



Al-Haq's Legal Analysis of Israeli Military Orders 1649 & 1650: Deportation and Forcible Transfer as International Crimes

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On 13 April 2010, military orders 1649 'Order regarding Security provisions' and 1650 'Order regarding Prevention of Infiltration', issued by the General Officer Commander of the Israeli Occupation Force's Central Command, entered into force.¹ These military orders dramatically broaden the existing definition of 'infiltration' in the occupied West Bank, criminalizing and subjecting to deportation every person present there. If implemented, these orders would facilitate the mass deportation or transfer of Palestinians and other protected persons from the West Bank, in clear violation of international law.

This paper will provide an analysis of the text of the military orders themselves, and an overview of the overall context of the military order regime through which they have been introduced. It will consider how the threat of imprisonment or deportation may be used to target particular groups of protected persons in the West Bank. The content of the military orders and the prohibition on deportation and forcible transfer will be analysed by reference to international law.

An analysis of the orders: All persons present in the West Bank are 'infiltrators'

The definition of infiltration

Military order 1650 amends military order 329 "Order regarding Prevention of Infiltration", dating from 1969. According to that order, an infiltrator was a person who entered the West Bank from Jordan, Syria, Lebanon and Egypt, without a permit from the military commander of the area, or who stayed in the area after the expiration of such a permit. The aim of the order was mainly to prevent Palestinian refugees from returning to their homes, and to prevent armed combatants from entering occupied territory. The meaning of 'unlawful' entry into the area was defined by reference to the opposite term 'lawful' which meant 'as per permit by the military commander'. Punishment for infiltration included imprisonment or a fine, and possible deportation.

Recently issued military order 1650 radically widens the definition of infiltration to include all those who (i) enter the area 'unlawfully' and (ii) who are present in the area without lawfully holding a permit. A permit is defined as a:

¹ Order regarding Prevention of Infiltration (Amendment No. 2) and the Order regarding Security Provisions (Amendment No. 112). Available at: http://www.hamoked.org.il/news_main_en.asp?id=904



“document or permit issued by the commander of the IDF forces or someone acting on his behalf under the provisions of security legislation, or issued by the authorities of the State of Israel under the Entry into Israel Law...which permit the presence of a person in the Area.”

The new definition of ‘permit’ is very vague. A technical reading seems to exclude Palestinian IDs from the scope of documents which might be considered permits under the order. Palestinian IDs, although ultimately approved by Israel, are in fact issued by the Palestinian Authority under the provisions of the Israel-Palestinian Interim Agreements, and therefore do not fit the requirements of the definition. It would appear that the ‘lawful document or permit’ which permits presence in the area, referred to above, does not include Palestinian ID documents.

Significantly, the order also deletes the definition of “resident of the Area”, and fails to redefine the term. Previously, any person not in possession of documents identifying him as a *resident* of the Area had to prove he was not an infiltrator. The presumption, therefore, was that those in possession of residency documents were not infiltrators. By contrast, the new order contains no such provision: section 5, which sets out those presumed to be infiltrators, states that: ‘a person is presumed to be an infiltrator if he is present in the Area without a document or permit which attest to his lawful presence in the Area without reasonable justification.’ In other words, all persons present in the West Bank are presumed to be infiltrators, irrespective of whether they are Palestinians holding a West Bank ID card that establishes their status as a permanent resident of the area.

Furthermore, the new order criminalizes those who are considered infiltrators. Whereas in the old order, infiltrators would be deported, under the new order, not only can they be deported but they can also be sentenced to up to seven years imprisonment if they have entered the area unlawfully, and three years imprisonment if they are present without a lawful permit.

The term ‘infiltration’ is ambiguous, but on a literal reading it includes all those present in the occupied West Bank, including those who were born and are legally resident there. The concept of infiltration is not limited to persons who have entered the territory unlawfully, or whose entry permits have expired, but to those present in the West Bank, whether they entered the territory or have always been there. Thus, according to the new definition, the presence of all the current inhabitants of the West Bank is criminalized and all are subject to potential deportation.

