates were assigned without regard to the wishes of the inhabitants, which had been clearly indicated in the report of the King-Crane

Mission that had been sent to the area by President Wilson. This report indicated that while independence was preferred, if there had to be assistance, the majority of the population of Palestine preferred American to British assistance.[21] The report also indicated that nearly nine-tenths of the whole non-Jewish population of Palestine were emphatically against the whole Zionist program, which included the idea that sooner or later Palestine would be organized as a Jewish commonwealth.[22]

As might be expected, the Arabs accepted the mandate without enthusiasm. Having managed to get their foot in the door, the greatly encouraged Zionists immediately began to exert increased efforts to the sponsoring of immigration into Palestine. At first, Jewish immigration was not very heavy and, while there was occasional sporadic violence, the Arab and Jewish communities lived in relative peace and harmony. However, in the late 1920's Jewish immigration began to rise. As immigration increased and as the Jews acquired more land, Arab anxieties increased. Disputes arose over immigration regulations, religious sites, land ownership, and Jewish union policies. All this time, Arab resentment was gradually growing.[23]

Tension between the Arab and Jewish communities continued to mount. In August of 1929, serious hostilities broke out between the Arabs and Jews following an incident at the Wailing Wall in Jerusalem, that began with an anti-Arab demonstration by young Jewish nationalists. Unrest and fighting soon spread to Hebron and to other nearby communities. By the time the hostilities were concluded, 133 Jews and 116 Arabs had been killed.[24]

Gradually, the attitudes of the Palestine Arabs hardened as more of them began to accept the leadership of Jaj Amin El Husseine, the Grand Mufti of Jerusalem, who took an extreme stand against Zionist objectives and advocated a resort to force, if necessary, to block their aspirations. During this time of growing nationalism, the three-cornered struggle for Palestine had the effect of strengthening the forces of both Arab nationalism and Zionist political nationalism and of bringing the two into direct confrontation. [25]

In 1933, with the rise of Nazi power in Germany, immigration figures climbed beyond the wildest dreams of the Zionists. The number of Jewish immigrants rose from 9,553 in 1932 to 30,327 in 1933. In addition, between 1932-33 there were some 22,000 illegal immigrants who entered Palestine. [26]

In 1936, resentful of the increased Jewish immigration and despairing that their claims and demands for independence would ever be met by the British, the Arabs launched a series of violent disorders all over the country. These disorders were directed at both the British and the Jews. By the summer of 1936, the disorders had assumed the aspect of a small war. Arab peasants carried on a campaign of sabotage and attacks against both British troops and the settlers in Jewish colonies. Small armed bands carried on guerrilla warfare from the hills. [27]

The British Government, after re-examining the whole Palestine problem, issued what has come to be known as the White Paper of 1939. In this document, it was stated that for the following 5 years Jewish immigration would

be limited to a maximum total of 75,000, after which there would be no immigration, except with the acquiescence of the Arabs of Palestine. Restrictions and prohibitions were also placed on the acquisition of Arab lands. The White Paper also stated that: "His Majesty's Government now declare unequivocally that it is not part of their policy that Palestine should become part of a Jewish State." [28]

The Zionists, refusing to be set back by the White Paper, went underground. They were determined to continue the immigration by illegal means, if necessary. Efforts to train their secret army, the Haganah, were stepped up. The more extreme groups started to prepare a campaign of violence and terror. [29]

The outbreak of World War II in Europe produced a sort of truce in Palestine, however, this did not last long. Many Zionists felt that Britain had broken the terms of the Mandate and had condemned thousands of Jews to death by the application of strict immigration quotas. Britain, to many, appeared to be the real enemy of the Jewish people.

In 1944, before the war in Europe had ended, the Zionists inaugurated a wave of terror in the Middle East. The more moderate of the terrorist organizations, the Irgun Zvai Leumi (National Military Organization), had approximately 200 dedicated activists among its ranks in 1944. [30] In addition to acts of terrorism against the British, the Irgun advocated and carried out a policy of reprisals to counter attacks by Palestinian Arabs. [31]

The other terrorist organization, the Lohmey Herut Israel (Lechi), better known as the Stern Gang, had far fewer members than Irgun, but also had much less restraint.[32]

The Irgun, Lechi, and Palmach (the striking force of the Haganah) struck repeatedly. Among the more notorious of the Zionist acts of terrorism was the assassination on November 6, 1944, of Lord Moyne, British Minister of State in the Middle East, by two Stern Gang gunmen[33] and the July 22, 1946 explosion of bombs planted in the basement of the King David Hotel in Jerusalem by the Irgun. The attack on the King David Hotel resulted in the death of over 200 persons, including 15 Jewish civilians.[34] In order to accomplish their aim of driving the British out of Palestine, the Zionists were ready to go to any lengths, including the murder of their own people. On November 26, 1940, the refugee transport ship PATRIA was blown up within sight of land. Of the 1,800 passengers, more than 250 were lost. Ten years after the incident, it was discovered that the ship had actually been blown up by the Zionists to arouse anti-British sentiment.[35] In attempting to counter the Zionist terrorism, by January of 1947, more than 80,000 regular British troops and 16,000 policemen were stationed by Britain in Palestine. However, even with one soldier or policeman for every 18 civilians, pacification efforts were unsuccessful.

Over a period of 25 years there had been various outside investigations carried on in Palestine and many reports filed. However, none had proposed a solution that was acceptable by both the Arabs and by the Zionists. Britain's

resources were almost exhausted. Finally, seeing that resolution of the situation was beyond means at its disposal, Britain decided to leave Palestine. On February 14, 1967, the British announced that they had decided to refer the Palestine problem to the United Nations.

The report of a United Nations Special Committee on Palestine, published on September 3, 1947, recommended that the mandate be terminated.[36] On November 29, 1947, the United Nations General Assembly adopted a plan for the partition of Palestine.[37] While the Zionists were not completely satisfied with the amount of territory awarded to them in the Partition Plan, they considered it to be the best deal that they could get under the circumstances and so were willing to go along with the plan.[38] The Arabs, on the other hand, refused to concede to the Zionists a right to Jewish sovereignty over any part of Palestine.[39]

The Arabs began to organize forceful resistance to the plan. With the evacuation of the British, there being no internal or external power willing or able to enforce the peace, armed hostilities continued to increase and, as May 14, 1948, the official date for the termination of the mandate approached, the flames of war continued to mount in the Holy Land.

4. Termination of the Mandate; Creation of the Refugee Problem

The flight of the Palestinian Arabs began on a small scale during the early phases of the hostilities. As the conflict intensified, their flight grew to greater proportions. Immediately after the General Assembly passed

the partition resolution, following serious clashes between the Arab and Jewish communities, some 30,000 upper and middle class Arabs, including most Arab leaders, fled from Palestine to safer areas. As the fighting spread and intensified, thousands more fled their homes to escape areas of combat and to seek food and other necessities.[40]

As the British withdrew, the Arabs in Palestine were left without any government or necessary governmental services. With the detrimental effect that this had on their morale, the Arabs were ready for mass flight. The Arab communities became easy prey to rumor and exaggerated atrocity stories, whether with or without foundation.

On April 9, 1948, the Irgun and the Lechi attacked the Arab Village of Deir Yassin. According to Menachem Begin, the Irgun commander, the purpose for the taking of Deir Yassin was to establish an airfield, which was subsequently constructed and which, for a time, served as the only means of communication between besieged Jerusalem and the coast. Before the attack on Deir Yassin, a loudspeaker was used to exhort all women, children and aged to leave their houses and to take shelter on the slope of a nearby hill. According to Begin:

> A substantial number of the inhabitants obeyed the warning and they were unhurt. A few did not leave their stone houses—perhaps because of the confusion. The fire of the enemy was murderous—to which the number of our casualties bears eloquent testimony [4 killed and nearly 40 wounded, with 40 per cent of the attackers suffering casualties]. Our men were compelled to fight for every house; to overcome the enemy they used large numbers of hand-grenades. And the civilians who had disregarded our warnings, suffered inevitable casualties.[41]

In the attack on Deir Yassin, 250 Arabs, including women and children were killed by the Jewish forces and a number of the bodies were thrown into the village well. [42] Once news of the brutal massacre became known, the Haganah denied having any part in the operation carried on by "dissident" groups. The Jewish Agency issued a statement expressing its horror and regret and even cabled the release to King Abdullah ibn-Husein of Transjordan. The Arabs, however, did not believe that the Irgun was solely responsible. [43] Begin clears up this point with his statement that: "Dir Yassin was captured with the knowledge of the Haganah and with the approval of its Commander." [44]

According to Begin, "The enemy propaganda after Dir Yassin was designed to besmirch our name. In the result it helped us. Panic overwhelmed the Arabs of Eretz Israel . . .. In the rest of the country too, the Arabs began to flee in terror before they clashed with Jewish forces." [45]

Another example of the type of tactics used to cleanse Arab districts of their Arab inhabitants is illustrated by the actions of Yigal Allon in Galilee, in May of 1948. Allon used Jewish mukhtars (mayors) who had contact with local Arabs to spread rumors and urge the flight of the Arabs. In some areas, the resulting Arab exodus resulted in the capture of key points without the firing of a shot. [46]

With the growing numbers of Zionist military victories, the flight of the Arabs before the onrushing Zionist armies gathered momentum until it

carried away nearly the whole of the Palestine Arab community. By the time armistice agreements had been signed and open hostilities ceased, the number of Arab refugees had grown to well over three-quarters of a million. Even after the signing of the armistice agreements, additional thousands of Arabs were expelled from Israeli controlled territory.[47]

The Israelis claim that at no time did they envisage a mass departure of the Arabs. They maintain that from the very start, the State of Israel held out the hand of friendship to the Arabs and that Israeli authorities exerted their utmost to prevent the mass flight. They further maintain that the Arab exodus took place at the behest of Arab military commanders and political leaders who persuaded the Arab populace that evacuation to neighboring countries would be brief and that they would soon be able to return behind the victorious Arab armies and share in the spoils.[48] However, no evidence has ever been found that would prove that any Arab government asked the Palestinians to flee.[49]

The Arabs, on the other hand, maintain that the refugees were forcibly dispossessed and expelled through the use of terrorism and other coercive measures by the Zionists in a coldly calculated plan to rid Israel of its Arab inhabitants.[50]

Even if the Zionists did, at the beginning, attempt to prevent the exodus of the Arab masses, it is clear that as the war progressed they gave up any effort to halt the Arab's flight. The Zionists actually began to

regard their leaving as beneficial. Not only did the Arab exodus eliminate many military problems, but it also assisted in the development of the new state by freeing Arab lands for confiscation and settlement by Jewish immigrants.[51] As Sir John Bagot Glubb, the former commander of the Arab Legion has pointed out: "It is certainly true that if the Arabs had not left, the Jewish State would have been unworkable. To what extent they were intentionally driven out by 'a few calculated massacres', no gentile will probably ever know."[52]

5. The June 1967 War; Creation of Additional Refugees

On May 18, 1967, Gamal Abdel Nasser demanded the withdrawal of the United Nations Emergency Forces (UNEF), that had been stationed in the Gaza Strip and at Sharm el Sheikh, at the mouth of the Gulf of Aquaba, since the Israeli evacuation following the conclusion of hostilities in 1956. Since the UNEF had been stationed on Egyptian soil with Egypt's consent, once that consent had been withdrawn, the Secretary-General of the United Nations had no real choice but to withdraw the troops. There were no UNEF units on Israeli territory as Israel had refused to grant permission for their presence. By May 22, 1967, the last units of UNEF were withdrawn.[53] Nasser then announced that the Straits of Tiran was closed to Israeli shipping.

There has been much speculation as to what impelled Nasser to so drastically accelerate the intensity of the confrontation with Israel. It

may be that he felt that a stunning victory over the Israelis was necessary for him to be able to silence critics at home and to recoup his declining prestige among the other Arab nations in the Middle East. Perhaps Nasser thought that Israel would not use military force, or if Israel did, that his armed forces would be able to secure some initial victories and that the major powers would then step in and stop the fighting. Once he had taken the initiative in escalating the intensity of the confrontation, Nasser was unable to back down. The tempo and temper of the Arab polemics quickened. Egyptian troops were moved into the Sinai. The response of the Israelis was the initiation of full-scale hostilities.

The United Nation's initial call for a cease-fire was ignored by all participants in the hostilities. Ultimately, the parties did agree on a cease-fire, but not until the Arabs realized that they were hopelessly beaten and that no third party was going to come to their aid. The Arabs then grasped at the demanded cease-fire as a means of stemming the Israeli advance. By this time, the Israelis had substantially accomplished their aims and needed a respite to digest the new territories that they had seized. As Israeli forces accomplished their objectives, cease-fires were agreed upon with their Arab opponents.

