

"The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and *alien occupation* and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations."²⁷

The International Committee of the Red Cross (ICRC) too has not accepted the Israeli Stance and in fact the Commentary on the Additional Protocols to the Geneva Conventions published under the auspices of the ICRC it has been said that the term "alien occupation" in the sense of this paragraph . . . covers cases of partial or total occupations of a territory which has not yet been fully formed as a State"²⁸ and that it implies the existence of distinct peoples.

Several publicists/jurists are of the view that the term "alien occupation" is intended to cover cases in which "a High Contracting Party occupies territories of a State which is not a High Contracting Party, or territories with a controversial status, and to establish that the population of such territory is fighting against the occupant in the exercise of their right of self determination", and support the view that this would mean in practice the peoples of South Africa and Palestine.²⁹

Israel's contention that it is not an occupant power in the legal sense, at least not on the West Bank needs to be considered. Conventional international law recognises but one form of military occupation: belligerent occupation, that is to say, "The occupation of part or all of an enemy's territory in time of war; this is the type of occupation covered by the Hague Regulations and the Fourth Geneva Convention of 1949".³⁰ The International Committee of the Red Cross (ICRC) has taken the view, relevant to the Israeli case that there is an occupation whenever during an armed conflict "territory

under the authority of one of the parties passes under the authority of an opposing party".³¹

Finally it may be stated that as regards Israeli occupation of West Bank and Gaza Strip, "the majority of the international community, and of international legal opinion, has not accepted that Geneva Convention" relative to war victims, 1949 is not applicable just because the previous status of the territories may have been slightly different from what those who negotiated the 1949 Geneva Convention IV may have had in mind.

Israel has consistently contended that it does not accept formally the *de jure* applicability of the Fourth Geneva Convention and that it has decided, since 1967, to act in *de facto* accordance with the "humanitarian provisions" of that Convention. It seeks to justify this stance by arguing that the Convention applies only where the Power ousted from the territory in question was a legitimate sovereign and that neither Jordan nor Egypt was the Sovereign power, in the West Bank and Gaza Strip respectively, during the years preceding the 1967 war.³² The issue, however, of formal applicability versus *de facto* application is not always of a distinction without a difference. It has never been made abundantly and patently clear whether "Humanitarian Provisions" connotes all of the provisions of the Fourth Geneva Convention or only those provisions which Israel might arbitrarily decide to apply.³³

It would be pertinent at this juncture to recall Professor Miyazaki's definition of international humanitarian law which would require Israel to apply and endorse *all* the relevant provisions of the Four Geneva Conventions of 1949 and the two Protocols of 1977 thereto as these instruments are the nuclei of international humanitarian law aimed at the protection of human rights in armed conflicts.³⁴

Be that as it may the Israeli position is neither tenable nor has been endorsed by the other High Contracting Parties to the Fourth Geneva Convention. Under that Convention, each Contracting State

27. The aim of paragraph 4 appears to be to establish that certain armed conflicts which might be viewed by some as essentially internal in character, are really international, and hence fully subject to the better developed legal regime governing international armed conflicts.

28. See Sandoz Y, Swinarski C, and Zimmermann B. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949* (Published under the auspices of International Committee of the Red Cross, Martinus Nijhoff Geneva 1987) para 112, p. 54.

29. See Bothe, Partsch and Solf: *New Rules for Victims of Armed Conflicts* (1982), p. 51-2.

30. Von Glahn, Gerhard: *The Occupation of Enemy Territory. A Commentary on the Law and Practice of Belligerent Occupation* (1957) at p. 27.

31. International Committee of the Red Cross - Annual Reports for 1968, 1973 etc.

32. See the Permanent Representative of Israel's statement in the Security Council on December 16, 1987. Doc. S/PV.2774 p. 74 and the foreword by the Haim H. Cohn to the booklet *The Rule of Law in the Areas Administered by Israel* (Israel National Section of the International Commission of Jurists, Tel Aviv, 1981).

33. Adam Roberts points out that the rejection of formal applicability has been frequently referred to in Israeli Court proceedings and has been one factor occasionally making the Courts reluctant to base their decisions squarely on the Fourth Geneva Convention of 1949. See: Roberts D: *What is Military Occupation?* BYIL, Vol. LV (1984), p. 248 at 283.