Arbitrariness of the order

In addition, the new order removes any definition of the term ‘lawful’. The meaning of ‘unlawful entry’ is therefore unclear, and could include circumstances other than



those relating to having the correct entry permit. Moreover, in stating that infiltrators will be presumed to be those present in the area without the necessary permit and without ‘reasonable justification’, the order introduces arbitrariness. The inclusion of the exception of ‘reasonable justification’, without a definition, allows the military commander to apply it as per political convenience.

Lack of judicial oversight

Finally, the mechanisms available to challenge deportation orders are inadequate. Order 1649 creates a committee which will oversee deportations. Persons subject to deportation orders, however, cannot initiate appeals to the committee. Instead, they are meant to be brought before the committee within eight days of receiving the order, at which stage a challenge can be heard. At the same time, the order allows the military commander to deport persons within 72 hours. As a result, it is perfectly possible that persons could be deported without having had the opportunity to challenge the deportation before the committee. In any event, the committee is comprised of military judges appointed by the commander of the Israeli Occupation Forces – the same authority that orders deportations in the first place. It is unclear the extent to which the residual jurisdiction of the Israeli High Court to hear judicial reviews of deportation orders will be available, given the possibility that the committee procedure will be viewed as an ‘alternative remedy.’ Even in the event that an appeal to the High Court is available, the court is notoriously prone, in deportation cases, to accept the arguments of the Israeli military, without proper scrutiny.

An Overview of the Existing Permit System in the West Bank

The Military Order and Permit Regimes

It is important to understand that the new military orders, whilst unprecedented in their scope, are not novel in terms of the restrictions placed on Palestinian life. They come within the context of an existing regime of military orders, which since the start of the occupation, has sought to restrict the ‘lawful’ presence of Palestinians in the OPT, creating a requirement that persons must have permits to be within certain areas, and to move between areas. Furthermore, the issuance of ID documents, whilst primarily related to residency rights in the OPT, is interlinked with the practice of restricting presence and freedom of movement.

Since the beginning of the Israeli occupation in 1967, upwards of 150,000 Palestinians have had their IDs revoked, thus losing any status recognized by Israel to enter or live in the OPT.² Such revocations have taken many different shapes and

² HSRC *Occupation, Colonialism, Apartheid? A Re-assessment of Israel’s practices in the occupied Palestinian territories under international law* (Cape Town, 2009) 199-219. Available at: <http://www.hsrc.ac.za/Document-3227.phtml>.



forms, with many thousands of Palestinians having lost their status due to time spent visiting, studying, or working abroad. Arbitrary administrative changes unilaterally implemented by Israel had the effect of revoking the IDs of these Palestinians who have since had to apply through the Israeli-controlled ‘family reunification’ process to seek permission to return to their homes and place of birth. Hundreds of thousands of Palestinians have been subjected to exclusion from their homeland through such processes. For example, should Palestinian residents of East Jerusalem receive a passport from a second state, such as the US, they will have their Israeli issued ID revoked, thus denying them any status as residents of Jerusalem.

By contrast, Israelis may hold citizenship in several states without losing any of their rights to live in Israel. The political goal behind such discriminatory administrative measures, as with the new military orders, is to seek to reduce the Palestinian population of the OPT while promoting the Israeli population. At any rate, even when Palestinians are granted IDs or permits to reside in their land, such documents only confer the right of residence for the duration of the document, with neither the recognition of the West Bank or Gaza being their permanent home, nor of any status approaching citizenship. It is within this context of exclusion, statelessness, and discrimination that the new orders must be considered.

The permit system in the OPT

Since the beginning of the occupation of the OPT in 1967, military orders have been passed that declare Gaza and the West Bank a closed military zone, and that therefore require Palestinian inhabitants of the OPT to have special permits to enter certain areas. For instance, Palestinians must hold permits to enter East Jerusalem, the Jordan Valley, areas behind the Annexation Wall – the ‘seam zone’ - and for movement between Gaza and the West Bank. Permits are even required to enter Area C, and although that requirement is often not enforced, it remains an arbitrary power of the Israeli Occupation Forces.