During and also after the end of the June 1967 war, by the use of psychological and economic measures, as well as by the utilization of some more direct means, the Israelis once again encouraged and assisted in an

exodus of Arabs into Arab controlled territories. Many of the same factors that contributed to the Palestine Arab exodus of 1948, contributed again in 1967. Large numbers fled from sheer panic generated by the fighting and by the fear that physical harm might be suffered at the hands of the victorious Israelis. By the end of August 1967, at least 113,000 of the refugees from the 1948 war had fled or been expelled into neighboring Arab states. However, nearly 550,000 of the approximately 1,350,000 United Nations Relief and Works Agency (UNRWA) registered refugees remained under Israeli rule. [54]

B. The Impact of Zionism in the Middle East

1. The "Jewish People" Concept

One of the basic tennents of political Zionism is the idea that all Jews, no matter where they reside and whatever their nationality, constitute "one people." Israel is, according to Zionists, the homeland not only for its own citizens, but for all Jews. Illustrative of Zionist thinking on this matter is a statement of David Ben-Gurion that "When a Jew in America or South America speaks of 'our government' to his fellow Jews, he usually means the government of Israel, while the Jewish public in various countries view the Israeli Ambassador as their own representative." [55]

One of the first goals of the World Zionist Organization was to get their "Jewish People" nationality claims recognized in international law. Although the Balfour Declaration rejected their claims, they have consistently

represented it as supporting them. The World Zionist Organization continued to press for recognition of their "Jewish People" nationality claims and of their status as the authorized (though self-proclaimed) spokesman for that entity in public law contexts.

In Israel's Declaration of the Establishment of the State of Israel, the Zionist "Jewish People" nationality concept is given considerable emphasis.[56] The concept that Israel is the creation of and the homeland of all Jewish people is also enunciated in the World Zionist Organization—Jewish Agency (Status) Law, which was enacted in 1952. The first two paragraphs of the Status Law provides:

> 1. The State of Israel regards itself as the creation of the entire Jewish people, and its gates are open, in accordance with its laws, to every Jew wishing to immigrate to it.
>
> 2. The World Zionist Organization, from its foundation five decades ago, headed the movement and efforts of the Jewish people to realize the age-old vision of the return to its homeland and, with the assistance of other Jewish circles and bodies, carried the main responsibility for establishing the State of Israel.[57]

2. Jewish Rejection of Zionist Ideology

Many Jews have tended to react emotionally to the problems of the State of Israel and to give it all-out financial, political, and moral support.[58] Israel was founded under a cloak of humanitarism and many, if not most, Jews continue to have a sentimental attachment to Israel as well as an interest brought on by fear of anti-Semitism, which is both promoted and

exploited by Zionists. However, even without evidence of overt anti-Semitism, the very real and extreme terrorism practiced against the Jews by the Nazi regime is not something that is easy for humanitarians of any religion to forget. Although the subject is one that most Jews are quite understandingly reluctant to discuss, many must have in the back of their minds the feeling that if conditions were right, the same thing could happen in any country and that perhaps someday they too might need a place where they could find shelter and protection.[59] This fear alone would be enough to make a considerable number of Jews quite apprehensive whenever they feel that the continued existence of Israel is in the balance. When the need arises, they do not hesitate to dig deeply into their pockets to help Israel. The Jews concern for Israel's fate is well illustrated by the statement of a Zionist writer that:

> [In June of 1967] anxiety among Jews for Israel's fate rose to a fever pitch almost immediately, and by the time the war began had expressed itself in an unprecendented outpouring of monetary contributions. Even Jews who had never publicly identified with Israel's cause suddenly showed their solidarity. The total collected and pledged in gifts and loans throughout the world was about $350 million, which made it likely that Israel, in spite of the drain caused by the war, would end the year with higher reserves in foreign currency than at the beginning.[60]

While it is obvious that a fair proportion of Jews outside of Israel identify with and have a considerable amount of sympathy for the problems of Israel, this does not necessarily mean that they agree with or accept Zionist dogma such as the "Jewish People" concept, with all of its many implications.

In the United States there have been many bitter struggles between and among those Jews who are Zionist, anti-Zionist but pro-Israel, and those who are anti-Zionist and anti-Israel.[61]

Clearly, there is widespread rejection among Jews in the United States and elsewhere of the Zionist dogma that Israel is the representative and guardian of the rights and interests of Jews wherever they may be and that these Jews owe primary allegiance to Israel rather than to the country in which they are "temporarily" residing. Not only is there a rejection of this ideological concept, but many Jews feel that they are endangered and thus are angered at the Zionist attempts to block the assimilation of Jews into the population among which they reside. Addressing himself to this subject, Dr. Elmer Berger, an American Jew who has been a critic of Zionism has said:

> What is incomprehensible, illogical, absurb, is that the State of Israel with seeming impunity, is permitted to operate part of its government in the United States, in direct impact upon United States citizens and in support of this conflicting policy. What is further incomprehensible, illogical and absurb is that the United States Government leaves United States citizens vulnerable to exploitation by the foreign sovereignty for extracting funds and political support to operate the machine and program which is admittedly designed to persuade these Americans to support the policy of the foreign state and ultimately to expatriate themselves.[62]

In their attempts to block assimilation of Jews, one of the Zionists' chief weapons is their promotion of anti-Semitism. The Zionists promote and exploit anti-Semitism as a means of documenting and bringing home to Jews the idea that it is impossible for Jews and those of other religions

to become a single, integrated community and that, therefore, a physical separation is the only practicable way out.[63] That Zionists look with favor on anti-Semitism is well illustrated by a statement in Davar, the official organ of the Marpai party, Israel's leading political party:

> I shall not be ashamed to confess that, if I had power and I have the will, I would select a score of efficient young men—intelligent, decent, devoted to our ideal and burning with the desire to help redeem Jews—and I would send them to the countries where Jews are absorbed in sinful self-satisfaction. The task of these young men would be to disguise themselves as non-Jews, and plague Jews with anti-Semitic slogans, such as, 'Bloody Jew', 'Jew go to Palestine', and similar intimacies! I can vouch that the results in terms of a considerable immigration to Israel from these countries would be ten thousand times larger than the results brought by thousands of emissaries who have been preaching for decades to deaf ears.[64]

When it comes to the subject of anti-Semitism, Zionists seem to be anxious to get the word out. For example, on April 19, 1969, the Anti-Defamation League of B'nai B'rith reported that more than one-third of the Nation's citizens holds anti-Semitic beliefs.[65] Not only does the promotion of anti-Semitism serve to discourage the assimilation of Jews, but it is also used by Zionists to help silence those who might dare to oppose Zionist and Israeli policies.[66] Anti-Semitism is also used by the Zionists, along with some other equally questionable methods, to help bludgeon from Jews the huge financial support required by the Zionist undertakings. Referring to some of these methods, one Jewish author, Henry Hurwitz has stated:

> /A/s is well known, a very large proportion of the supposedly voluntary philanthropic donations are extracted from business

> and professional men on threats of punitive, economic and social sanctions. This must be described as what it is—a species of terrorism. Such terrorism has become a most effective technique in large Jewish fund raising.[67]

Senator William F. Fulbright, Chairman of the Senate Foreign Relations Committee has referred to the Zionist fund raising operations as a conduit through which more than one million tax free dollars a year has passed for use in political lobbying and propaganda in the United States. These were funds that had ostensibly been raised for humanitarian purposes.[68] The American Zionist Council has also been used as a conduit of funds to avoid compliance with the Foreign Agents Registration Act.[69]

While, by various means, the Zionist organizations have been able to enlist a considerable amount of moral and financial support for Israel, this does not necessarily indicate widespread acceptance of Zionist ideology. In fact, the refusal of Jews to abandon their homes in the Western World and to "return" to Israel, is clear evidence of rejection of a basis principle of Zionism. In discussing the failure to properly tap this large reservoir of aliya, former Prime Minister Levi Eshkol has indicated that out of a total of one-and-a-quarter million immigrants to Israel during the seventeen years preceding 1967, only sixty-two thousand came from the United States, Canada, England, South Africa, Australia, New Zealand, and from Western Europe and South America; an average of only about 3,600 a year.[70]

Not only has there been a failure of Western Jews to respond to the Zionist call for a return to their "homeland," but even in Middle East

countries where the position of Jews has not been made untenable as an indirect result of the Arab-Israeli conflict, Jews do not rush to heed the Zionist call. For example, there are still 60,000 Jews living in Iran, where they enjoy freedom of worship and full citizenship rights.[71] As a matter of fact, this was the situation of the Jews living in all of the Middle East countries prior to the advent of Zionist-Arab conflict. All of the religious communities, Moslems, Christians, and Jews, regulated their life in accordance with the principles of their faith. The religious minorities lived in automomous communities under their own laws. The Jews were, in a number of ways, integrated into Arab society. Their mother tongue was the Arabic language, which was also the medium of their literary and other intellectual products.[72]

3. Arab Rejection of Zionism

The deeply engrained hostility of the Arabs to Zionism, and thus to Israel, results from a number of factors. Basically though, their fear of and rejection of Zionism is based on their opposition to the apparent aims of Zionism and the methods used by Zionists in carrying out these aims.[73] Three grievances most often mentioned by Arabs in denouncing Zionism and Israel are the supposed Zionist expansionist aims, Israel's discrimination against the Arabs, and Israel's treatment of the Palestine refugees. A brief look at the claims of the participants relating to these matters would be helpful at this point.

a. Expansionism

The boundaries of the biblical and historical "Promised Land" supposedly ran from the Nile to the Euphrates. This, in the Arab view, is what the Zionists intend to have as the boundaries of the State of Israel.

Over the years, according to an Israeli government source, the area known as "Palestine" has been whittled down considerably. It has gone from 45,000 square miles prior to 1922, to 10,000 square miles in 1922, to 7,993 square miles at the time of the 1949 armistice. [74]

The Arabs feel that, because of the limited amounts of land available in Israel for cultivation, Israel's current policy of encouraging large scale immigration will ultimately lead to increasing threats against the territory of the surrounding Arab states. [75] This policy of wholesale immigration, without regard to the absorbtive capacity of the country, has raised the Jewish population of Israel from about 650,000 in 1948, to 2,239,200 by the end of 1964, and to over 2,500,000 in 1966. [76] During the seventeen years preceding 1967, Israel absorbed an average of 73,000 immigrants a year. [77]

That Zionist leaders did not consider the borders of Israel, as they were constituted in 1949, as permanent is illustrated by the statement of David Ben-Gurion, who was then the Prime Minister of Israel, that:

> . . . I add now that it (Israel) has been established in only a portion of the Land of Israel. Some are hesitant as to the restoration of our historical frontiers, fixed and set from the beginning of time, but even they will hardly deny the anomaly of the new lines . . . . [78]

Events have shown that the Arab fears of Israeli territorial expansion are not entirely groundless. Israel gave up Arab land seized during the 1956

hostilities only because of extreme pressure by the United States. At the present time, not only does Israel continue to occupy all of the Arab territory seized during the June 1967 war, but Jerusalem has been annexed and it appears that Israel intends to hold on to part, if not all, of the remainder. Commenting on July 5, 1968, on Israel's expanded frontiers, General Dayan said:

> Since the return to Zion a hundred years ago a double process of colonization and expansion of frontiers has been going on. We have not yet reached the end of that road. It is the people of Israel who will determine the frontiers of their own State. [79]

Israel's leaders have not precisely defined how much Arab territory, occupied since the 1967 hostilities, that they intend to keep. However, Premier Golda Meir has stated that Israel's frontiers must provide "no natural advantage to our neighbors." [80]

b. Treatment of Arab Refugees

The Universal Declaration of Human Rights provides:

> Everyone has the right to leave any country including his own, and to return to his country. [81]

United Nations General Assembly Resolution 194-(III), adopted on December 11, 1948, and repeated in substance every year since 1948, provides that:

> /T/he refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return . . . . [82]

Spokesman for the Palestine refugees contend that the attitude of the refugees has been made clear since 1948. They continue to maintain that it is their lawful right and desire to return to their former homes in Palestine.[83]

The Arabs insist that Israel must abide by the United Nations resolution. The Israelis, on the other hand, maintain that the resolution did not call for an immediate repatriation of the refugees and that this is recognized by the inclusion in the resolution of the words "at the earliest practicable date." Their view is that the use of these words admitted that it was not then practicable for the Arab refugees to be returned. What is required, they maintain, for this "suspensive condition" to be satisfied is a return to normal conditions, i.e. a general settlement of all of the major Arab-Israeli differences.[84]

In the Israeli view, the Arabs should not have fled in the first place. An Israeli government publication states:

