



**THE WEST BANK
AND
THE RULE OF LAW**

**INTERNATIONAL COMMISSION OF JURISTS
and
LAW IN THE SERVICE OF MAN**

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AND
THE RULE OF LAW**

A study by

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Preface

The two authors of this study belong to a group of lawyers seeking to promote the rule of law in the West Bank of the Jordan. It is known as Law in the Service of Man and is affiliated to the International Commission of Jurists.

The preparation of this study is a task which could be undertaken only by West Bank lawyers as the military orders, which have constituted the only form of legislation applicable to the area for over 13 years, are not published and are not to be found in any library. Most of them are distributed to practicing lawyers, and some are sent to the people directly affected by them. Nowhere is a complete set available and efforts even by lawyers to obtain copies of missing orders are usually unsuccessful.

There have been isolated cases, as in Chile, where one or two decrees of a military government have been treated as secret documents and not published. However, this is the first case to come to the attention of the International Commission of Jurists where the entire legislation of a territory is not published in an official gazette available to the general public.

Members of Law in the Service of Man propose to continue their analysis of the legal situation in the West Bank with more detailed studies on specific topics. This first general survey covers both the legal structure and the changes which have been made to the substantive law.

The chief factor affecting law in the West Bank is that for 13 years it has been without an indigenous government for the area. The only legislative or executive authority covering the area is

the military occupying power. Under international law, as an occupant "is not the sovereign of the territory he has no right to make changes in the laws, or in the administration, other than those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realisation of the purpose of the war. On the contrary, he has the duty of administering the country according to the existing laws and the existing rules of administration" (Oppenheim's International Law, ed. Lauterpacht, 7th ed., Vol. II, p. 437). At first the military government followed these precepts and declared that it accepted that it should apply the provisions of the Geneva Conventions of 1949. The secrecy of its legislation has helped to convey the impression that the military occupation continues to be guided by these principles.

This study argues, however, that the military government has extended its legislation and its administration far beyond that of an occupying power, concerned only with the security of its military forces. The passage quoted above indicates that the rules for a military occupation are based on the assumption that it will be temporary. In the event, however, this occupation has continued for 13 years and has every prospect of continuing for a further indefinite period. In its legislation the military government has exercised powers akin to those of a sovereign government. It has altered the existing laws and administration in such a way as to make the economy of the West Bank subordinate to the interests of Israel, and to facilitate the encroachment on the territory of Jewish settlements, which are universally condemned as a violation of international law (see ICJ Review No. 19, December 1977, p. 27).

The study also shows how the authority and efficacy of the local judiciary has been weakened, how their jurisdiction has been reduced, and how their function of hearing appeals from administrative decisions in wide and important areas has been supplanted by the curiously named and dilatory 'Objection Committee', which is composed entirely of Israeli military officers.

An analysis is made of the legislation and administration in such essential fields as land rights, water rights, trading and commerce, town planning, trade unions, education, literature, and information, which appear to go far beyond the needs of Israeli

security and to result in the State of Israel obtaining many of the benefits which would accrue from an annexation of the territory.

The International Commission of Jurists joins in publishing this study in the belief that it will make a significant contribution to information about the Israeli rule in the West Bank.

Geneva, August 1980

Niall MacDermot
Secretary-General

Introduction

The position taken by the United Nations, supported by most countries of the world, on the status of the West Bank of Jordan (including East Jerusalem) is to consider that area as occupied territory, and the state of Israel as a belligerent occupier. The declared policy of most countries of the world is also consistent with this position. They all call for the termination of Israel's occupation of the West Bank and for the withdrawal of Israeli forces.

Israel takes an altogether different view. As early as December 17, 1967, almost six months after the occupation, the area came to be designated by Israel as Judea and Samaria. This historical and geographical designation reflects the nationalist and religious feelings towards this territory and symbolizes Israel's policy in relation to the area. On February 29, 1968, the Ministry of Interior promulgated a regulation whereby the West Bank, the Golan Heights, the Gaza strip and Sinai would no longer be considered as enemy territory¹.

The official Israeli position on the status of the West Bank in international law, as expressed by the State Attorney for the Israel government, Mr. Gabriel Bach, is as follows: Israel considers that since the Jordanian annexation of the West Bank in 1950 was recognized only by Great Britain and Pakistan, the question of sovereignty of the area is undecided. Therefore, Israel considers itself as the present power administering these territories until their status is resolved by negotiations. Consequently, it considers that the various Geneva Conventions governing occupation of enemy territory do not apply to the West Bank, and that

Israel has the role of an administrator rather than occupier of the territories.