34. Professor Shigei Miyazaki in Christophe Swinarski (Ed), op. cit. note 12, p. 433

undertakes a series of unilateral engagements, *vis-a-vis* itself and at the same time *vis-a-vis* the others, of legal obligations to protect those civilians who are found in occupied territories following the outbreak of hostilities. This is why Article 1 states that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention *in all circumstances*" (emphasis added). The phrase "in all circumstances" is intended to include declared or undeclared war, recognized or unrecognized state of war, partial or total occupation with or without armed resistance, or even under certain circumstances when the opponent is not a contracting party. It may be added that the International Committee of the Red Cross too has rejected the Israeli stance.

Humanitarian Law

It may be mentioned that although the term "humanitarian law" is a relatively recent one the body of law it alludes to is age old.³⁵ Be that as it may, international humanitarian law comprises international human rights law and the laws of armed conflicts³⁶ with the provisions of such legal instruments as the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 and the two Additional Protocols of 1977 as its nuclei. Both are universally applicable, when States resort to the use of force in their international relations. The central concern of both laws is human dignity and respect for human rights; the fountain head of both laws is the same—the laws of humanity. Professor Abi-Saab is of the view that contemporary humanitarian law presents certain characteristics which distinguish it from the other branches of international law. These characteristics attach either to the substances of the rules themselves or to the condition (i.e. the context and framework) in which these rules apply and evolve and to the patterns of their implementation and evolution (which explain in large part, the substantive characteristics).³⁷ In his opinion, the salient substantive characteristics of humanitarian law include:

35. The term "Humanitarian law" owes much of its currency to Jean Pictet.

36. The laws of armed conflicts or laws of war as they popularly referred to are divided into laws of belligerency and the laws of neutrality. While the laws of belligerency are the rules governing the actual conduct of armed conflicts (*jus in bello*), which comprise the rules relating to the commencement, execution and termination of armed conflicts, the Rules relating to the execution of armed conflicts are divided broadly into Hague Law and Geneva Law.

37. Georges Abi-Saab "The Specificities of Humanitarian Law" in Christophe Swinarski (Ed.) *Studies and Essays on International Humanitarian Law and the Red Cross Principles* (ICRC, Geneva 1984), p. 261–262.

- (i) The quest for universal application;
- (ii) The 'absolute' character of protection;
- (iii) The reach for the individual level; and
- (iv) The *erga omnes* character of the obligations, and the common interest in their application.³⁸

Professor Abi-Saab has argued that if the criterion provided in Article 53 of the Vienna Convention on the Law of Treaties 1969.³⁹ relating to peremptory or *jus cogens* norms were to be applied to the "protective norms of the Geneva Conventions, we can easily reach the conclusion that these norms fit perfectly in this category. In the first place, the Geneva Conventions (but not yet the Protocols) are among the rare multilateral treaties which have attained the level of near universal participation. Moreover, common articles 6/6/6/7 and 7/7/7/8 prohibiting, *inter se*, agreements which waive or reduce the level of protection provide a rare express, example of normative standard setting 'from which no derogation is permitted', to use the language of article 53 of the Vienna Convention".⁴⁰

It has also been argued that Article 55c of the Charter of the United Nations regards universal respect for, and observance of, human rights and fundamental freedoms as a principle of international law. To this end all Members of the United Nations pledge themselves to take action in cooperation with the Organization for the achievement of this purpose.⁴¹

Moreover, both the Preamble to the Vienna Convention on the Law of Treaties of 23 May 1969 and the Preamble to the Vienna Convention on Succession of States in respect of Treaties of 22 August 1978 treat universal respect for, and observance of, human rights and fundamental freedoms as a principle of international law.

38. *Ibid.*, pp. 267-270.

39. Article 53 of the Vienna Convention on the Law of Treaties, 1969 entitled "Treaties conflicting with a peremptory norm of general international law (*jus cogens*)" stipulates "A treaty is void, if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". (Emphasis added)

40. George Abi-Saab op. cit. note 36 at page 271 (footnotes omitted).

41. See Article 56 of the Charter of the United Nations.

The Martens Clause

"The principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience", as referred to in the Martens Clause, discussed below are part of *jus cogens* in the light of the provisions of the Vienna Convention on the Law of Treaties. Particularly, the laws of humanity are the basis of the Geneva Conventions. The International Red Cross slogan "*inter arma caritas*" is also based on the laws of humanity. The laws of humanity comprehensively cover the various laws of war and complement them where they are lacking.