> 160,000 Arabs . . . held their ground, discounted the intimidation and stayed unharmed in their villages. Through natural increase their number has since risen to over 220,000. They are citizens of Israel, enjoying equal rights and opportunity with Jews.[85]

As far as the Arabs that left are concerned, and especially in view of the hostile attitude of many of them towards the Government of Israel, the Israeli position is that their return would introduce a fifth column within Israel's borders. As Mrs. Golda Meir has stated:

> For 20 years the refugees were kept in camps. The textbooks printed with the money of the United Nations were full of hatred for Israel, with wonderful examples of how there were five Israelis, we killed three, how many are left? Now the little boy who was five is now 25. He is maybe Fatah [an Arab commando] now. Now we are asked to give them a free choice to come back. This is a fifth column that we are asked to take. [86]

Israel's supporters also advance the theory that the situation should be looked upon as a population shift. The claim is made that between 1947 and 1963, about 650,000 Jews were uprooted in African and Middle Eastern countries and were absorbed by Israel. They also reportedly collectively left behind property valued in the hundreds of millions of dollars. [87]

The claim has also been made that the refugee situation is being used as a political football by the Arab governments. As Robert Galloway, a former UNRWA representative to Jordan has reportedly said:

> It is perfectly clear that the Arab nations do not want to solve the refugee problem. They want to keep it as an open sore, as an affront against the United Nations, and as a weapon against Israel. Arab leaders don't give a damn whether the refugees live or die. [88]

In support of this theory, it is pointed out that some of the Arab nations, such as Syria and Iraq are greatly underpopulated and could absorb all of the refugees with ease. [89]

The Arabs, on the other hand, maintain that the reason why Israel prevents the return of the refugees is because of the Zionist inspired concept that Israel should be a Jewish state and the more Jewish the better. That this was one of the early goals of the Zionist movement is clearly shown

in the statement in the report of the King-Crane Commission that:

> . . . The fact came out repeatedly in the Commission's conference with Jewish representatives, that the Zionists looked forwarded to a practically complete dispossession of the present non-Jewish inhabitants of Palestine, by various forms of purchase. [90]

That the Zionists have not lost sight of this goal is clearly reflected in their actions in actively assisting in the exodus of Arabs both at the time of the founding of the State of Israel and in 1967.

Various reasons are given for the failure of the Arab countries to absorb the refugees. The primary reason advanced is that the refugees desire to return to their homeland and so do not wish to be assimilated into their host or other Arab countries. There are other practicable reasons that are also advanced. Egypt, though large in land area, has very little land that may be cultivated. Egypt is considered to be overpopulated and cannot physically absorb any appreciable number of refugees. Lebanon has a touchy political situation, with its population about evenly divided between Christians and Moslems. It is feared that allowing the refugees living there, who are mostly Moslems, to become citizens, would upset the religious balance among the population and could cause serious political difficulties. Jordan, because of limited amount of land suitable for cultivation, can absorb only a limited number of refugees. The countries with the greatest absorbtion potential are probably Syria and Iraq. However, even in these nations, the problem of absorbtion would not be simple. In the first place,

these governments could not give consideration to the refugees over their own citizens in the parceling out of land. Also much of the land is privately owned, even if not cultivated. To purchase the land, bring it under cultivation, and to construct the necessary dwellings would require a great deal of money. [91]

Despite what is claimed by Zionist propaganda of the hard and callous attitude of the Arab governments toward the Palestine refugees, the refugees host countries of Jordan, Egypt, Syria, and Lebanon have been fairly generous and hospitable to the refugees and have spent more than $100,000,000 on direct assistance to them. [92]

c. Discrimination Against Arabs

In the Declaration of the Establishment of the State of Israel it is provided that:

> The State of Israel will . . . foster the development of the country for the benefit of all inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; . . .
>
> We Appeal - . . . to the Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions. [93]

Speaking about the apartheid policy practiced by the Government of South Africa, before the United Nations General Assembly on October 2, 1963, Mrs. Golda Meir, who was then Israel's Foreign Minister, stated:

> The people of Israel feel deep abhorrence for all forms of discrimination on the grounds of race, colour or religion. This stems from our age-old spiritual values, and from our long and tragic historical experience as a victim of man's inhumanity to man. We therefore naturally oppose policies of apartheid, colonialism and racial or religious discrimination wherever they exist. [94]

While Israel's official attitude is one of nondiscrimination, as Arabs are quick to point out, that has not been the policy put into actual practice. There are numerous ways in which the Arabs in Israel are discriminated against. According to a poster issued in Jerusalem in 1958, and which is signed by Professors Martin Buber, E. Simon, and A. Bonne', of the Hebrew University, and others:

> The bulk of Israel's Arab population is subject to a military rule that denies them the basic rights of any citizen. They have no freedom of movement or residence; they are not accepted as equal members of the trade unions and are not employed on the same basis as others in most organizations or government departments. Their entire life depends on the good graces of the military governors and their aids. Government ministries, in fulfilling their duties, help the Arabs in the fields of agriculture, health, education, etc., but the system of military government casts its heavy shadow over all these benefits. [95]

Discrimination against Arabs in Israel is even written into law. Under the Nationality Law of 1952, [96] Jews can obtain instant citizenship by "returning" to Israel. The same law, however, by providing a system of

qualified eligibility, has effectively deprived a great number of indigenous Palestine Arabs, who are residents of Israel, of the rights and benefits of citizenship. Another example of laws that have discriminated against Arabs in Israel is the Absentees' Property Law of 1950.[97] Under this law, land owned by Arabs who had fled from their homes during the fighting in 1948, was seized even if they had only gone to the next village for safety and had returned to their homes the next day.

In addition to statutory discrimination, there is discrimination against Arabs in Israel in many other more subtle ways, such as in employment, rights to travel, the expropriation of Moslem religious (Waqf) foundations, and, in general, relegation of the Arab minority to a class "B" category.[98]

4. Rejection of the Zionist "Jewish People" Concept in Public International Law

Clearly, no state can afford to subscribe to a dogma that maintains that a portion is its populace owes primary allegiance to another government. To so recognize would be an abdication of part of the sovereignty of that state to a foreign government. Beginning with the second safeguard clause of the Balfour Declaration, it can be said that the Zionist "Jewish People" nationality claims are not considered to be recognized in public international law.[99]

So far as American law is concerned, recognition of the "Jewish People" nationality claims would be prohibited by the First Amendment of the United States Constitution. Such recognition has also been specifically rejected

by the United States Department of State in a letter to Dr. Elmer Berger, Executive Vice-President of the American Council for Judaism. [100]

C. The Palestinian Arabs' Response

1. The Development of Guerrilla Warfare

Nearly a century and a half ago, Karl von Clausewitz observed:

> . . . When, as in Spain . . . the war is for the most part carried on by means of a people's war . . . a truly new power is formed and . . . people's warfare introduced a means of defense peculiar to itself. [101]

Although sometimes given a variety of names such as "unconventional", "unorthodox", or "underground", almost all types of irregular warfare are commonly referred to today as "guerrilla warfare." [102] Guerrilla bands have played a considerable part in almost every war in modern history. Since the beginning of World War II, guerrilla action has become more and more prominent as a substitute for conventional warfare.

Guerrilla warfare is usually resorted to as a means of minimizing an adversary's relative advantage either in numerical strength or armament. It is the weapon of the weak. Utilizing this form of warfare, the strategically weaker side assumes the tactical offensive in selected forms, times, and places. It is not used in preference to regular warfare, but is used when and where the possibilities of regular warfare have been foreclosed. It is used before regular forces have been created, after regular forces have

been defeated, and where regular forces are unable to operate.[103]

Guerrilla warfare is a way of harassing and wearing down the enemy while developing one's own strength. If the adversary puts a low value on the task of defeating the guerrillas and does not commit its full resources to the struggle, this form of warfare may be decisive itself. In most cases, however, the weaker side must eventually shift from guerrilla operations to regular warfare to achieve victory.[104]

During World War II, the Germans encountered guerrilla activity throughout their areas of operations. Since the conclusion of the war, there have been numerous occurrences of guerrilla warfare throughout the world. While such activity has been successfully combatted in areas such as the Philippines and Greece, guerrilla forces have achieved notable successes in such places as Algeria, Cuba, and China.

2. Pre-1967 Use of Guerrilla Warfare Against Israel

By July 20, 1949, the last of the four armistice agreements had been signed. For the Arabs, a battle had been lost but the war was not over. They adopted an official policy of belligerency without open armed hostilities. The cease-fire lines became the de facto boundaries. Drawn on large scale maps by men primarily interested in military considerations, the arbitrary demarcation lines paid little attention to civilian realities. In many instances, villages were divided from their fields and from their wells and

orchards. As might be expected, Arab refugees soon began to filter across the armistice lines to try to harvest their crops, to work their lands, and to reclaim some of their personal possessions.

In the beginning, most of the border crossings were individual affairs for the purpose of recovering property or for personal reasons. Israel pursued a tough policy against all infiltrations, whether with innocent objectives or not. The Israelis met these infiltration with force and soon there was an increasing cycle of infiltrations, incidents, reprisals, and raids.

While most of the early raids into Israel were carried out by private individuals and groups on their own initiative and without any direction from the Arab governments, the Israelis assumed that all raids were the responsibility of the Arab host states and carried out retaliatory attacks against Syria, Jordan, and Egypt, regardless of the immediate responsibility for the specific border violations. Force was met by even greater force and unofficial violence was met by official retaliation.

Many of the raids into Israel were made by individuals or groups of refugees living in the Gaza Strip. Israel, in turn, retaliated with large scale attacks on the Gaza Strip. In 1955, after several such attacks on the Gaza Strip, Nasser began to seek and to obtain advanced weapons and to train Palestinian Arabs for future reprisal assaults on Israel. In late August of 1965, these Egyptian-trained Palestinian Arab guerrillas, called <u>fedayeen</u>

(men of sacrifice), began to make raids deep into Israeli territory.[105]

Having become increasingly concerned about the violent fedayeen raids, one of the main objectives of the Israeli Sinai campaign of 1956, was to destroy the fedayeen bases in Egypt and to discourage further fedayeen attacks.[106] So far as short term results were concerned, this objective was largely accomplished. As a result of Israel's military activity and the subsequent stationing of the United Nations Emergency Force on the Egyptian side of the Gaza demarcation line, fedayeen and other kinds of illegal border crossings were brought to a virtual halt.[107] However, as far as long range results were concerned, the Sinai campaign did nothing to remove the underlying causes nor to alleviate the symptoms of Arab hostility towards Israel. As might have been expected, the respite from fedayeen activity was only to be temporary.

In 1956, during the temporary occupation of the Gaza Strip by Israeli forces, young Palestinians formed a new underground movement called "Al Fatah."[108] Following the conclusion of the 1956 hostilities, Egypt was no longer in a position to give shelter and encouragement to the new fedayeen. Syria, on the other hand, was able and willing to do so. In 1964, Al Fatah began to conduct raids designed mainly to disrupt Israeli water projects by dynamiting water pipelines, pumpts, and wells. Although Al Fatah's home base was in Syria, it was easier and safer to cross the Israeli-Jordan border than the Syrian-Israeli frontier.[109] The continuing raids of

Al Fatah and other fedayeen forces out of Syria and across the Jordanian border, with no apparent Syrian or Jordanian restraint, resulted in considerable casualties and property damage in Israel.

The Egyptian government had assumed responsibility for the 1955 - 1966 fedayeen activity as a reply to Israel's retaliation raids, however, the hosts of the fedayeen of the mid-1960's officially disclaimed any responsibility.[110] Needless to say, this disclaimer had no effect on Israel's official policy of replying to raids within Israel with armed reprisals.

While the fedayeen of the mid-1960's may have enjoyed some measure of independence, they were extremely dependent on their host governments not only for substance, but also for the supply of weapons and other equipment needed to conduct their guerrilla activities. In actual practice, they were still being used as pawns in the struggles of Arab power politics.

Just as the efficacy of the fedayeen raids in 1955 - 1966 was a contributory reason for Israel's march into Sinai, in 1967, the fedayeen raids again helped to produce in Israel a nearly irresistible determination to react.[111]

3. The Modern Palestine Arab Resistance Movement

a. The Impact of the June 1967 War

For 20 years, while living in subsistence level refugee camps, the spirit of the refugees had been sustained by promises of the Arab nations that Israel would be defeated and that the refugees would be able to return to

their homes. The stunning victory of the Israeli forces in the June 1967 hostilities, however, served to make crystal clear what should have been readily apparent after Egypt's defeat in 1956; the Arab nations could not deliver on their promises in 1967, and probably couldn't for decades to come.