While taking this political position on its relationship to the West Bank, the Israeli Government has stated on several occasions that it is willing to be governed by the humanitarian provisions of the various international conventions applicable to occupied territories. Furthermore, in Military Proclamation No 2 the Area Commander announced that all laws in force at the time of the occupation shall continue to be in force. The Government and the High Court of Justice in Israel has also confirmed on several occasions that the framework of Jordanian law has been retained and that only those amendments necessitated by humanitarian and security considerations and proper and effective administration were made. Not to have done so, and to have applied Israeli law to the areas would have been tantamount to annexation, a step which Israel for political and practical considerations is not willing to take.

It is not a primary purpose of this study to examine the status of the West Bank under international law. Without accepting the official Israeli position as stated above, the intention here is to study the situation now prevailing in the West Bank, using universally accepted standards, to assess whether the principles of the rule of law are being observed. As Israel has declared that Jordanian law continues to be applied in the West Bank, this body of law will be used as the frame of reference.

It must be emphasized from the start, however, that the military occupation itself places the greatest limitation on the rule of law. As long as it continues all essential requirements of a society under the rule of law such as the right to self-determination, representative government and an independent judiciary will continue to be denied. As matters now stand no indigenous central government machinery or legislative body of any sort is in existence. The judiciary is the only national institution that continues to function in the occupied territories. For this reason and for the reason that an essential requirement of a society under the rule of law, is the existence of an independent and respected judiciary, and an independent legal profession with a professional body to uphold its standards, this study will focus first on the position of the judiciary and the legal profession.

Under customary international law as well as under the Geneva Conventions of 1949 an occupying power is entitled to make alterations to domestic law to the extent that is necessary for the security of its forces. It is inevitable that under such conditions the civil rights of the inhabitants of the territories will to some extent be restricted. As this study will seek to show, however, the military administration of the West Bank has gone far beyond making alterations necessitated by security considerations. The position of civil and political rights, including in particular changes to property rights will be examined, and finally the way in which the local Jordanian law has been radically transformed in a number of important spheres, the effect this has had, and the apparent objectives of the Israeli government in making these changes.

1) See Nahumi, 'Policies and Practices of Occupation', *New Outlook*, Tel Aviv, May, 1968, p. 35.

Part One:
The Judiciary
and the Legal Profession

Section 1

Jordanian Legislation Relating to the Court System

Constitution of the Courts

According to Jordanian law, there are three categories of Courts, the regular courts, the ecclesiastical and Sharia courts, and special tribunals¹. Little significant change has occurred in the religious courts² and the special courts. This section will, therefore, be concerned primarily with the first category, the regular courts.

Jordanian law on the constitution of regular courts³ states that a Magistrate court should be established in every sub-district⁴, a Court of First Instance in every district⁵, one Court of Appeal to be established in Amman and one in Jerusalem⁶ and finally a Court of Cassation in Amman. This last court hears appeals on civil and criminal matters from the Court of Appeal. It also sits as a High Court of Justice and in that capacity hears appeals against administrative decisions and can issue orders of prohibition, mandamus, certiorari and habeas corpus⁷.

Independence of the Judiciary

In the Jordanian constitution it is stated that the judiciary shall be independent and subject to no other authority save that of the law⁸. All matters of appointment of judges, promotions, salaries,

and transfers are determined by a Judicial Council established by virtue of the Law on the Independence of the Judiciary⁹.

This Council is composed of:

1. The President of the Court of Cassation as President;
2. Two members of the Court of Cassation chosen according to seniority;
3. The President of the Court of Appeal of Amman;
4. The President of the Court of Appeal of Jerusalem; and
5. The Attorney-General.

Inspection of the Courts

Under Jordanian law there was an important system of court inspection. Inspectors were appointed by the Minister of Justice with the duty of inspecting the work of the civil and criminal courts, as well as the functioning of the staff of all judicial departments¹⁰.