The permit system creates a situation of constant uncertainty in relation to freedom of movement since it is selectively and inconsistently enforced. In times of ‘heightened security’, it is enforced in its fullest manifestation, causing Palestinian society to come to a virtual standstill. During the Second Intifada for instance, Palestinians were required to possess permits even to travel between cities within the West Bank. At other times the requirement is loosely imposed, and Palestinians find that they can travel to many areas of the OPT without hindrance, yet not without fear that they will be subject to arrest.

ID documents

The issuance of ID documents, whilst primarily related to residency rights, also affects freedom of movement and the ability of Palestinians to be lawfully present in certain areas of the OPT. The ID card system came about as result of a military order



passed shortly after the start of the occupation. It required all Palestinian residents of the West Bank and Gaza to carry Israeli-issued ID cards as a condition of their permanent residency. However, the question of who was given an ID document was determined on the basis of a population census conducted by the Israeli authorities at the start of the occupation. The census contained the names of all those present in the OPT at the time, but excluded those who had fled to neighbouring countries as a result of the war, and those who happened to be living in other countries at the time.³

Following the Israeli-Palestinian Interim Agreements in 1995, responsibility over the population registry – which had been established as a result of the census – was ostensibly transferred to the Palestinian Authority, but the granting of permanent residency required the prior approval of Israel.⁴ Changes to the population registry can be made to by the Palestinian Authority but there is no guarantee that Israel will make the same changes to its copy of the register. Since the Israeli army relies on the Israeli copy of the registry in order to determine persons' status in the West Bank, changes the Palestinian side makes to the registry will not necessarily translate into the granting of rights to persons on the ground. The significance of this, in relation to persons registered with Gazan addresses, will become apparent in the section below.

In practice, ID documents, as well as the regularisation of residency in the OPT, have been used to place restrictions on the ‘lawfulness’ - in Israeli terms - of Palestinian presence and freedom of movement within the OPT. During times in which the permit system is being stringently enforced, ID documents essentially legalise the presence of the ID holder to the location of the address registered on the document and no more. Therefore during the Second Intifada, Palestinians often found themselves confined to the area registered in their ID document, and were unable to move outside of it to other parts of the West Bank without a special permit. Similarly, persons that live in the West Bank but whose ID documents contain Gazan addresses are, according to the Israeli authorities, not legally permitted to be in the West Bank without an additional permit.

Thus, the new military orders, whilst they dramatically broaden the concept of infiltration in a way which is unprecedented, also supplement the existing regime of military legislation, which already places extensive restrictions on Palestinians’ ability to reside within and move around the OPT. When viewed within that context, the way in which the orders are likely to be implemented, and the groups of persons most likely to be affected by the orders, can be better understood.

Groups Likely to be Targeted for Deportation under the new order

³ Al-Haq *Occasional Paper No 8: The Right to Unite* (1990) 3.

⁴ The Israeli-Palestinian Interim Agreement, Annex II, Article 28(2)(1).



An Israeli spokesperson has stated that order 1650 ‘is not intended to apply to Israelis, but to illegal sojourners in Judea and Samaria,’⁵ and that it relates to ‘the deportation procedure of Palestinians illegally in the West Bank’.⁶ According to Hussein Al Sheikh, PA Minister for Civil Affairs, Israeli officials have stated that the orders will restrict the entry of ‘internationals’ into the West Bank whose visas will not be considered permission to enter the West Bank.⁷ Whilst on a literal reading the order could apply to all persons, it would appear that several groups of persons are therefore most at risk.

West Bank 'residents of Gaza'

The primary at-risk group are the thousands of Palestinians who live in the West Bank but are registered in the Palestinian population registry with Gazan addresses. Many were born in the West Bank or have lived there for years with their families. As stated above, although the population registry is maintained by the P.A., Israel has final approval over changes to it. In 2000, Israel froze any changes to its copy of the population registry, meaning it no longer recognised any changes Palestinians made to their addresses from Gaza to the West Bank. Moreover, in 2007, Israel instituted a policy by which all 'residents' of the Gaza Strip (those registered with Gazan addresses) were required to hold a permit to remain in the West Bank. The policy is essentially an internal Israeli decision. It was never published, nor was it based on any particular legislation.