On paper, the military balance had seemed to be overwhelmingly in favor of the Arabs. The Arab armies greatly outnumbered the Israeli army and possessed the latest in armament. However, they were no match for the well-honed Israeli military machine. There are many reasons for the impotence of the Arab armies. One of the most important factors was the superior training of the Israeli soldier. All Israelis between 17½ and 18½, except for Arabs, mothers, the insane, pregnant women, and those who take an oath that military service violates religious principles, are subjected to universal military training. After their release from active training duty, the conscripts are assigned to a frontline reserve unit until age 39, when they are transferred to a home guard or civil defense unit until they reach 50 years of age. Virtually all Israelis are literate. On the other hand, Egypt and Syria, for example, have just under a 30 per cent literacy rate. The Egyptian and Syrian armies were largely a conglomeration of illiterate peasants serving upper-caste officers whose main interest in military life was the path it provided to high office in a government ruled by soldiers. The common soldier had little to fight for. Faced with the realization that

he really had little to gain from victory, he was more interested in staying alive than in killing Israelis.[112]

In addition to deficiencies in leadership, training, and morale among their armed forces, the Arab nations had internal problems that prevented them from throwing their full weight into the fray, as Israel could do. The Egyptians had troops tied up in Yemen. Iraq had its own problems with a Kurdish minority in its northern mountains. For one reason or another, the various Arab pledges to Nasser simply didn't materialize.

In the aftermath of the defeat of the Arab armies, Palestinian leaders realized that if they were ever going to return to their homes in Palestine, it would have to be by their own hands and not by those of the Arab nations surrounding Israel. Taking the destinies of the Palestinian people fully under their own wing, the Palestinian fedayeen organizations began to emerge with genuine separate identities from their host governments.

b. The Battle of Karameh

On March 21, 1968, Israeli forces launched a massive attack against Karameh, a city that had been built by the 1948 refugees and which was located on the east bank of the Jordan River. The Israelis expected minimal resistance on the part of the Jordanian army and the Palestine commandos. However, while the Israeli forces did eventually take Karameh, they did so only after a number of very hard-fought battles with Palestinian resistance forces. After capturing the city, the Israelis used dynamite charges to destroy

Karameh's two main schools, the mosque, the pump house, field irrigation units, and UNRWA food storage buildings. As the Israelis began to withdraw, combat was resumed. While the Israelis carried off as much of their damaged equipment as they could, a number of tanks and other vehicles and equipment was abandoned under fire. On the following day, the captured armament was paraded through the streets of Amman before cheering crowds. While the Israeli forces did take Karameh, its Palestinian defenders had fought courageously and well and with a number of acts of heroism on the part of members of the resistance forces. For the Palestinian fedayeen, the battle for Karameh was a psychological victory. The myth of the military invincibility of Israeli forces had been destroyed. Within the next few weeks, thousands of young men and women had volunteered for service with the fedayeen. A turning point had been reached. [113]

Money also began flowing to the commando movement. Many businessmen at rich oil centers such as Dhahran in Saudi Arabia and Kuwait, voluntarily began to contribute 5 percent of their salary to the fedayeen organizations. King Faisal of Arabia, is said to have contributed $4,500. Money also began to come in from various Arab governments, from oil rich Arab sheiks, from benefit drives, from the sale of Al Fatah stamps and posters, and from numerous other sources. [114] One commando, who goes by the code name of Abu El Fuhad, is from the royal family in Kuwait. Contributing the equivalent of $3 million when he joined the movement, he then turned over his monthly pay of just under a million dollars. Palestinians all over the Arab world have

been asked to give 5 per cent of their monthly salary to the movement.[115]

The fedayeen are now fairly well equipped with weapons as an indirect result of the June 1967 hostilities. After the fighting subsided, they were able to obtain a considerable amount of armament left on the battlefields by the retreating Arab armies. For two weeks following the ending of hostilities, commando teams scrambled about the Sinai desert to collect machine guns, rifles, grenades, various other weapons, and ammunition before they were found by the Israeli salvage squads.[116]

The morale of the fedayeen is high. A member of one of the commando organizations occupies a position of prestige and respect. Each week, hundreds of Arab newspapers and magazines sing the praises of new heroes and fallen martyrs. There is no higher honor for a man walking on the streets of Amman than to be recognized as an accomplished commando with many crossings of the Jordan River to his credit.[117] Under the rules of jihad (holy war) proclaimed against Israel by Moslem leaders from 34 countries in October of 1968, those Arabs who fall in battle are accorded the reverence of prophets and go straight to paradise.[118]

While international law does not encourage the use of violence in the settlement of disputes, it must be recognized that the Palestinian refugees have lost their lands, their homes, and their personal possessions. They have been denied the basic right of human dignity. For 21 years, they have been nourished on promises and false hopes. The United Nations and the Arab states on whom they have long counted for help have proved to be impotent

to obtain for them the justice which they feel is long overdue. Under the circumstances, it is difficult to condemn them for resorting to coercive measures of self-help. The refugees' tragic situation has been well summed up by the Commissioner-General of UNRWA:

> Psychologically, the refugees are confronted constantly with the physical dangers and tensions resulting from hostilities across the cease-fire lines, eruptions of violence in the occupied areas, and retaliatory raids on the ground and in the air. They feel the frustrations and fears of measures taken for security reasons, such as curfews, interrogations, detentions and demolition of buildings. Uncertainty about the future which has hung over their heads for twenty-one years, continues. They wonder when, if ever, they may realize the hopes which the United Nations has extended to them—hopes to return to their places of residence before June 1967, hopes for repatriation to their original homes or compensation for those choosing not to return, and hopes for "a just settlement of the refugee problem", as part of the peaceful settlement envisioned by the Security Council Resolution of November 1967. [119]

c. Organizations Comprising the Resistance Movement

There are several separate fedayeen organizations that together comprise the Palestine resistance movement. Of these, Al Fatah is the most prominent and the largest. Al Fatah is the political bureau of the Palestine Liberation Movement. The military wing of the organization is known as "Al Assifa" (The storm). There are several camps in Jordan where Al Assifa recruits are trained. The period of training is three months. While in training, the recruits receive $28.00 per month. When they become full fledged commandos, their pay goes up to $56.00 per month. [120]

The Popular Front for the Liberation of Palestine (PFLP) is the most extreme of the fedayeen organizations. The PFLP has taken credit for such spectacular activities as the hijacking of an El Al airliner, the shooting up of two others, the bombing of the Tel Aviv central bus station and a Jerusalem supermarket, and the blowing up of the Aramco pipeline.[121] Unlike Al Fatah, the Popular Front, pays its personnel no salary. Some money is available to support a guerrilla's family, but the guerrilla himself receives only his food, a blanket, and a weapon.[122]

The total number of commandos in the resistance movement is secret. However, it is estimated that there are about 15,000 in Jordan, about 2,000 in Syria, and about 2,000 in Egypt and the Gaza Strip.[123]

Many Palestinians have become educated and have been living in Arab states such as Kuwait, Saudi Arabia, Libya, and Lebanon, where they are doing well as engineers, financiers, professors, lawyers, and businessmen. It is these men who have put together the new fedayeen movement and who have emerged as the new leaders of the Palestinian Arabs. Yaser Arafat, the leader of As Fatah is a Palestinian educated in Cairo, who worked as an engineer in Kuwait. Dr. George Habash, the head of PFLP is a Palestinian who became a medical doctor in Lebanon.[124]

d. Objectives and Goals of the Resistance Movement

One of the most significant achievements of Al Fatah has been its constructive and realistic analysis and statement of the objectives and goals of

the resistance movement. In the past, Arab objectives were stated in vague and highly inflammatory terms, such as threats to "drive the Jews into the sea." Al Fatah constantly stresses that its objective is limited to the destruction of the political structure of the state of Israel and not the Jews living there.[125] In a pamphlet published by Al Fatah, it is stated that:

> "Al Fatah" has and will always insist that the military wing "Al Assifa", is not operating against any particular faith. Palestine has consisted for centuries of Arabs belonging to the Moslem, Christian, Jewish and other faiths. Harmony has always prevailed between these groups in Palestine.
>
> "Al Fatah" does NOT intend to "push the Jews into the sea." Its resistance and struggle remain solely against the malignant Zionist regime which has usurped, pillaged, expelled, and terrorized Palestine's native Arabic speaking inhabitants . . .[126]

Addressing himself to the goals of the resistance movement, Yasir Arafat has stated:

> The fight is against Zionism as a political, land-grabbing movement and not against the Jewish people. In fact we want to liberate not only ourselves from Zionism but also the Jews who are being used by this malignant doctrine as cannon fodder for a racist rule and international monopolies.
>
> Those Jews who want to live in peace with the Arabs in a liberated Palestine will be accepted as citizens with full rights. Unlimited numbers of Jews can live in Palestine on equal terms, without religious or legal discrimination. Towards the Jews, we will show the utmost generosity. We are not anti-Jewish revolutionaries because our enemies are not the Jews; we are not anti-Semitic because we are Semites. We are a militant liberation movement in the fullest sense of the expression.[127]

Arafat has also stated:

> . . . Our aim is to bring an end to the concept of a Jewish Zionist state, a racist expansionist state. Our aim is to destroy this state, this concept—but not its people. We want a democratic Palestinian state. We will not force anyone out who is willing to live under the banner of this state as a loyal Palestinian. It does not matter whether he is Christian, Moslem, or Jew. [128]

From the foregoing, it is clear that the official objectives or goal of the resistance movement is the creation of a bi-national state, which would foster and promote inclusive values for all its inhabitants rather than the exclusive values of a chosen few.

e. Strategy of the Resistance Movement

With no hope of defeating the Israelis themselves, the fedayeen aim to provoke Israel into taking over more and more Arab territories until it finally chokes on a glut of Arabs within its borders. [129] The greater the number of Arabs within territories occupied by Israel and the more acreage that must be defended, the weaker will be Israel's position and the greater will be the cost to Israel from acts of subversion and terrorism in the part of Arabs within the occupied areas. In addition, according to Arafat, "the very process of Israeli expansion will extend the war of liberation into all the countries bordering on the occupied territories, and they will take up the struggle in defense of their own existence." [130]

The fedayeen leaders realize that their struggle may take some time. They talk of fighting for 20, 30 or even 50 years. [131] That they fully

intend to continue the struggle, even if it takes many years, is clearly demonstrated by the fact that Al Fatah has set up training camps where Palestinian youth aged 8 to 14 receive military, political, and athletic training after school hours as members of Al Ashbal (lion cubs).[132]

In addition to the stated aim of provoking Israel into taking more and more Arab territory, the commando activities are very important for the purpose of rallying the Palestinian Arabs behind their cause. As one fedayeen leader put it: "The masses can be mobilized in Palestine only around the issue of fighting . . . ."[133] Explaining why the PFLP concentrates on sabotage and attacks of a spectacular nature, Dr. Habash has stated:[134]

> Frankly, we need the shock value, not for personal publicity but for the whole Palestine cause. We had to shock both an indifferent would and a demoralized Palestine nation. We must make it clear to our own people and all the world that there can be no political solution short of a return to Palestine.

So that the Palestinian people will not be forgotten and to gain worldwide support for their cause, one of the basic strategies of the movement is stated by Al Fatah to be the creation of "an awareness of the Palestinian problem on the regional, national and international levels."[135]

With the ever increasing effectiveness of the commando operations, the fedayeen hope that the heightening tension and instability within Israel may serve to halt immigration and even give an impetus to Jewish emmigration from Israel. They hope that the commando raids will have the effect of curtailing foreign investment in Israel, will burden the Israeli budget with high defense costs, and will ultimately paralyze Israel's economic growth.[136]

IV. RECOGNITION OF PALESTINE RESISTANCE FORCES AS LAWFUL COMBATANTS ENTITLED TO THE PROTECTION OF THE GENEVA CONVENTION OF PRISONERS OF WAR

A. Regulations Governing the Conduct of Modern Warfare

The conduct of modern warfare is regulated by various rules and regulations, known as the laws of war, which set forth basic principles that have been acknowledged as binding by a majority of civilized states.[137] The primary sources of the laws of war are the customs or usages of war generally accepted by the nations of the world and treaties, especially multilateral treaties, such as the Hague Convention of 1899 and 1907 and the Geneva Conventions of 1929 and 1949.[138] If a particular treaty or clause of a treaty setting forth rules governing the conduct of warfare is declaratory of international customary law or general principles of law, belligerents are bound to comply with these obligations even if they have not formally adhered to the treaty.[139]

The purpose of the laws of war is to make the conduct of armed hostilities as humanitarian as possible, giving consideration to the needs of military necessity. As a practicable matter, the efficacy of the rules governing the conduct of warfare depend in large part on the honor and conscience of the belligerents. Unfortunately, as the Nuremburg and Tokyo war crimes trails show, this is not a very reliable means of ensuring adherence to the laws of war.