It may be mentioned in this regard that preambular paragraph 9 of the Hague Convention (II) of 1899 and preambular paragraph 8 of the Hague Convention of 1907 read as follows:

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the regulations adopted by them, the inhabitants and the belligerents remain under the protection of and rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."

This clause commonly referred to as the Martens Clause is based on paragraph 3 of the Declaration of 20 June 1899 read by Friedrich Von Martens, the Russian delegate who chaired the Eleventh Meeting of the Second Committee of the Second Commission on the occasion of the First Peace Hague Conference of 1899.

In the course of Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts held between 1974 and 1977, the significance of the Martens Clause was recognised. Thus it is that Article 1 paragraph 2 of the Protocol Additional to Geneva Conventions of 1949 stipulates that :

"In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience".

The pith and substance of the foregoing is that publicists are of the view that the protective principles and rules of Hague Conventions

of 1899 and 1907 and the Geneva Convention of 1949 and the Protocols of 1977 are of the nature of *peremptory jus cogens* norms as defined in Article 53 of the Convention on the Law of Treaties from which no derogation is permitted.

At this juncture it would not be out of order to enquire into the corpus of *opinio juris* which has over the years called for the application, to the occupied territories, of the principles and norms of international humanitarian law, as incorporated in the four Geneva Conventions of 1949 and the two protocols thereto of 1977.

(i) Security Council

It will be recalled that the Security Council had by its resolution 237 of 14 June 1967 had called upon the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations had taken place and to facilitate the return of those inhabitants who had fled the areas since the outbreak of hostilities.

By the same resolution the Security Council had recommended the scrupulous respect of humanitarian principles governing the treatment of prisoners of war and *the protection of civilian persons in time of war*, contained in *the Geneva Conventions of 1949*. It may be mentioned that the General Assembly had by its resolution 2252 (ES-V) of 4 July 1967 welcomed this recommendation of the Security Council.

The Security Council by its Resolution 478(1980) of 20 August 1980 had affirmed that the "enactment of the 'basic law' by Israel constitutes a violation of International Law and did not affect the continued application of the Geneva Convention of 1949 in the Palestinian and other Arab Territories occupied since 1967, including Jerusalem" and had determined "that all legislative and administrative measures and actions taken by Israel, the occupying power, which had altered or purported to alter the character and the status of the Holy City of Jerusalem, and in particular the recent 'basic law' on Jerusalem were null and void and must be rescinded forthwith."⁴²

It will be recalled that the Security Council had affirmed that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 is applicable to the Palestinian and other Arab

42. It was reiterated in Resolution 605(1987). See: Division for Palestine Rights, Vol. X, Bulletin 5/6, 1987.

Territories occupied by Israel since 1967 and had by its Resolution 592 (1986) called upon Israel to abide immediately and scrupulously by the Convention.

The Security Council in its Resolution 605 (1987) of 22 December 1987 *inter alia* strongly deplored the policies and practices of Israel in the occupied territories. The Secretary-General of the UN in his statement before the Committee on the Exercise of the Inalienable Rights of the Palestinian People said that he had sent the Under Secretary-General Merrack Goulding to Israel and the occupied territories in order to study the situation before hand.

Having been apprised of the decision of Israel, the occupying power, to "continue the deportation" of Palestinian civilians in the occupied territories, the Security Council by its Resolution 607 (1988) of 5 January 1988 reaffirmed once again that the Geneva Convention relative to the protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to Palestinian and other Arab territories, occupied by Israel since 1967, including Jerusalem; and called upon Israel to refrain from deporting any Palestinian civilians from its occupied territories. The Security Council also requested Israel, the occupying power, to abide by its obligations arising from the Convention.⁴³

A week later, the Security Council whilst expressing its regret that Israel, the occupying power, has, in defiance of that resolution, deported Palestinian civilians, called upon Israel to rescind the order to deport Palestinian civilians and to ensure the safe and immediate return to the occupied Palestinian territories of those already deported. The Council also requested that Israel desist forthwith from deporting any other Palestinian civilians from the occupied territories.⁴⁴

(ii) General Assembly

Since Israel was established in 1948 the recognition of the rights of the Palestinian people continued to be relegated for two decades under the label of the Palestinian refugees problem. However, the General Assembly which had initially proposed the partition of Palestine recognised in 1969 the "inalienable rights of the people of Palestine". The following year the General Assembly declared that it recognised "that the people of Palestine are entitled to equal rights and

43. S/RES/607 (1988), 5.1.1988.

44. S/RES/608 (1988), 14.1.1988.

self-determination, in accordance with the Charter of the United Nations" and that "full respect for the inalienable rights of the people is an indispensable element in the establishment of a just and lasting peace in the Middle East". Thus, the right of self-determination of the Palestinian people was formally recognised by the international community and similar resolutions have been adopted in successive years.