The process of acquiring such a permit is extremely difficult. The applicant has to prove they have lived in the West Bank for eight years continuously, are married with children, have security and policy clearance and have satisfied additional ‘humanitarian’ grounds. As a result, many applications for permits have been refused, and hundreds of persons have already been deported to Gaza.⁸

⁵ Available at: <http://www.haaretz.com/hasen/spages/1162075.html>

⁶ Dan Izenberg *New law could deport of thousands of West Bank Palestinians* Jerusalem Post, 12 April 2010. Available at: <http://www.jpost.com/Israel/Article.aspx?id=172917>

⁷ Ma'an News *PA minister: Israeli military orders don't include Gazans*
<http://www.maannews.net/eng/ViewDetails.aspx?ID=276298>.

⁸ In March 2010 a coalition of Israeli NGOs petitioned the Israeli Courts against a new procedure on the part of the Israeli Ministry of Defence which almost completely blocks the possibility of Palestinians relocating from the Gaza Strip to the West Bank. The procedure, which COGAT describe as part of a ‘general policy to reduce movement’ between Gaza and the West Bank, not only sets extremely narrow criteria for meeting the test, but even proposes a quota on the number of applications ‘to be processed annually’. (State of Israel Ministry of Defense Coordinator of Government Activities in the Territories ‘Procedure for Processing Requests of Gaza Strip Residents to Settle in Judea and Samaria’ 8 March 2009.) In the few cases in which a permit may actually be granted on the Israeli interpretation of ‘humanitarian grounds’, the applicant will have to reapply after 6 months for an extension, and subsequently every 12 months up to a period of 7 years, at which point, changing the address at which the individual’s address is registered ‘will be considered’ by the Israeli authorities. Petition in Hebrew available at: <http://www.hamoked.org.il/items/112250.pdf>. More information on the procedures at: <http://www.gisha.org/index.php?intLanguage=2&intItemId=1707&intSiteSN=113>.



It is possible that the recently issued order will effectively serve to formalise the process, already begun, of transferring Palestinians registered with Gazan addresses from the West Bank to Gaza, and that in the wider context of the severe restrictions that already exist in relation to freedom of movement between the West Bank and Gaza, the order is intended to consolidate a wider Israeli policy of separating Gaza and its inhabitants from the West Bank.

Foreign passport-holding spouses of West Bank Palestinians

Another category of vulnerable persons are foreign passport-holding spouses of Palestinian residents of the West Bank. Many are Palestinian in origin but have lived in other countries, or were excluded from the census conducted at the start of the occupation, and are awaiting the results of family unification requests. In 2000, Israel froze the processing of all family unifications applications. As a result, thousands of persons were unable to regularise their status in the West Bank. The effect has been to create constant uncertainty, which deters many West Bank inhabitants from even attempting to marry those who do not reside within the West Bank, or to have their spouses come to live with them in the West Bank. It has also caused some Palestinians to leave the West Bank to live in countries in which their spouses have legal residency. In 2007, as a result of legal and political pressure, the Israeli authorities processed a certain number of cases, but many more remain outstanding. Thousands of 'foreign' visitors are therefore still in the precarious position of having no legal status in the West Bank. It might be the intention to use the orders to deport them.

Internationals

Finally, as suggested by the P.A. civil affairs ministry, foreign passport-holders on tourist visas that are visiting or working in the West Bank might be at risk. In fact, the new orders might be part of a continuing strategy to ensure that foreign employees of international organisations and human rights defenders are unable to enter or remain in the West Bank. There have been several other recent Israeli policies aimed at restricting the international presence in the West Bank: for instance the issuance of 'PA area-only' tourist visas, and of tourist as opposed to work visas for foreign employees of non-governmental organizations that operate in the West Bank. Furthermore, in recent months, several international solidarity movement activists have been arrested in their homes in the West Bank and served with deportation orders. The restriction on the ability of internationals, particularly those who support the Palestinian civilian population through aid work or solidarity activities, to visit and stay in the West Bank has several implications. It impairs the long-term ability of Palestinian civil society to effectively oppose the occupation and to maintain and develop its relations with the outside world. Such relations are, in the context of prolonged military occupation, vital for the survival of the population.