The laws of war are applicable irregardless of whether the resort to coercion is regarded as permissible or impermissible, just or unjust, or legal or illegal.[140] The reasons for this are obvious. If a belligerent was not bound by the laws of war, his opponent would certainly refuse to abide by them, thus completely frustrating the purpose of the rules. Another reason why justness or legality cannot be permitted to determine the applicability of the laws of war is that decisions as to the justice or legality of a particular cause often depend on the perspective from which the conflict is viewed. Obviously, the participants in the hostilities would have diverging views as to which side is in the right and so would not be very likely to accept the findings of any outside decision-makers.

Among the various treaties regulating the conduct of war, one that is of particular significance in the case of the Palestine resistance movement is the Geneva Prisoners of War Convention of 1949.[141] If this convention is not applicable, then all resistance forces who engage in military acts such as the killing or wounding of enemies, or the destruction of enemy property, upon capture, could be treated as criminal offenders and be punished accordingly. On the other hand, if the Convention does apply, such forces would be entitled to all of the protections contained therein that are applicable to those in a prisoner of war status.

B. Claims of the Participants Concerning the Applicability of the Prisoners of War Convention

In defining the categories of persons who should be considered prisoners of war, Article 4 of the Prisoners of War Convention provides:

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

. . . .[142]

The Zionists consider the fedayeen to be terrorists and murderers. They maintain that the Palestinians in the ranks of the fedayeen are once again simply being exploited by the neighboring Arab states for their own political purposes.[143] In an Israeli government publication, it is stated that:

The immediate purpose of the Arab terrorist organizations and their backers in the Arab capitals is--now as before the Six-Day War--to weaken Israel and undermine Israel morale, keeping tensions and para-warfare alive in the Middle East, while the Arab States and their military establishments prepare to renew their total attack.[144]

The official Israeli position on the prisoners of war question is indicated in a pamphlet published by the Zionist Organization of America:

> Addressing a British Labor Party branch in Jerusalem, Foreign Minister Abba Eban stated on August 5 [1968] that the Fatah terrorist organization was outside the jurisdiction of international law and could not clam [sic] its protection. "There is something strange," he said, "in an Arab state invoking U.N.'s protection for a terror group trained and organized to murder the citizens of a neighboring state. A normal country cannot ask the protection of courts for 'organized gangs of sworn murderers'."[145]

From Eban's statement, it is clear that Israel has no intention of abiding by the Prisoners of War Convention even in those cases where the four conditions set forth in Article 4 of the Convention have been complied with.

Some of the fedayeen attacks are carried out against targets in Israel or deep within occupied areas. In such cases, if the commandos are to have any real chance of completing their mission and escaping, they probably cannot comply with the requirements of the Convention calling for the having of a fixed distinctive sign that is recognizable at a distance, and the open carrying of arms. However, in the bulk of the fedayeen attacks, which are carried out against targets in the occupied areas near the Jordan River, the same considerations do not apply. In carrying out such attacks, the fedayeen can and probably do usually wear uniforms and carry weapons openly.[146]

Numerous Arab claims have been made that Israel has violated the Prisoners of War Convention in a number of instances by such acts as the killing of commandos after their capture, by torturing those that they do take prisoner, and by subjecting the prisoners to criminal trials.[147]

C. Appraisal and Recommendations

During World War II, partisan or guerrilla units conducted extensive operations against the enemy in France, Norway, the Soviet Union, Malaya, Burma, the Philippines, and in many other areas occupied by the Axis powers. Virtually all of these resistance movements operated with the full approval of their legitimate sovereign. Most of them received material support through air drops of weapons, munitions, medical supplies, food, and even leaders. The activities of these resistance forces, which contributed in no small measure to the ultimate victory of the Allies, were denounced as illegal by the Axis powers, who imposed drastic penalties on those that they captured.[148]

The continued Axis claims as to the illegal nature of the partisan activities and the harsh punishments (usually shooting without any intervening trial) meted out to members of the resistance forces resulted in a reappraisal of rules relating to this type of warfare following the conclusion of World War II. As a result, in Article 4 of the Prisoners of War Convention of 1949, it is provided that resistance forces operating in or outside of their own territories, even if this territory is occupied, are entitled to prisoner of war status if they meet the four specified minimum conditions.

The first condition set forth in Article 4 requires that the resistance forces be commanded by a person responsible for his subordinates. Compliance with this requirement causes resistance forces no real difficulties as a guerrilla band would, of necessity, have to have a leader if it is to operate

effectively. There is no requirement that the commander be commissioned or appointed by the party whose cause he serves. His leadership could be simply asserted and acknowledged by his subordinates, or he could be elected by his troops. What is required is simply that the commander exercise sufficient authority to ensure that his men comply with the laws of war.[149]

The condition requiring that operations be conducted in accordance with the laws and customs of war appears to be a fair and reasonable requirement. Guerrilla bands who do not themselves observe the rules of war should not expect the benefits and protection of such rules in the event that they fall into enemy hands.

The other two conditions, requiring resistance forces to have a fixed distinctive sign recognizable at a distance and to carry arms openly can not always be easily complied with by guerrilla forces. The idea behind these provisions is to prevent guerrillas from being able to hide among the civilian inhabitants, strike, and then blend back among the civilians. The requirement for a distinctive sign is usually fulfilled by the wearing of a military uniform that makes one clearly distinguishable from the general population. Where, because of poverty, a sudden emergency, or other reasons, a uniform is not worn, the requirement can be met by the wearing of a distinctive sign that cannot be quickly assumed or removed. This could be accomplished, for example, by sewing the sign to the clothing. Arms must be carried openly, that is, they must not be concealed about the person and may not be hidden on the approach of the enemy.[150]

These provisions are somewhat unrealistic so far as guerrilla operations are concerned, since typical guerrilla tactics call for the use of as much stealth as possible to avoid detection up until the time the attack takes place. Once the attack has been attempted or completed, the survival of the guerrillas often depends on their ability to disappear in the face of pursuit.

In the old days, soldiers frequently wore very distinctive uniforms with brilliant colors. However, modern combat uniforms are usually designed so as to blend into the environment and make the wearer as inconspicuous as possible. Since the insignia and uniforms worn by today's combat forces offers little protection against surprise, the rationality of the requirement for a fixed distinctive sign is open to serious doubt.[151] The rationality of the requirement that arms be carried openly is also subject to serious question. Many members of regular armed forces carry only a sidearm or some other weapon that could be considered to be concealed, or no weapon at all. However, the fact that they are not carrying weapons openly would not prevent these regular forces from being entitled to prisoner of war status upon capture.

It might be claimed that if the provisions calling for a distinctive sign and the open carrying of weapons were eliminated, this would seriously hinder the occupant in suppressing violent resistance to the occupation by removing a deterrent to guerrilla warfare. However, this is not necessarily true. Past experience during World War II has shown that despite the common

practice of summarily executing captured guerrillas, this denial of prisoner of war status was not a very effective countermeasure against such activity. This suggests that the elimination of these requirements would not significantly affect the level or nature of resistance activities. For those operations where a uniform and the open carrying of arms would be a handicap, as is the current practice, they would not be utilized. On the other hand, in the case of attacks in areas where camouflaged uniforms and the type of arms that are carried openly are of assistance to the guerrillas, they could be expected, just as they do now, to make use of them. In other words, the elimination of these requirements would probably have little significant effect on the tactics, methods of operation, types of clothing or uniforms, and types of arms employed or used by resistance forces.

In view of the basic principal that there should be a minimum of unnecessary destruction of values, it is considered by this writer that there should be a re-evaluation of the provisions of Article 4 of the Prisoners of War Convention with a view towards the elimination of the requirement that resistance forces have a distinctive sign and carry weapons openly to be entitled to prisoner of war status.

Turning to the current situation in the Middle East, it would appear that the same considerations mentioned above would prevail and that, in the interests of humanity, Israel should accord prisoner of war status to all captured resistance forces that are commanded by a leader and who have not violated any of the laws or customs of war. However, it is recognized that

Israel has no legal obligation to expand the categories of persons entitled to the protection of the Convention. At a minimum though, Israel is legally obligated to accord prisoner of war status to those members of the resistance forces who do comply with the four requirements.

On June 14, 1967, the United Nations Security Council adopted a resolution in which it was indicated that the obligations of the 1949 Geneva Prisoners of War Convention should be complied with by the parties involved in the conflict.[152] However, it could be argued that this recommendation was only concerned with those persons who had been taken prisoner during the conflict that had just ended and so is not addressed to the resistance situation.

Since it appears that Israel does not consider any of the resistance forces to be covered by the Prisoners of War Convention, the United Nations should adopt a resolution that clearly calls upon Israel to apply the provisions of the Convention in the case of resistance forces who are captured and who have complied with the four requirements of Article 4.

Whether or not Israel would comply with such a resolution is, of course, an open question. However, the fact that other resolutions have not been fully complied with does not justify a failure to act. Israeli leaders realize that repressive measures merely harden the determination of their opponents. For this reason, death sentences have not been imposed against any captured resistance forces.[153] The failure to accord prisoner of war status serves no real military purpose. Instead, the trials of captured guerrillas simply help to establish them as martyrs and heros in the Arab

world. While the formality of a trial and the imposition of a prison sentence may help to satisfy the desires of many Israeli citizens for punishment of the guerrillas, this procedure is actually against Israeli long term interests. Accordingly, the moral force of a recommendation of the United Nations Security Council that the Convention be complied with might be sufficient to shift the attitude of the Israeli government on this matter.

V. LEGALITY OF RESISTANCE TOWARDS A BELLIGERENT OCCUPANT

A. Obligations and Duties of the Inhabitants and the Occupant

From ancient times, up to the nineteenth century, a belligerent occupant was usually considered to be the absolute owner of the occupied lands. He could treat the occupied regions and the inhabitants as he saw fit. He could devastate the land and appropriate all public and private property. He could kill the inhabitants, enslave them, hold them for ransom, or even make them fight in his own army against their former sovereign. So long as belligerent occupation was viewed as being tantamount to conquest, there was no question but that the people owed allegiance to the occupant to the same extent as they had owed it to their former sovereign. However, as the view became more prevalent that a displaced sovereign retained sovereignty over his lands, ideas about the duties of allegiance of the people changed. Since the Hague Conference of 1899, there has been general agreement that the inhabitants do not owe allegiance to the occupant.[154]

While the inhabitants do not owe allegiance to the occupant, they do, nevertheless, owe the occupant such obedience as may be required to ensure the security of the occupant's forces, to enable the occupant to establish law and order, and to enable the occupant to properly administer the occupied territory. Inhabitants who commit offenses that violate these obligations may be punished by the occupying power.[155] Of course, those members of organized resistance forces who are entitled to the status of lawful combatants under Article 4 of the Prisoners of War Convention, may not be punished for acts of resistance against the occupant but must instead be treated as prisoners of war.

While the inhabitants have certain obligations towards the occupant, or at least the occupant has the right to punish the inhabitants for various infractions, the inhabitants may, at the same time, claim certain obligations on the part of the occupant. The inhabitants are entitled to continue to go about their day-to-day lives as normally as possible, under the circumstances. They are entitled to respect for their well-being and for their property, religious, and various other rights. In general, it may be said that, consistent with the requirements of military necessity, they are entitled to a minimum of depravation or destruction of values that are material to them.

The primary source for ascertaining the minimum community policies that are applicable to the inhabitant-occupant relationship is the Geneva Civilians Convention of 1949.[156] In drafting this Convention, its authors aimed to

prevent the reoccurrence of atrocities against civilian inhabitants of occupied territories, such as were committed by the Nazis and the Japanese during World War II.

All of the states involved in the June 1967 hostilities, are parties to the Civilians Convention and so are bound by its terms.[157] The Convention is applicable in the case of any armed conflict, whether or not there has been a declaration of war, and is applicable even if a state of war is not recognized by one or more of the states involved.[158] All but a number of specified key articles of the Convention cease to be operative one year after the general close of military operations.[159] However, an armistice agreement only provides for a temporary cessation of hostilities and does not put an end to a condition of war between the belligerents.[160] The day-to-day newspaper accounts of Israeli raids and strikes against Egyptian, Syrian, and Jordanian positions and their countering attacks against Israeli positions, not to mention the continuing resistance attacks within Israel and the occupied areas furnishes substantial evidence that the general military operations have not been brought to a close. In view of the humanitarian objectives of the Civilians Convention, it is clear that any doubts resulting from the ambiguity of the term "close of military operations" should be resolved in favor of the continued applicability of all portions of the Convention to the Arab territories occupied by Israel since the June 1967 war.