At the Forty-second Session, the General Assembly by its resolution 42/69-I held Israel responsible for the security of the Palestinian refugees in the Palestinian and other Arab territories occupied since 1967, including Jerusalem and called upon Israel to fulfil its obligations as the occupying power in that regard, in accordance with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949. It need hardly be mentioned that similar resolutions were adopted at previous session of the General Assembly,⁴⁵ and which were either referred to the humanitarian principles of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 and to the Obligations Arising From the Resolutions Annexed to the Hague Convention IV of 1907 or reaffirmed the inalienable rights of all displaced inhabitants to return to their homes or former places of residence in the territories occupied by Israel since 1967 and declaring that any endeavour to restrict, or to attach conditions to, the free exercise of the right of return by any displaced person is inconsistent with that inalienable right and inadmissible.

(iii) Economic and Social Council

On 26 May 1988 the Economic and Social Council of the United Nations by its Resolution 1988/25 *inter alia* reaffirmed that "the Geneva Conventions relative to the Protection of Civilian Persons in Time of War, 1949 is applicable to territories occupied by Israel since 1967, including Jerusalem".⁴⁶

(iv) Other Organizations

It will be recalled that similar resolutions affirming the application of the Geneva Convention of 1949 and/or condemning Israeli

45. See General Assembly Resolutions 41/69-I of 3 December 1986; 40/165 of 16 December 1985; 39/99 of 14 December 1984; 38/33-I of 15 December 1983; 37/120 G of 16 December 1982; and 36/146 B of 16 December 1981.

46. See United Nations Division for Palestinian Rights, Vol. XI, Bulletin No. 5, May 1988.

occupation and deportation of the Palestinian peoples from the occupied territories have also been adopted by such international organizations as the League of Arab States; the Organisation of African Unity and the Organization of Islamic Conference.

(a) *League of Arab States*

The resolution adopted at the Extraordinary Session of the League of Arab States Council held at Tunis on 23 and 24 January 1988, *inter alia*, condemned such crimes of the Zionist occupation against the militant Palestinian people, as killings, deportation, massive arrests, imposition of sieges of hunger and thirst, prohibition of medicines and medical care, aggressions against the holy places particularly the Holy al-Agsa Mosque.

(b) *Organisation of African unity*

At its forty-second session the Organisation of African Unity, *inter alia*, strongly condemned Israel, the Occupying Power, for the implementation of its Iron Fist Policies and all racist practices against the Arab Population in the occupied Palestinian territories as such policies and practices of continual occupation, expropriation of land and water resources, expulsion, arbitrary detention and flagrant violations of the norms of international law and relevant conventions. It also affirmed its adherence to the United Nations Security Council Resolutions 475 (30 June 1980) and 478 (20 August 1980) relevant to the status of the Holy City of Jerusalem, and, which, *inter alia*, determined that all legislative and administrative measures and actions taken by Israel, the Occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, were null and void, and that such actions by Israel constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East, and a threat to international peace and security, and which, further, demand that Israel rescind such measures.⁴⁷

At the same session of the OAU; inspired by the UN resolutions on the Protection of Palestinian Refugees in Host Arab Countries, the Universal Declaration on Human Rights and the 1949 Geneva

47. OAU CM/Res. 1093, adopted at the Forty-second Ordinary Session held at Addis Ababa, Ethiopia, in July 1987. p. 15 at 16 quoted from Division for Palestine Rights, Vol. X, Bulletin No. 7/8, July/August 1987. That resolution also requests the Security Council of the United Nations to seek ways and means to compel Israel, the Occupying Power, to terminate its occupation and withdraw its military forces from the Palestinian occupied territories including Jerusalem.