International Law: Grave Breaches, War Crimes, & Crimes Against Humanity

Accountability and International Humanitarian Law

Forcible deportations or transfers of ‘protected persons’ in occupied territory are prohibited under international humanitarian law. Article 49 of the Fourth Geneva Convention, which is binding on Israel, prohibits ‘individual or mass forcible transfers, as well as deportations of protected persons from occupied territory...regardless of their motive.’

Furthermore, forcible deportations or transfer are criminalised by Article 7(1)d of the Rome Statute of the International Criminal Court which states that deportation or forcible transfer of persons, when committed as part of a widespread or systematic attack directed against a civilian population constitutes a crime against humanity. Under Article 8(2)vii of the Rome Statute, ‘unlawful deportation or transfer’ constitutes a war crime, ‘in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes’.⁹

Forcible deportation and transfer is understood in international law as the ‘involuntary and unlawful evacuation of individuals from territory in which they reside [...]. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacement within a State.’¹⁰ In its *Kristic* decision of 2001, the Trial Chamber of the International Tribunal for the Former Yugoslavia addressed the situation of forcible transfer within a state, finding Radislav Krstić guilty of crimes against humanity for the forcible transfer of Bosnian Muslims within the territory of Bosnia and Herzegovina.¹¹ As such, the transfer of Palestinians from the West Bank to Gaza, although it is within the OPT, is prohibited. Evacuations of protected persons are permissible in only very exceptional circumstances, where imperative military necessity or the security of the civilian population demands it. If no such exceptional circumstances exist, the deportations or transfers are unlawful, and a grave breach of

⁹ Elements of Crimes of the Rome Statute, clarifies that for the purpose of Article 7 (1) (d) on the crime against humanity of deportation or forcible transfer of population, the term ‘forcibly’ is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element_of_Crimes_English.pdf p 7.

¹⁰ Krstić, ICTY, Trial Chamber, Case no. IT-98-33-T, para 521.

¹¹ In its *Kristic* decision of 2001, the Trial Chamber of the International Tribunal for the Former Yugoslavia addressed the situation of forcible transfer within a state. In 1995, 25,000 Bosnian Muslim civilians were forcibly bussed by the Bosnian Serb army outside the enclave of Srebrenica to territory under Bosnian Muslim control (but within the territory of Bosnia and Herzegovina). Radislav Krstić, having knowingly participated in forced transfer of protected persons, was found guilty and convicted of forcible transfer as a crime against humanity.

the Geneva Convention, attracting the most severe penal sanction, and individual criminal liability to those responsible for the acts.

In occupied territories, protected persons are all those who find themselves in the hands of the Occupying Power but who are not of the nationality of the occupying state (or of a neutral state who is not a signatory to the Geneva Convention). Thus Palestinians and internationals, are protected persons whether they were in the territory at the beginning of the occupation or entered the territory at a later date.¹² The status of protected person is not dependent on the issuance of permits or residency documents by the Occupying Power. The question of whether persons have a permit to be in the West Bank is therefore entirely irrelevant to the question of whether or not they are protected persons, the deportation or transfer of whom is prohibited.

There can be no doubt that transfers or deportations of Palestinians or foreign-passport holders pursuant to the new military orders, would be unlawful, as the stated reason for the deportations is an administrative one (lack of the necessary permit) rather than imperative military necessity or the security needs of the population.

As such, the orders effectively legislate for the commission of war crimes. Those responsible for issuing or authorising the orders, which would include Ehud Barak, Israel's Minister of Defence and Gadi Shamni, Major General Commander of Israeli Occupation Forces in the West Bank, as well as those that plan and carry out the deportations, would, in the event that deportations are carried out, be responsible for the commission of grave breaches of the Fourth Geneva Convention.