Israel's purported annexation of Jordanian Jerusalem is of no effect so far as the applicability of the Civilians Convention is concerned. The obligations of an occupant cannot be avoided by the premature and illegal annexation of occupied territory.[161] Annexation of conquered enemy territory, whether of the whole or a part, cannot effectively transfer title until after a clearly established conquest and, as long as war continues, conquest is not clearly established.[162] That the war between Israel and Jordan has not been concluded is abundantly clear. In a United Nations General Assembly resolution passed on June 17, 1967, the measures taken by Israel in an attempt to alter the status of Jerusalem were declared to be invalid.[163] In the Civilians Convention, it is provided that:

> Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention . . . by any annexation by the latter of the whole or part of the occupied territory.[164]

1. Claims Concerning the Conduct of the Israeli Occupation of Arab Lands

Since the close of the June 1967, hostilities, innumerable allegations have been made claiming that Israel has consistently committed serious violations of the Civilians Convention in the conduct of the occupation of Arab lands. Before proceeding to examine some of these claims, it would be well to point out that no effort has been made to establish the veracity of each of the various claims. Some, no doubt, are true. Others may contain

little or no truth. However, those claims that are well documented do tend to show that there have been a number of serious breaches of several articles of the Civilians Convention.

a. Claims Concerning the Treatment of Prisoners and Detainees

Article 27 of the Civilians Convention provides:

> Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.
>
> . . . .

Article 31 of the Civilians Convention provides:

> No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Article 37 of the Civilians Convention provides:

> Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated.
>
> . . . .

In an article published in the Jerusalem Post on March 31, 1968, and quoted in a Zionist publication, it is stated in part:

> When arrested he [a Fatah member] is often joined by the rest of his band, for he often discloses their hiding places.
>
> Before they cross over from Transjordan, the Fatah members are told that when they are sure that they are surrounded, they should not resist, that they may surrender. They know that they will be safe in prison, they also know that there is no

> death penalty in Israel, that the prisons here, compared to the many they have been to, are relatively comfortable. [165]

From this, it would seem that those who are detained or imprisoned by Israeli authorities are treated with kindness and consideration. Without the necessity of the use of force or coercion, they willingly give the Israeli authorities information that may serve to condemn other fellow members of their resistance organization.

Contrasted with this report is the eyewitness account of a reporter who was at an Israeli interrogation center where suspected "terrorists" captured during the battle for Karamah were being questioned. The reporter states: "Captured terrorists must expect torture (Arab police use it on their own people), but it was horrible to hear." [166] While these suspected "terrorists" had been apprehended during a raid into unoccupied Jordan, they nevertheless were entitled to the protection of the Civilians Convention under the provisions of the first paragraph of Article 4, which provides:

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

It is a well publicized fact that <u>fedayeen</u> who participate in commando attacks in Israel or in the occupied areas sustain a very high casualty rate. [167] Obviously, it takes a dedicated and courageous sort of individual to be willing to participate in such activities. It is difficult to believe that, upon capture, this type of person would volunteer information that is

damaging to his fellow fedayeen and to his cause without the prior application of some very severe mental and physical forms of coercion. Reports of the use of such measures are not lacking. Many accounts have been given by former prisoners or internees, who have been released or who have escaped, of various types of intimidation and torture used by the Israelis to extract information from them. [168] While many of the reports may be highly exaggerated or contain some untruths, with so many accounts of torture rendered by so many different persons, it is apparent that there must be some substance behind the allegations of inhuman treatment accorded to internees and prisoners by the Israelis.

While some might find it difficult to believe that the Israelis would resort to such behavior towards their fellow man, there are many other examples of cruelty towards their Arab opponents that might be cited. One example that clearly shows their cruel and callous attitude towards the Arabs is the "boots incident." During the June 1967 hostilities, many Arab soldiers were seen making their way across the Sinai desert without any boots or shoes. As one typical report put it: "Egyptian soldiers had discarded their shoes in their haste to retreat, presumably in the belief that the boots impeded progress in the soft sand." [169] That many Egyptian soldiers did have to make their way across the desert without boots is undoubtedly true. However, it is just as clear that no one who has lived all his life in the Middle East, where so much of the land consists of desert, would think of trying to walk through the Sinai desert bare footed under a broiling summer sun. Upon

capturing the unfortunate Arabs, instead of going to the trouble of transporting them to prisoner of war camps, the Israelis simply took away their boots and sent them on their way, through the fiery desert sands, towards the Suez Canal. No doubt, many of those set out across the desert in this fashion did not make it to the Canal. Photographs of some of those that did make it to the Canal, with their feet bandaged in an attempt to protect them from the intense heat of the desert sands, clearly reflect the extreme suffering and pain brought about by their trip through the desert without shoes or boots.[170]

b. Claims Concerning the Forcible Transfer and Deporation of Inhabitants and the Transfer of the Occupant's Civilian Population Into the Occupied Territory

The first paragraph of Article 49 of the Civilians Convention provides:

> Individual or mass forcible transfers, as well as deporations 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.

Mention has previously been made of Israeli efforts during and immediately after the June 1967, hostilities, to induce and assist the Palestinian refugees and residents to leave the occupied areas. In addition to these claims, there have been numerous claims made that Israel has continued to use coercive methods to induce protected persons to leave the occupied areas and that, in some cases, protected persons have been forcibly deported.[171]

No claims have been made that Israel has transferred or deported protected persons to Israel. Rather, the deportations and transfers have been to states that are clearly identified with and are friendly towards the protected persons involved. In the case of those protected persons transferred from the west bank to the east bank of the Jordan River, it could be argued that they have not been transferred or deported to "any other country" since the West Bank is still legally part of Jordan. The same argument could also be used in the case of those who are transferred or deported from the Sinai Peninsula or the Gaza Strip to Egypt. However, in interpreting the first paragraph of Article 49, it must be kept in mind that the purpose of the drafters of this Article was to prevent a reoccurrence of the well-known Nazi practice of deporting persons from occupied areas to Germany for use as forced laborers, for other inhumane purposes, and to clear areas for settlement by "more desirable" persons. While the drafters may not have envisioned a situation such as has developed in the Middle East, it is clear that their intent was to prohibit all transfers of the population of occupied areas to any other places except for genuine security reasons, which is provided for in the second paragraph of Article 49. To ensure that these provisions are not used as a simple pretext for evacuating occupants for reasons other than security, it is provided that the Protecting Power must transfer the occupants back to their homes as soon as hostilities in the area have ceased.

That the drafters of the Civilians Convention intended to prohibit transfers for the purpose of facilitating the settlement of the occupant's

citizens in the occupied area is clear from a reading of the concluding paragraph of Article 49, which provides: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

There have been numerous accounts in newspapers and periodicals which indicate that Israel is establishing settlements of civilians in the occupied areas. One of the most recent accounts reported the inauguration of Rosh Tsurin on the west bank of the Jordan River. Reportedly, Arabs who had tilled the land there since 1948, were evacuated and the settlement was taken over by members of the religious kibbutz movement. It was also reported that earlier this year, members of the same kibbutz movement had set up the near-by Kfar Etzion settlement, also in the occupied part of Jordan. [172]

Clearly, the settlement of Israeli citizens in the occupied areas is a flagrant violation of Article 49. The claim has been made that "these are not ordinary settlements but military outposts." [173] However, the fact that the settlements may play a military role cannot be used to justify violations of this clear precise and provision prohibiting the settlement of civilians in occupied areas. That protected persons are being displaced in order to make room for Israeli settlers makes the flaunting of this provision especially serious as this is exactly the type of thing that Article 49 is intended to prevent.

c. Claims Concerning Reprisals and Collective Punishments

The first and last paragraphs of Article 33 of the Civilians Convention provide:

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

It is a well-known fact that Israel's official policy is to severely punish alleged "collaborators" with the fedayeen by blowing up their homes. Defending this controversial policy, Israeli Defense Minister Moshe Dayan stated at a press conference that the destruction of the homes (about 250 as of June 22, 1969) has discouraged collaboration with terrorists.[174] Allegations have also been made that various other punishments have been imposed on the inhabitants of the occupied areas, including such measures as extended curfews, mass arrests and searches, detention without the placing of charges, intensive interrogations, and the confiscation of property.[175] Needless to say, measures such as these are clearly prohibited by Article 33.

d. Claims Concerning Looting, Pillage, and Destruction of Property

Article 53 of the Civilians Convention Provides:

> 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 public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Article 33, paragraph 2, of the Civilians Convention provides: "Pillage is prohibited."

In addition to the homes previously mentioned that were destroyed as reprisals for alleged collaboration with fedayeen, it is a well publicized fact that the Israelis have bulldozed Arab homes to create a parking lot and a broad plaza at the Wailing Wall in occupied Jerusalem. They have also made extensive excavations to uncover more of the wall. When the excavations reached the 5½ story home that happened to be the childhood home of Yasser Arafat, the leader of Al Fatah, inch thick cracks appeared in its walls, conveniently enabling the Israelis to label the building as dangerous to public safety, thereby allowing this building, along with all others in the way of the excavations, to be demolished. [176]

While, in some areas, the destruction of homes and even complete villages could be attributed to military operations, there have been numerous reports of widespread destruction not related to military activities. In a report of the Secretary-General of the United Nations (hereinafter referred to as the "Report of the Secretary-General"), based upon the observations of Nils-Goran Gussing, his personal representative, it is indicated that at Beit Awa, in the Hebron area, out of some 400 houses, more than 90 per cent were completely demolished and the remaining homes were partly damaged. [177] The story of what happened at Beit Awa, is summarized as follows:

> The Special Representative visited Beit Awa on 11 August. The Arab Mukhtar stated that Israel troops entered the village on 11 June at 5:30 a.m. The inhabitants were then asked to take two loaves of bread and to go to the hills surrounding the village. At 7:30 a.m. the Israel troops started to demolish the houses with dynamite and bulldozers. Groves around the

> village were burnt. The belongings of the inhabitants were also burnt since they were unable to take them along. The population stayed in the hills for a week. They were then authorized to return by the military governor. Out of the original population of 2,500, some 300 had left for other areas. [178]

An Israeli military officer informed the Special Representative that a decision had been made by the government to rebuild the village. [179] This, in effect, admitted that the destruction had been wrongful. The Special Representative also reported that another village in the area, Beit Mersim, which had had a population of approximately 500, was completely destroyed. [180] Many other Arab villages such as Zeita, Beit Nuba, and Yalu, have also been reported as having been destroyed by the Israelis after the end of hostilities in June of 1967. [181]

In addition to the destruction of homes and villages, the Israelis have also resorted to the systematic confiscation of real property. In the Hebron area, for example, property of inhabitants who had left the area was seized under the authority of the Absentees' Property Law of 1950, the same law that had been used by the Israeli government to deprive thousands of Arabs of their property in Israel. In the Report in the Occupied Territories, the confiscation is described as follows:

> The Israeli custodian of absentees' property had seized the houses of those who were away since the houses were empty. However, in some cases, the inhabitants were only temporarily away on a visit to Amman. In other cases, when a relative of the owner had been present but not the owner himself, the property had still been considered as absentee property by the Israel authorities. [182]

Not only is property of absent Arabs confiscated, but homes are also seized and the Arabs evicted on various pretexts. For example, on June 25, 1969, Israeli authorities seized a number of buildings, including a Moslem school and the Mahkama, a historic Moslem court and mosque, in the Old City of Jerusalem, along the route used by visitors to the Wailing Wall. The 17 evicted Arab families, totaling 88 people, were told to find new quarters on their own. However, after the eviction became a public issue, city officials agreed to pay a year's rent to each of the families. Most of the families accepted the offer and moved to new quarters in Silwan and Abu, outside the Old City of Jerusalem. A cafe owner and three families who refused to accept the Israeli order were evicted by soldiers. The buildings thus seized were to be used to billet Israeli soldiers to "ensure the safety" of visitors to the Wailing Wall. [183]

Numerous claims have also been made that the Israelis have engaged in wholesale looting and pillage of Arab holy places, homes, shops, and other buildings in the occupied areas. [184] The Syrian village of Kuneitra was one village, for example, that suffered extensive pillage or looting. In the Report on the Occupied Areas, it is stated that:

> Although reports from Israeli sources indicate that Kuneitra was taken without fighting, the Special Representative observed all over the city that nearly every shop and every house seemed to have been broken into and looted. A visit to one apartment building confirmed the thoroughness with which the looting had been done, and showed that in some cases dwellings had been set on fire after looting had occurred. [185]

While Israeli spokesman did not deny the looting in Kuneitra, they did try to convey the impression that the looting might have been done by Syrian troops. However, on the strength of reports received from different sources, the Special Representative "felt reasonably sure that the responsibility for this extensive looting of the town of Kuneitra lay to a great extent with the Israeli forces . . . ."[186]

Even hospitals and schools were not immune. During his visit to the hospital at Qalqiliya, the Assistant to the Special Representative was informed by the doctor in charge that the "X-ray machine, the operating table, overhead lights, and other equipment in the operating theatre, as well as stocks of hospital linen had disappeared."[187] In the most recent report of the Commissioner-General of UNRWA, it is stated that:

> In the Gaza Strip, during and immediately after the hostilities, ninety of the Agency's 100 schools were damaged and looted in varying degrees to the extent of an estimated $220,000 in value.[188]

B. Claims Concerning the Right of Palestinians to Resort to Individual and Collective Self-Defense

As has previously been pointed out, the resistance of Palestinians to the takeover of their lands by the Zionists is not a recent phenomenon. It started long before the establishment of the "Jewish" State of Israel in 1948, which made the Palestinians aliens in their own country. Their resistance has not always been well organized and articulate. At times, the resistance movements have received assistance and direction from Arab states

on Israel's borders. But always, Palestinians have been directly involved in the coercive aspects of the movement. While the resistance movement has received new emphasis and direction as an indirect result of the June 1967 war, the factors that motivate the resistance of the Palestinian people remains essentially the same. They have suffered expulsion from their lands and homes, expropriation and destruction of their property, loss of their national heritage, and they have been deprived of many other fundamental human values, including the basic value of human dignity and self-respect.