The duties of the inspector listed in article 3 of the regulation include inspection of all court records, files, summonses, judgments, investigation of the reasons for adjournments to see whether they were warranted or not, files of the Notary Public, cases before the Execution Department to check whether judgments have been properly executed, the functioning of the Prosecution Department, the files of criminal cases to check whether the accused has been properly served, and tried, and whether the decision has been properly executed and any appeal properly heard, as well as inspecting prisons and remand centres. No less than 15% of all the work carried out by the person whose work was being examined had to be reviewed¹¹. In practice the inspector chose files at random and inspected all their contents.

The inspector submitted annual reports to the Minister of Justice on the conduct and efficiency of every member of the judiciary and their staff. The Minister on request had to provide the person concerned with a copy of the report upon him and afford him an opportunity to defend himself against any adverse report. Any complaints against the administration of justice were examined by a committee, composed of the President of the Court of

Cassation, the head of the prosecution department, a representative of the Ministry of Justice and, when the committee is investigating the conduct of a judge, the President of the Court of Appeal to whom the judge is affiliated.

Before 1967, this procedure proved to be of vital importance in maintaining the standards of the judiciary and their staff. It kept in check any who might otherwise act carelessly or unscrupulously.

Section 2

Structural Changes in the Courts after 1967

Immediately after the 1967 War, the Israel Military Command in the West Bank published Proclamation No. 2 concerning the assumption of Government by the Israel Defence Forces. Section 2 states that:

“All laws which were in force in the area on June 7, 1967, shall continue to be in force as far as they do not contradict this or any other proclamation or order made by me (The West Bank Area Commander) or conflict with the changes arising by virtue of the occupation of the Israel Defence Forces of the area.”

In this section some of these changes will be examined, as they affected the Courts.

Abolition of the Court of Cassation

Perhaps the most significant change that has been made to the West Bank judicial system is the abolition of the Court of Cassation¹². The repercussions and significance of this action were far-reaching.

Firstly, the abolition of this court has meant that a basic structural change was effected in the West Bank system of the administration of justice. As has been seen, the legal system in the West Bank was based on a four-tier structure with three levels of appeal: from the Magistrate to the Court of First Instance, to the Court of Appeal, and finally to the Court of Cassation. Now, this

highest level has been completely eliminated. Also, the president and members of the court had important roles to play in various areas, such as in the appointment of judges, disciplining judges and employees in the judicial departments, and reviewing complaints made by the Courts' Inspector. As justices of the highest court in the country, they acted as the guardians of the proper functioning and independence of the judiciary. With the elimination of this court, these functions suffered accordingly.

Secondly, the role of the court as the arbitrator of cases where novel points of law and points of general public significance are raised has been abolished, without being replaced; the Court of Appeal has not been given similar powers.

Thirdly, its abolition has meant placing a heavier burden on the Court of Appeal, which now, in addition to its appellate jurisdiction, has to act as a High Court of Justice, which previously was the function of the Court of Cassation. With its present composition of a president and two judges, and with the very large load of case work which it has to bear, the Court of Appeal cannot be expected to carry out that extra burden properly and efficiently. This is evident from the long delays and the poor quality of its decisions, especially when compared with those of the equivalent court in Jordan.

Fourthly, the President and two members of the Court of Cassation, together with some other judges, used to constitute a special board to which requests by government departments and others for the interpretation of any law of general importance hitherto not interpreted could be referred. This board has not been re-constituted, and this important function is at present in obeyance.

Transfer of Court of Appeal from Jerusalem

1962 was a memorable year for Arab lawyers practising in the Jerusalem District. The construction of a complex to house the Court of Appeal, the Court of First Instance and the Magistrate's Court of Jerusalem was completed. Situated in Salah Eddin Street in Jerusalem, it is a modern structure well designed and equipped. But the Arab lawyers and public did not enjoy for long the facili-

ties it provided. In June 1967 the Six Day War broke out between Jordan and Israel and was lost by Jordan.

On July 16, 1967, the Military Commander of the Israeli Army administering the West Bank announced, in military proclamation No. 39, the re-structuring of the judicial system for the West Bank and the abolition of the Court of Appeal of Jerusalem. The Israeli District Courts were moved to the new building erected during the Jordanian times and the West Bank was left without a Court of Appeal. The search began for a new site for the Arab Court. In 1970 a place was found. It was a building in Ramallah owned by the municipality and used until then as a vegetable market. This site continues to date to be the place where the Court of Appeal for the whole of the West Bank, the Courts of First Instance for the southern half of the West Bank, the Magistrate's Courts for the Ramallah area, and the offices of the Attorney General and the Ramallah prosecutor, are situated. This choice of location for the West Bank courts and judicial departments is perhaps symbolic of the importance and respect the Israeli military authorities have for the judicial system existing in the West Bank.