In the event that mass deportations take place, given the very detrimental effect they would have on the civilian population, and the indication that they are motivated by efforts to fragment the civilian population, they are likely to be considered to constitute a widespread or systematic attack against the civilian population, and therefore a crime against humanity.¹³

The right to enter the West Bank

¹² J Pictet (ed) *Commentary to Geneva Convention IV relative to the Protection of Civilian Persons in time of War* (ICRC: Geneva: 1958) 47. In 2004 the Assistant US Attorney General in a Memorandum to the US president affirmed this view, holding that 'The phrase "[n]ationals of a neutral State who find themselves in the territory of a belligerent State" must be understood in light of the Convention's overarching structure. [...] If "territory of a belligerent State" were construed to include occupied territory as well as the home territory of a party to the conflict, nationals of neutral States would not enjoy GC's protections anywhere in the world. Interpreting "territory of a belligerent State" to include occupied territory would thus render this phrase effectively meaningless. Such a construction is disfavored. See, e.g., *Factor v. Laubenheimer*, 290 U.S. 276, 303-04 (1933) Jack L Goldsmith III, US Assistant Attorney General "*Protected Person*" *Status in Occupied Iraq under the Fourth Geneva Convention: Memorandum Opinion for the Counsel to the President* 18 March 2004, pp 9-11.

Available at: <http://www.justice.gov/olc/2004/gc4mar18.pdf>.

¹³ *Kristic*. See further: Antonio Cassese *International criminal Law* (OUP, 2003) 76-7.



In relation to the severe restrictions that the new orders are likely to place on the ability of persons to enter the West Bank from other countries, the position under international law is governed by the general rules regarding the administration of occupied territory, particularly those of the Hague Conventions. As a fundamental principle, military occupation is meant to be temporary in nature. As a result, measures aimed at creating permanent changes to occupied territory are prohibited and only two factors can justify the imposition of administrative measures by the Occupying Power; the military needs of the occupying army and the welfare needs of the protected population. It is clear that an order denying the entry of all persons to the West Bank, without the necessary ‘permit’ cannot be justified by either consideration: it damages the normal functioning of the local population and, because it arbitrarily restricts the entry of potentially all persons into the West Bank, cannot be justified on military grounds.

Furthermore, the entry of persons engaged in aid or humanitarian work which benefits the civilian population, should be actively facilitated by the Occupying Power. Article 30 of the Fourth Geneva Convention, for instance, provides that ‘the Detaining or Occupying Power shall facilitate, as much as possible, visits to protected persons by the representatives of other organisations whose object is to give spiritual aid or material relief to such persons.’ It is therefore unlawful that Israel should institute what could amount to a ban against all international presence in the West Bank, including the presence of those engaged in humanitarian work.

International Human Rights Law

The International Covenant on Civil and Political Rights, by which Israel is bound with respect to every individual under its control, guarantees, in Article 12, the right of persons lawfully present within a territory to freely choose their residence. The only exceptions permitted are those necessary to protect national security, public order, public health or morals, and the rights and freedoms of others.¹⁴ Insofar as the order will prevent Palestinians who are deported from the West Bank to Gaza from being able to choose to reside in the West Bank, without clear security reasons, the orders are in violation of the covenant.

Moreover, the expulsion of foreign passport holders on the basis of the orders violates Article 13 of the covenant, which holds that a state may only expel aliens lawfully present within its territory pursuant to a decision made in accordance with the law. The phrase ‘in accordance with the law’ presupposes the existence of just laws regulating the presence of aliens in a territory, and due process for those facing

¹⁴ Human Rights Committee. General Comment. No. 27: Article 12 (Freedom of Movement). Sixty-seventh session (1999). HRI/GEN/1/Rev.9 (Vol.I).



deportation.¹⁵ As described above, neither the arbitrary nature of the orders which breach international humanitarian law, nor the military committee which is meant to oversee the deportations, can be described as allowing for expulsions ‘in accordance with the law.’ Deportations of foreign nationals under the orders will therefore violate Article 13 of the covenant.