To the Palestinians, the June 1967 war and the subsequent Israeli occupation of Arab lands is, in many ways, like the re-run of an old movie. In their view, Israel launched the hostilities for the primary purpose of furthering Zionist expansionist aims. Their hopes of 20 years had gone up in smoke. Part of Jerusalem was annexed by Israel and the rest of the occupied lands were treated as part of Israel. Once again, there was the expulsion, the destruction and expropriation of homes and other property, and the replacement of Arab villages with Zionist settlements. An increase in the intensity of resistance activities was to be expected. This was met by Israeli reprisals, which then led to Palestinian counter-reprisals.

In a world with constantly increasing expectations and demands for the limitation and eventual elimination of international violence and coercion, a very fundamental question arises as to whether or not the Palestinian resistance activities constitutes lawful self-defense. In ascertaining the

answer to this question, one of the primary sources that should be consulted is the four Geneva Conventions of 1949.[189] None of these four conventions condemns resistance movements. To the contrary, they each contain provisions that afford various types of protection to those engaged in such activities. Articles 13(2) of each of the conventions relating to the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces, and Article 4(2) of the Prisoners of War Convention all contain identical language clearly extending coverage of these Conventions to members of organized resistance movements who meet the four enumerated requirements previously discussed. This amounts to an express admission that resistance is a likely concommitant to occupation and that such resistance should not be considered unlawful. Significantly, the protections of these Conventions are to be provided irregardless of whether the resistance movement operates in or outside the occupied territory. This indicates that the resistance that is recognized as lawful includes not only that which takes place at the time of initial occupation, but would also include long range resistance movements conducted over an extended period of time. As has previously been mentioned, even those resistance forces that do not meet the four requirements, are afforded protection by the Civilians Convention.

There is some authority to the effect that even in the absence of these Geneva Convention provisions, where an occupant has violated duties imposed upon it by the laws of war then the inhabitants are released from any possible duties of obedience and cannot be denied the right of self-defense.[190]

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Intertwined in the question of legality of the Palestine resistance movement is the issue of the justness of the cause for which the resistance is waged. While the Geneva Conventions do not differentiate between resistance movements waged for just or unjust causes, contemporary fundamental community policy does seek to restrict or prohibit the resort to coercion except for certain purposes, such as to protect certain indispensable values and to enforce certain community decisions.

The Judgement of the Nuremberg Tribunal is a clear pronouncement of the impermissability of aggressive war. The waging of aggressive war is also clearly prohibited by the provision in the United Nations Charter that:

> All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
>
> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. [191]

In Article 51 of the Charter, the right of self-defense is expressly preserved. However, the Charter does not contain any real guidelines to assist a decision maker in reaching decisions in a coercive situation as to which of the participants is guilty of unlawful coercion and which is acting in justifiable self-defense. In analyzing the question of the lawfulness in an on-going coercive situation such as has developed in the Middle East, numerous factors must be taken into consideration. One very important factor is that of priority in the exercise of substantial coercion. [192] In

examining the question of priority, no one particular act should be considered in isolation from the broader context of the entire factual development of the coercive situation. Thus, in considering questions concerning the Palestine resistance movement, it would be highly inappropriate to simply examine particular guerrilla attacks, the inauguration of the June 1967 hostilities, or any other single coercive development. Rather, an examination of the question of priority must include a view of all of the relevant factual background commencing with the founding of the World Zionist Organization in 1897. Applying this principle, it will be recalled that it was the World Zionist Organization that sponsored Zionist immigration to Israel, the systematic purchase of Arab lands, and the use of various measures to drive the Arabs out of Palestine. It was the Zionists who were the first to use organized terrorism against the Arabs and the British in Palestine. It was the Zionist reign of terror against the British that forced them to evacuate and leave the Arabs to face the Zionist threats alone. In 1948, all of the participants in the hostilities claimed self-defense. In 1956, Israel clearly attacked first, claiming self-defense. In 1967, Israel again was the attacker, and again claimed self-defense. Each time the Zionists have claimed self-defense, it should be noted, they have reached out their hands for a generous slice of Arab lands. If one considers these events, along with the entire factual background of this conflict, the inescapable conclusion must be reached that the Arabs have consistently, from the very first, reacted or responded to

Zionist activities, but cannot be said to have been the participant primarily responsible for the initiation of the various coercive events.

Another very important factor to take into consideration in examining questions relating to the legality of the coercive situation in the Middle East is the exclusive or inclusive nature of the objectives of the participants.[193] In today's world, with constantly increasing demands and expectations for more widespread distribution and sharing of values, it would appear that community policy should favor and consider most legitimate the promotion of objectives that are of an inclusive rather than those of an exclusive nature. What are relevant are the real, as distinguished from the proclaimed objectives of each. In order to ascertain the nature of the actual objectives of a participant, it is necessary to view the words, acts, and effects of the acts of each participant in the context of the entire development of the coercive situation. In the case of Israel, the demonstrated Zionist objectives are of an unquestionably exclusive nature. It is clear that values at stake are largely to be shared only by Jews, or more exactly, Jews who are Zionists. In the case of the Palestinians, their objectives manifest inclusivity in that they call for a widespread sharing of the values involved irregardless of the religious or racial backgrounds of the members of the community.

Whatever test is applied to the Zionist-Palestinian confrontation, the conclusion is inescapable that the Palestinians are fighting for their lands,

their property, their lives, and for the overriding conception of human dignity. The further conclusion must also be reached that their resort to coercion does contribute lawful self-defense.

C. Appraisal and Recommendations

The objectives of the Nazi and Japanese regimes during World War II were blatantly unjust and illegal. Yet, so far as the victims of atrocities committed in occupied areas were concerned, this was of small consolation. Unfortunately, the world order system under which we live still has not progressed to the point where third-party decision-makers can make and enforce rational judgments concerning the legality and permissibility of on-going coercive situations such as is currently found in the Middle East.

Considering the diametrically opposed objectives of the participants and the manner in which the entire situation is enmeshed in the political "cold-war" between the world's major powers, it is not likely that there will be an early end to the Israeli occupation of Arab lands. Pending the ultimate settlement of the conflict, from a humanitarian standpoint, there is a very pressing need for action to ensure implementation of the provisions of the Civilians Convention in the occupied areas.

As a first step towards accomplishing this goal, it is imperative that a fact-finding mission be stationed in the Middle East by the United Nations. The sole function of this mission should be to investigate any alleged violations of the 1948 Geneva Convention in the occupied areas and to report

their findings to the Secretary-General on a continuing basis. These findings should be released to the public by the Secretary-General as soon after receipt as possible. The purpose of such a fact-finding mission would be threefold. First of all, by focusing public attention on particular violations, the unfavorable publicity and public reaction and, in many cases, even the possibility of such a reaction, could well result in a much more humanitarian approach on the part of the Israeli authorities. Some salient illustrations of this are found in the Report on the Occupied Areas. For example, when the Assistant to the Special Representative toured the hospital at Qalquiliya and was informed that the operating room equipment had disappeared, Israeli authorities present immediately promised to provide the hospital with a new operating theatre. [194] Assuming that the Israeli authorities kept their word, the replacement of the equipment considerably lessens the nature of the violation. More recently, as has previously been mentioned, it was adverse publicity that resulted in the Israeli authorities offering the payment of a years rent to Arabs in Jerusalem who were being forced to move to other quarters. [195]

A second purpose of the fact-finding mission would be to deter occupation authorities from committing violations of the Geneva Conventions. If Israeli authorities are aware that their actions in the occupied areas may be subjected to immediate examination by an impartial fact-finding mission, they may well hesitate to embark upon programs or to institute measures

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that contravene the Conventions, especially where their actions would tend to provoke widespread public condemnation because of violations that deprive inhabitants of basic human rights.

A third purpose to be served by the fact-finding mission would be to ensure public understanding of and to gain public support for the imposition of any sanctions that are called for in the event that the fact-finding mission finds that serious violations of the Conventions are taking place. Such public enlightenment is of crucial importance since the use of sanctions can be effective only to the degree that the necessity for their imposition is understood and supported by the peoples of the world.

It is realized that there would be opposition on the part of Israel to the creation of such a fact-finding mission. When the General Assembly passed a resolution calling for such an inquiry in December of 1968, Israel indicated that such a mission would not be admitted unless there was a comparable effort to investigate the status of Jews in Arab countries.[196] This, the Arabs refuse to permit, for the obvious reason that they do not wish to be put in the position of granting recognition to the Zionist "Jewish People" nationality claims by allowing Israel to represent the interests of their citizens who happen to adhere to the religion of Judaism. The condition imposed by Israel might be somewhat justified if what was requested was a commission to study the treatment of Arabs in Israel. But that is not what is called for. Under the circumstances, the Israeli position is unsound and Israel would

probably back down from this position if a fact-finding mission would actually be dispatched to the scene. The Israeli authorities, as well as those of all other states visited, did cooperate with the Secretary-General's Special Representative, allowing him full freedom of movement and giving him assistance in making transportation and other necessary arrangements for his visits.[197] While Israel might complain loudly if a fact-finding mission was actually sent to the Middle East, it probably would cooperate with the mission rather than risk world-wide condemnation from a well-publicized refusal to do so.

VI. COERCIVE MEASURES THAT MAY LEGITIMATELY BE EMPLOYED BY OR IN COMBATTING RESISTANCE OR LIBERATION FORCES

Guerrilla warfare, with its hit and run tactics, raids, terrorism, and sabotage, makes a mockery of the formality that is the hallmark of the traditional military profession. Terrorism is one of the most powerful weapons in the arsenal of the guerrilla leader. Wielded against his own people, it helps to establish the necessary community support for the guerrillas. Used against the enemy, it presents him with a considerable dilemma. In order to deter such acts in the future and to maintain the morale of his people, there is a tendency to use terror against terror. However, drastic measures by the enemy to curb guerrilla attacks invariably increases the hostility of the local population and thus strengthens community support in favor of the guerrilla forces.[198]

In modern warfare, where there is the presence of an ideological conflict, a struggle for values beyond the immediate interests of the individual participants, especially if the values for which the struggle is waged are deemed to be very fundamental, there is a tendency for rules designed to limit destructivness to break down because the end is thought to justify the means.[199] This seems to be what has happened in the Israeli-Palestinian conflict. The fedayeen regularly resort to sabotage and terror attacks that make no distinction between military and civilian targets, between men and women, or between adults and children. The Isralies, on the other hand resort to equally repressive counter-measures in their efforts to put a halt to fedayeen attacks.

In trying to justify their resort to extreme measures of coercion, both sides frequently claim that their actions constitute lawful reprisals. In traditional international law, acts of reprisals are measures of retaliation, that would ordinarily be illegal, which are resorted to by one belligerent against another to convince the other that he must cease his violations of the accepted rules of warfare.[200] For reprisals to be justified, the illegal conduct of the enemy must first be proved and the action taken by the retaliating participant must be a proper measure of reprisal.[201]

A. Claims as to Enemy Persons who are Permissible Objects of Attack

The combatant members of enemy armed forces are, of course, permissible targets of attack. A basic question arises though, when attacks are directed against civilians. Traditionally, civilians who did not significantly participate in the belligerent effort were not legitimate objects of attack. However, in modern warfare, the distinction between combatants and the civilian population has been whittled down both in theory and in fact by the demands of military necessity. [202]

In the Middle East, numerous claims are being made by the participants as to the use of violence against civilians. The Israelis have resorted, for example to the shelling of refugee camps. On November 20, 1967, for example, Israeli artillery shelled the Karma refugee camp, which was located two miles east of the Jordan River, causing many casualties among its inhabitants. Israel later claimed that the camp was being used as a staging area by Arab commandos. [203] Also, on an almost daily basis, newspapers report Israeli air attacks on "guerrilla bases and camps" in Syria, Lebanon, and Jordan. [204] In August of 1969, Israeli planes bombed "Arab guerrilla positions" in Lebanon. A Lebanese spokesman said that several people were seriously injured in the raid, including a woman who later died of napalm burns. [205] While most of these shellings and bombings are announced by Israeli authorities, and so reported in American newspapers, as being against guerrilla camps and bases, many of these targets may well be refugee camps or simply Arab border villages.