Convention expressed its deep concern over the tragic attacks directed against the Palestinian camps with the aim of destroying and eliminating them and dispersing their inhabitants by force.⁴⁸

At its Forty-eighth Ordinary Session the Council of Ministers of the Organization of African Unity by its Resolution CM/Res.1154(XLVIII), *inter alia*, condemned Israel the occupying power for its oppressive racist policy of aggression against the Palestinians in the occupied territories, as the continued occupation, confiscation of land and water resources, deportation and illegal detentions which constitute a flagrant violation of the Universal Declaration on Human Rights and the Geneva Convention of 12 August 1949 on the Protection of Civilians in Time of War; and expressed its support for convening an International Conference for Peace in the Middle East in accordance with the provisions of the relevant resolutions of the UN General Assembly in particular, No. 38/58/C of 13/12/83 and 41/430 of 13/12/86 with the participation of the Permanent Members of the UN Security Council and the parties concerned including the PLO, the sole legitimate representative of the Palestinian people, as an independent party, and on equal footing with the other parties.⁴⁹

(c) *Organization of Islamic Conference*

At the emergency meeting of the Al-Qods Committee held at Irfane, Morocco on January 5, 1988 the Secretary-General of the Organisation of the Islamic Conference, Mr. Syed Sharifuddin Pirzada, expressed among other things, grave concern of the Muslim World at the continuing vicious Zionist onslaught against the Palestinian people in the occupied territories, the violation of holy places, and the firing at worshipper in mosques.

(d) *Asian-African Legal Consultative Committee*

Referring to the policy currently being pursued by Israel of deporting any person considered by them as a leader of the popular uprising of the masses in the occupied territory the Secretary-General of the Asian-African Legal consultative Committee in his statement made at the Forty-third Session of the General Assembly said that

48. OAU CM/Res. 1094 adopted at the Forty-second Regular Session held at Addis Ababa, Ethiopia, in July 1987, p. 17 at 17 and 18 quoted from Division for Palestine Rights, Vol. X, Bulletin No. 7/8, July/August 1987.

49. See the United Nations Division for Palestine Rights, Vol. XI, No. 5, May 1988, p. 9.

apart "from such expulsions being illegal under the Geneva Convention of 1949 and the 1977 Protocol, they constitute a futile effort to stem the tide of destiny".

Conclusions

More than three centuries ago Hugo Grotius made the classical distinction between civilians and combatants which thereafter was maintained by the provisions of Articles 23 and 25 of the Lieber Code.⁵⁰ Thereafter the Brussels Declaration of 1874 rendered immune civilian dwellings from military attack. It may be stated that even though the latter instrument i.e., the Brussels Declaration was never ratified, it had been widely accepted as declaratory of customary international law leading to Hague Convention No. II of 1899 and No. IV of 1907.

Following the German and Italian air force operations during the civil war in Spain and similar acts by Japan in China, the then British Prime Minister had in 1938 succinctly stated the three principles of international law applicable in land, sea or aerial warfare thus :

"In the first place, it is against international law to bomb civilians as such and to make deliberate attacks upon civilian populations. In the second place, targets which are aimed at from air must be legitimate military objectives and must be capable of identification. In their place, reasonable care must be taken in attacking those military objectives, so that, by carelessness a civilian population is not bombed".⁵¹

The Fourth Geneva Convention elaborated, in detail, many rules of customary international law as also the Hague Rules relating to Civilians.

International community adopted in 1977 two Protocols to the four Geneva Conventions of 1949. The provisions of these Protocols, as pointed out above, were aimed at supplementing the Geneva Conventions of 1949. In the foregoing pages an endeavour has been made to make out a *prima facie* case for the application of the provisions of Hague Rules of 1899 and 1907 as well as the international humanitarian law as codified in the four Geneva Conventions of 1949 and the Protocols thereto of 1977. Whilst it is hardly necessary to

50. For details see E. Root in *AJIL*, Vol. 7 (1913), pp. 453-469 and Oppenheim's *International Law*, Vol. II.

51. See the House of Common Debates, Vol. 337, Col. 937.

reiterate the specific provisions and stipulations of these international instruments, reference may be made, as an *aide memoire*, to that provisions and common article 55 of the Hague Convention (II) of 1899 and (IV) of 1907, the stipulations of articles 1, 2, 4, 32, 33, 40, 47, 49 and 53 of the Geneva Conventions Relative to the Protection of Civilian Persons in Time of War, 1949 and provisions of Protocol I of 1977.