The right to self-determination

The right of the Palestinian people to self-determination in the Occupied Palestinian Territory is firmly established, and pertains to all territory occupied by Israel during the 1967 war – that is, to the West Bank, including East Jerusalem, and Gaza – as a single territorial unit. The right to self-determination is, in the most general sense, the right of a population to sovereignty over a given territory. It includes the right of the population to function normally within the territory, to move around in it freely, to develop international relations and to determine who enters and stays within the territory. The orders, in as much as they contribute to the permanent separation of Gaza from the West Bank, ensure the criminalisation of Palestinians on account of their mere presence in their homeland, and interfere in the ordinary functioning and development of the Palestinian population. The occupier’s system of total control over Palestinian lives through the military order regime is a major factor contributing to the denial of Palestinian self-determination.

The illegality of the military orders under Oslo

It is generally accepted that the Oslo Accords, both in substance and in practice, have allocated negligible genuine power to the Palestinian Authority over matters in the West Bank, and have not improved conditions for the population under occupation. For that reason, this paper will not contain a detailed analysis of the orders in light of the Oslo Accords. Nonetheless, it is worth noting that that even under the restrictive terms of the Oslo Accords with respect to the powers and responsibilities of the Palestinian Authority, the new military orders, and the practice of the Israeli authorities in the period before they were issued, appear to contradict the terms of the Accords.

In particular, under the Israeli-Palestinian Interim Agreement of 1995 (Oslo II), the Palestinian Authority is granted jurisdiction over civil affairs of all persons, except Israelis, in Areas A and B of the West Bank.¹⁶ The responsibility for the issuance of ID documents in Areas A and B rests with the PA (although the granting of permanent residency requires prior Israeli approval).¹⁷

¹⁵ Human Rights Committee. General Comment. No. 15: The position of aliens under the Covenant. Twenty-seventh session (1986). HRI/GEN/1/Rev.9 (Vol.I).

¹⁶ Article XVII Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip

¹⁷ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex II, Article 27(a)(1).



Arguably, a military order which vests power over the status of all those present in all parts of the West Bank directly with the military commander in an overarching fashion disregards the powers that were meant to be allocated to the PA under the Oslo agreements. Had the orders been issued in accordance with an underlying security rationale, they might have been permissible under the provision in Oslo II according Israel responsibility for the overall security of Israelis. However, since not even an ostensible security justification has been offered, Israel is clearly in breach of the Accords. Similarly, Israel's decision to freeze all changes to the population registry so that no issuance of residency rights to Palestinians by the PA can even begin to be made, violate the arrangements that the Oslo Accords envisaged would be put in place. The Military Orders are therefore not only unlawful by international law standards, but also breach the binding Oslo Accords that Israel voluntarily entered into with the Palestinians. In that sense, they represent an increasing departure from Oslo and marginalisation of the functions of the PA by Israel.

Conclusion

Pictet's Official Commentary to the Fourth Geneva Convention explains that 'the authors of the Convention voted unanimously in favour of the absolute prohibition of individual or mass deportations from occupied territory'¹⁸ It notes that such a provision was absent from the earlier Hague Regulations on the basis that 'this was probably because the practice of deporting persons was regarded at the beginning of this century as having fallen into abeyance'. It is therefore unacceptable that in 2010, Palestinians should find themselves vulnerable to such criminal behaviour on the part of Israeli authorities. Laws deemed unnecessary at the beginning of the 20th century are today to be violated with impunity as Palestinians are dismissed as sojourners and criminalized as 'infiltrators' in their own land.

Palestinians continue to suffer from the effects of past deportations and forced transfers, with many hundreds of thousands still living in refugee camps both in the OPT and abroad. As alluded to in this paper, a wide array of military, political, economic, and legal mechanisms continue to make life extremely difficult for the Palestinian population, where measures such as movement restrictions, land confiscation, and the Annexation Wall have indirectly contributed to internal displacement and involuntary emigration. The new military orders pose a more palpable threat, constituting an enabling mechanism by which direct deportations of Palestinians can be exercised by the Israeli Occupation Forces.

International organisations, High-Contracting Parties to the Fourth Geneva Convention, and the international community at large must take concrete and immediate steps to ensure that Israel does not, through these military orders, engage in prohibited practices of deportation and transfer of the civilian population. Impunity

¹⁸ Pictet *Commentary to Geneva Convention IV* 279.

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for crimes against Palestinians can no longer be tolerated and those found to be responsible for such unlawful actions must be held individually criminally responsible.