The fedayeen, on the other hand, have made numerous attacks against civilians both within Israel and in the occupied areas. Among these attacks were the explosion of a bomb in a supermarket in Israeli Jerusalem on February 21, 1969, which killed two Israeli youths;[206] the explosion of a bomb in a cafeteria in the Hebrew University in Jerusalem on March 6, 1969, which injured 29 students;[207] and the explosion in August of 1969, of a mine under a bus near El Hamma, in Israel, which killed two Israelis and wounded 12 others.[208] Mines, usually of an indiscriminate effect, are frequently used by the fedayeen. One type that they often use is a tiny land mine, of Chinese manufacture, which they plant in streets and even in schoolyards in Israel.[209] Explosive devices have even been found embedded in watermelon in Israeli marketplaces.[210] Probably the most notorious attacks directed against Israel by the fedayeen were the attacks on El Al aircraft. On December 26, 1968, Popular Front forces attacked an El Al Boeing 707 with machine guns and gasoline bombs as it was preparing to take-off for a flight from Athens to New York City, with 41 passengers and a crew of 10. One passenger, an Israeli engineer, was killed by bullets that penetrated the windows where he was sitting.[211] On February 18, 1969, Popular Front forces riddled another Israeli El Al airliner with machine gun fire as it was taxing for a take-off at the Zurich airport. They also threw

incendiary grenades at the plane, but they fell short. Two passengers received gunshot wounds, four others were injured while escaping from the plane, and one of the attackers was killed by an Israeli security guard aboard the plane.[212]

In addition to direct attacks against civilians, both sides have attacked targets with the aim of causing widespread depravations among the civilian population. For example, on May 31, 1969, fedayeen blew up an oil pipeline near the headwaters of the Jordan River for the apparent, though unsuccessful, purpose of polluting Israel's nationwide water system.[213] On the other hand, on June 23, 1969, Israeli commandos destroyed part of the $21 million East Ghor irrigation canal in northern Jordan, which irrigates 54 per cent of the Jordan valley farmland on the east bank of the Jordan River.

It is clear then, that both participants utilize intensive attacks aimed either directly or indirectly against civilians. The relevant question then (disregarding for the moment the issue of reprisals), is to what level of violence should civilians be subjected by participants engaged in or combatting a resistance or liberation movement.

Humanitarian concepts call for the avoidance or at least the minimization of the employment of highly destructive violence against noncombatants. As Professor Lauterpacht has stated:

> It is clear that admission of a right to resort to the creation of terror among the civilian population as being a legitimate

> object *per se* would inevitably mean the actual and formal end of the law of warfare. For that reason, so long as the assumption is allowed to subsist that there is a law of war, the prohibition of the weapon of terror not incidental to lawful operations must be regarded as an absolute rule of law.[215]

In modern warfare, in a sense, it can be said that virtually the whole population is an effective base of power and so the doctrine of military necessity can be used to justify widespread attacks against noncombatants. While this approach may be somewhat justified in a situation of total warfare such as in World War II, such arguments are not so persuasive in situations involving limited hostilities. In fact, in cases of limited hostilities, attacks on enemy nonbelligerents actually contravene one of the basic principles of warfare, that of economy of force. Instead of helping to bring the hostilities to a close, such means of conflict tends only to intensify the level of destruction and makes a pacific approach more difficult. In the Middle East conflict, the Israelis hope to break down the will of the Palestinians to resist. The Palestinians, for their part, wish to convince the populace of Israel that steps must be taken to accord "justice" to the Palestinians. Trying to accomplish these goals with terror tactics against civilians have not proved to be effective. Instead, these attacks only harden the will of the people on both sides against the objectives of the other.

Even if agreement is reached on the principle that noncombatants should not be legitimate subjects of attack in the case of hostilities involving

resistance or liberation movements, there is still a problem of distinguishing between combatants and non-combatants as sometimes the line between them becomes somewhat blurred.[216] However, this fact should not deter attempts to make a rational distinction between the two groups.

In the factual situation under study, in the case of the Palestinians, only those who actively participate in fedayeen activities, either full or part-time, as well as any others who directly engage in attacks against Israeli targets should themselves be proper targets of attack. Those Palestinian civilians who merely provide funds or logistic support should not be legitimate subjects of attack. In the occupied areas, in view of the provisions in the Civilians Convention prohibiting the settlement of the occupant's citizens in such areas,[217] it would appear that any Israeli national, whether he be uniformed or in a para-military kibbutz or other settlement, should be regarded as a proper subject of attack. In Israel, only uniformed members of the armed forces should be considered as legitimate subjects of attack.

It is recognized that an argument can be made that since a large portion of the adult population of Israel, both male and female, have been militarily trained and are in the active reserve, subject to being called to active service at any time, they should be proper subjects of attack, whether or not they are on active military duty at the time of the attack. If this argument is to be accepted, then what about adult Palestinians who are not fedayeen?

In a couple of months time they could be trained military men, so why not permit attacks on them before they can be brought under arms? And why shouldn't the children receiving Al Ashbal training be proper subjects of attack? The only logical answer is to simply draw the line between those who are on active military duty and those who are not. To attempt to formulate any other guidelines would only lead to constantly more irrational claims and counterclaims to the inclusion of more and more categories of civilians as lawful subjects of attack. An example of the extremes that such claims can reach is illustrated by the explanation of SS Major General Otto Ohlendorf, at his war crimes trial, as to why Jewish and gypsy children had to be killed:

> I believe that it is very simple to explain if one starts from the fact that this order did not only try to achieve a [temporary] security but also a permanent security because for that reason the children were people who would grow up and surely being the children of parents who had been killed they would constitute a danger no smaller than that of their parents.[218]

B. Claims of the Participants as to Enemy Resources that are Legitimate Objects of Attack

Since war cannot be waged without the expenditure of material resources, a usual claim of any belligerent is to deprive the enemy of resources by means of destruction or capture. While the loss of particular resources may have the incidental effect of depriving the civilian population of certain values, unless the likely effect would be serious injury or death to civilians, humanitarian considerations would not prohibit such attacks.

In the case of the fedayeen, arms supplies and storage areas, guerrilla camps and other similar resources would be legitimate targets of attack. In the occupied areas, any resources that are of benefit to the Israelis would be proper objects of attack. In Israel, all military or civilian resources would appear to be proper objects of attack.

A question then arises as to what attacks on resources are legitimate if serious injury or death to civilians is likely to result as an incident of the attack. In the case of total warfare, such as was encountered during World War II, so long as the object of attack was a legitimate target, such as a factory, for example, the fact that many civilians would be killed as a result of the attack was not considered to render the strike unlawful. However, in the more limited context of guerrilla warfare, such incidental destruction of human lives should not be regarded as justified unless as an incident of an attack on a genuine military resource. A genuine military resource might be defined as one that is actually being used for military purposes or which is of such a nature that its only practical use would be military in nature.

Applying this criteria, attacks such as those made against the El Al airliners and those aboard them would be considered unlawful since at the time of the attacks, the planes could not be said to be genuine military sources. The planting of bombs, mines, and other explosive devices in public places, on roads, or in other places where enemy civilians are likely to be

killed or seriously injured by the explosion would likewise be unlawful. On the other hand, a military office building or camp could be attacked or blown up despite the fact that some civilians may be killed. A belligerent cannot be permitted to obtain immunity from attack against his military installations by such devices as hiding them among civilians or by employing civilians to work therein.

C. Appraisal and Recommendations

After the close of the June 1967 hostilities, attacks of the fedayeen were small in scale and were directed primarily against military targets. If Israel had limited its reply to counter-attacks only against the attacking fedayeen, they probably would still be capable of making only small scale and largely ineffectual attacks. Instead, pursuing a policy calling for large scale reprisals, the Israelis bombed and shelled refugee camps and even engaged in large scale ground attacks such as the attack against Karamah. The result was predictable. Violence begets violence. There were reprisals and counter-reprisals in an ever ascending spiral. The end product of the wholesale use of reprisals by each side has been widespread destruction and loss of lives. At the same time, neither of the participants appear to be any closer to the accomplishment of their objectives than they were after the June war.

During World War II, it was learned that reprisals against the inhabitants of occupied territories resulted in the massive destruction of human values

without any corresponding military gains. The result was a prohibition against reprisals against inhabitants being included in the Geneva Civilian Convention. Since then, the additional experience gained during the various wars of national liberation or resistance tend to show that the same prohibition should be extended to all participants in all hostilities involving resistance or liberation movements.

If agreement cannot be obtained as to the complete abolition of reprisals in the prosecution of such hostilities, then at least some strict limitations on their use should be seriously considered. Reprisals should be permitted, if at all, only for specific and well documented serious violations of the laws and customs of war by the other participant. A mere allegation of repeated and continuing violations by the other side should not be sufficient. Reprisals should be required to be of a proportionate nature and be reasonably near, in point of time and selection of type of target, to the occurrence that constitutes the justification for the reprisal. Most important of all, reprisals directed against civilians should be prohibited altogether. Details concerning these and any other restrictions on the use of reprisals should be clearly spelled out in an appropriate convention.

In addition to restrictions on the use of reprisals, controls should also be established to place reasonable limitations on the levels of violence that may be lawfully resorted to by participants in hostilities involving resistance or liberation movements. The goal of such restrictions should be to minimize, as much as possible the destructiveness of such hostilities, so far as noncombatants are concerned.

VII. CONCLUDING APPRAISAL AND RECOMMENDATIONS

It is a truism that the best way to prevent war is to eliminate its causes. However, that cannot always be easily accomplished. In the case of the Palestine problem, the root cause of the conflict must inevitably be identified as Zionism. It is clear that real peace can be brought to the Middle East only by the elimination of Zionism, with its promotion of an exclusive set of values, and by the establishment in Palestine of a bi-national state that will protect and promote the inclusive interests of all its citizens, including the displaced native Palestinians, no matter what their ethnic or religious background. [219]

While it is the hope of all peace-loving people that the Arab-Israeli conflict will soon be brought to a close, Israeli military and political strength renders this a highly unlikely eventuality. Rather, it is probable that the conflict will continue, with gradually increasing intensity, for some time to come. As the conflict intensifies, more and more people not directly involved in the hostilities are likely to suddenly find themselves victims of the conflict.

The resistance movement of the Palestinian people is not a completely unique situation. There are resistance or liberation movements in different stages of development in Southeast Asia and in various other parts of the world. Such movements are also likely to develop in many other areas, such as in Rhodesia and the Union of South Africa, where, as in Israel, the government promotes the exclusive values of the ruling class, rather than the inclusive values of all the people.

The drafters of the 1949 Geneva Conventions, with the World War II type of resistance movements in mind, included provisions to provide some degree of protection for such forces in future coercive situations. However, subsequent experience involving modern resistance and liberation movements indicates that additional provisions are needed to deal with this type of warfare.

What is urgently needed is a new convention specifically concerned with rules to be applicable to resistance or liberation movements. Such a convention should contain specific guidelines to assist in the differentiation between an insurrection or common criminal bands and resistance or liberation movements whose members should be accorded the status of lawful combatants. Such a convention should also provide for definite limitations on the types and intensity of violence that may be utilized by members of a resistance or liberation movement and by the forces that are combatting such a movement.

In any new convention or in the case of revisions of existing ones, there must be a balancing of the interests, advantages, and disadvantages of the participants in coercive situations involving resistance or liberation movements, with an emphasis on a reduction in the levels of permissible violence to which either side may resort. Such a balancing is necessary because if an attempt is made to give a relative advantage to one side or the other, the side that is disadvantaged would be likely to ignore the rules, resulting in the other participant doing likewise.

One of the ultimate goals of mankind is the creation of a world order system in which all disputes with international implications will be settled in a pacific manner. However, it must be recognized that the implementation of such a system may be many years away. At the present time, while efforts to eliminate the causes of any coercive situation are extremely important, whether the conflict is in the Middle East, Vietnam, Nigeria, or in any other troubled area of the world, there also is a pressing need for an increased emphasis towards the application of as much humanity to these conflicts as is possible.

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