As the Secretary-General of the United Nations said "Several Security Council and General Assembly Resolutions have declared the inadmissibility of the acquisition of territory by war and insisted on Israel's withdrawal from territories occupied since the 1967 war. The Security Council and the General Assembly have consistently maintained since 1967 that the territories that came under Israeli control during the 1967 War are "occupied territories" within the meaning of the Fourth Geneva Convention. Both the Security Council and the General Assembly have also stated in numerous resolutions that the Fourth Geneva Convention applies to these occupied territories. Accordingly, even though Israel does not accept the *de jure* applicability of the Fourth Geneva Convention, the *opinio juris* of the world community is that it must be applied. In this regard it may be stated that the issue of deportation of Palestinians should be one of items for consideration by the International Conference on Palestine which is to be convened in accordance with General Assembly Resolution 30/120 C.

Given the politico-legal complexity of the subject, it is now for consideration by the Committee as to what future course the study or studies to be prepared by the Secretariat may take.

MINISTRY OF FOREIGN AFFAIRS OF THE ISLAMIC REPUBLIC OF IRAN

Report

Deportation of the Residents of Occupied Territories From the Stand point of International Law

1. For many years now, the occupation regime of al-Qods has deported the Palestinian residents of the territories occupied by this regime. This act is incompatible with the undeniable principles and stipulations of international law on occupied territories.
2. The question of the deportation of the local population of occupied territories was brought forth during the peace conference of the Hague in 1899 and 1907. Following long elaborations in these conferences, the participants

concluded that it is a self-evident fact that the deportation of the local population of the occupied territories is illegal and inhuman, and includes several cases; the least that can be expected is the humanitarian behaviour of the civilized States, which does not require any special enactment to this effect. It may therefore be concluded that, from the standpoint of the Hague Regulations, which is the outcome of the Hague Conferences, deportation is deemed to be illegal.

3. During World War II, the German Nazi regime, displaced and deported the local population of the territories it had occupied. Therefore, the Charter of the Nuremberg and Tokyo Tribunals stipulated that the deportation of the civilian population of occupied territories, carried out for any purpose, constitute a war crime, a violation of the practice and the law of the war, and a crime against humanity.
4. Article 49, Geneva Convention IV, on the protection of civilians in time of war⁵², stipulates that :
"Individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited regardless of their motive."
In the continuation of this Article, it is explained that the evacuation of the residents of an area, necessitated by military operations, is excluded.
5. On the other hand, the residents of the occupied areas, are not obliged to obey occupation forces.⁵³
6. The occupation power is responsible for the maintenance of the normal living conditions in the occupied territories. For this purpose, it should respect, to the extent possible, the Laws applied in the occupied territories. This fact has also been stipulated in Article 43 of the Hague Regulations. The occupation regime of al-Qods claims that the occupied Arab territories are not included in the provisions of the Geneva Convention of 1949, because the nature of these territories is different from what the sponsors of Geneva Convention of 1949 had had in mind, and that for the member States of the international community, these territories had not indisputably been included in the Arab lands.

52. Geneva convention IV, 1949, Protection of Civilians in time of war.

53. Encyclopedia of Public International Law Vol. 4, North Holland Publications, p. 65.

7. The answer to such an unrealistic claims is that to the majority of the members of the international community and legal scholars, such an argument that :

"Geneva Convention IV is not formally applicable just because the previous status of the territories may have been slightly different from what those who negotiated the 1949 Geneva Convention IV may have had in mind."

is unacceptable and rejected.⁵⁴ On the other hand, Article 2 of the 1977 Protocol I, additional to Geneva Conventions 1949, elucidates this point and stipulates that occupied territories should also include the territories not generally accepted as part of a State's territory.

8. Another point that should be mentioned here is the question of the difficulties stemming from the interpretation of Paragraph 3, Article 6 of the Geneva Convention IV, 1949, that stipulates :
"In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the occupying power shall be bound, for the duration of the occupation, to the extent that such power exercises the functions of government in such territory, by the provisions of the following articles of the present convention : 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143."
Protracted occupation creates some practical and legal problems; that is to say, it causes certain regulations of the law of occupation, provided on the assumption of the continuation of the military operations, to lose their *raison d'être*. The aforementioned article stipulates that even though the application of the Convention ceases one year after the overall cessation of hostilities the occupation force, as long as it acts as the dominant government of the occupied territory, remains duty bound to implement 43 of the 159 articles of the Geneva Convention of 1949. These 43 articles include 23 of the 32 articles of the third part of the convention devoted to the law of occupation. These 43 articles, that are applicable even after one year, are among the important articles of the Convention covering the major humanitarian provisions for the residents of the occupied territories.

54. British Yearbook of International Law, 1984, Adam Roberts "What is a Military Occupation?" p. 283.