

10.2 Prohibition on expelling and deporting the population of an occupied territory. Applicability to the territories occupied by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

N.B. As per the **disclaimer**, neither the ICRC nor the authors can be identified with the opinions expressed in the **Cases and Documents**. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven**; nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: “Le droit de la guerre” in *Annuaire Suisse de Droit International*, 1989, p. 248; original in French, unofficial translation.]

The following note was drawn up by the Directorate for Public International Law. It relates to the lawfulness of the expulsion and deportation to Lebanon of four Palestinian activists from the West Bank of the Jordan.

1. Notwithstanding Resolution 607 (1988) adopted unanimously by the Security Council on 5 January, which obliges Israel to refrain from deporting Palestinian civilians from the occupied territories and calls upon it to meet the obligations imposed upon it by the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereinafter referred to as the Fourth Convention), the Israeli authorities expelled four Palestinian activists from the West Bank and deported them to Lebanon.

The question arises as to the lawfulness of such a measure with regard to international law and the Fourth Convention in particular. To resolve that matter, consideration should first be given to the question of whether [that Convention] applies to the territories which have been occupied by Israel since 1967.

1. Israel has always disputed the applicability in law of the Fourth Convention in the occupied territories, proceeding from a literal interpretation of the second paragraph of Article 2 of that Convention under which

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

The Israeli argument is that in cases of occupation that instrument covers only situations where the ousted power enjoys legitimate sovereignty and that that was not the case with regard to the Kingdom of Jordan which had, from 1950 to 1967, annexed the West Bank in violation of the 1949 Armistice Agreement.

By contrast, the overwhelming majority of the international community (including the United States) has always maintained that the Fourth Convention is applicable de jure in accordance with the first paragraph of Article 2 which stipulates that

the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more High Contracting Parties, even if the state of war is not recognized by one of them.

However, it is precisely as a result of such a conflict (the Six Day War) between the States Parties to the Fourth Convention (Israel and Jordan) that Israel occupied the West Bank. That interpretation, which is based essentially on the aim of the Fourth Convention – to grant special protection to civilians who take no part in the hostilities – is further borne out by Article 4 which states that

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.

Thus, there is a widely accepted opinion that the Fourth Convention does apply in the occupied territories with regard to anyone other than Israeli citizens. Incidentally, the meaning of occupation is defined in Article 32 [sic] of Hague Convention No. 4 of 18 October 1907 Respecting the Laws and Customs of War, i.e. territory is considered occupied when it is actually placed under the authority of the hostile army.

However, the question of the applicability in law of the Fourth Convention would appear to be a theoretically one and may remain unresolved as Israel has always declared that it intends to apply it de facto in the occupied territories. The Israeli delegate repeated as much to the Security Council on 16 December 1987 in that he said: However, we have decided, since 1967, to act de facto in accordance with the humanitarian provisions of that Convention.

Therefore, consideration must be given to the question of whether or not the expulsion of the four Palestinian civilians constitutes a violation of the Fourth Convention.

1. The first paragraph of Article 49 of the Fourth Convention specifically prohibits individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of

the Occupying Power or to that of any other country, occupied or not, regardless of their motive. It is an absolute prohibition to which there are no exceptions other than the derogation provided for in the second paragraph (temporary total or partial evacuation of a given area if the security of the population or imperative military reasons so demand). Article 78 dispels any remaining doubts that might exist on the lawfulness of such a decision:

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

In other words, the maintenance of law and order cannot justify any measure taken in that respect, even against activists. In particular, forcible evacuation is among the measures prohibited by the Convention. In this context it should not be forgotten that the very clear prohibition on such practices is due to the tragic experience of the Second World War. The fact that mere expulsions and not collective evacuations are involved alters nothing in terms of their legal nature. The above-mentioned Article 49 prohibits any individual or mass forcible transfers.

Although the Fourth Convention reserves the right of the occupying power to subject the population to criminal provisions which it deems essential for the orderly government of the territory, the criminal provisions laid down and implemented by the occupying power may not pose any obstacle to the clearly stated prohibition on deportations.

Therefore, it would appear that by evacuating four Palestinian civilians – irrespective of whether or not they were agitators – Israel contravened the Fourth Convention. Moreover, it is a grave breach within the meaning of Article 147 which deems unlawful deportation or transfer to constitute such a breach. It is in those terms – grave breach – that the International Committee of the Red Cross publicly condemned the recent Israeli decision.

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