Coupled with this transfer of the seat of the Court of Appeal, was the removal of a large area from the jurisdiction of the Jordanian system of courts described above, namely, the whole of East Jerusalem and a substantial area included in the enlarged Jerusalem municipality. This action led to the lawyers' strike, described in chapter 6 below.

Regular Courts

In addition to the two major changes described above, other changes were made, arising out of the annexation of Jerusalem and the abolition of the second highest level of government, the district¹³. The present constitution of the regular Courts in the West Bank is as follows: — There is a Court of Appeal which convenes in any place where a Court of First Instance is situated according to the discretion of the President. The offices of the Court are situated in Ramallah. The Court of First Instance of Hebron is now designated as the Court of First Instance for the

southern half of the West Bank. The offices of this court are also situated in Ramallah. The northern half remains within the jurisdiction of the Nablus Court of First Instance. Magistrate courts have been established in various towns and cities in the West Bank. The area of jurisdiction of these courts is determined by amendments to the schedule of the military order by virtue of which they were established.

Religious Courts

By Article 105 of the Jordanian Constitution all matters of personal status for Muslims and Christians are within the jurisdiction of the Sharia and Ecclesiastical courts respectively.

There are five recognized Christian denominations which have their own Ecclesiastical Courts. Each of these communities is allowed by law to elect its own judges, and its courts apply the religious law of the community on matters of personal status of their communities which includes questions of succession. Under Israeli law issues concerning succession are within the exclusive jurisdiction of District courts. Accordingly, members of these communities who are domiciled in Jerusalem must resort to the District courts on these matters. Except for this usurpation of their jurisdiction in such matters in Jerusalem, there have not been any changes affecting Ecclesiastical courts.

The Sharia Courts, on the other hand, which have exclusive jurisdiction according to Jordanian law over all matters of personal status affecting Moslems, have faced some problems.

The Qadis (judges) presiding over the Sharia courts are appointed according to Jordanian law by the Qadi El Qudaa "Chief Justice" whose status is that of a government minister. He is responsible for the administration of all Sharia courts in the country. When Israel occupied the West Bank, the military government wanted to assume responsibility for the administration of the Sharia courts, to appoint the judges, and to force these courts to levy taxes in the form of revenue stamps, which was not a requirement before. The qadi's resisted. The military government refused to allow the decisions of the courts to be executed in the execution departments of the regular courts in accordance with

the Jordanian law¹⁴. The controversy became the subject of many articles in the local papers, in which it was stressed that the independence of the budget of the Sharia courts is a necessary prerequisite for the courts' independence¹⁵. It was reported in the *El Quds* daily newspaper of 25.8.1969 that the Magistrate of Jericho had sent a memorandum to the Officer in the Israeli army in charge of the judiciary declaring his objection to the orders prohibiting the execution of judgments of the Sharia court¹⁶. A Sharia court was then established by the Israeli Government in Jaffa and it now has jurisdiction over the Moslem population of Jerusalem.

The judges of all Sharia courts (qadis), including those in Jerusalem, continue to be appointed and paid by the Jordanian authorities, who are also responsible for the administration of their courts. The judgments of these courts are executed by the execution departments of the West Bank's regular courts. This raises a special problem for the Jerusalem Sharia court, as its judgments can be executed only by the West Bank execution departments, which have great difficulty in executing within Jerusalem.

Military Courts

The West Bank Military Courts were established by proclamation 3, which was eventually replaced by Proclamation No. 378. The proclamation defines "Military Courts" as those composed of either a President, who must be an officer in the Israeli army with legal qualifications, and two other officers¹⁷, or a single judge with legal qualifications¹⁸. In both cases the appointment of the judges is made by the Area Commander. According to a recent amendment to Order 378, a three-member court may at any stage of the proceedings, upon the request of the military prosecutor, transfer the case to a single-judge court¹⁹. In practice, almost all cases are now heard by a single judge.

Military courts are held in the places and at the times which the judge designates²⁰. The record of the proceedings may be taken by the judge or a court clerk. The usual practice now is for the judge to take the record, which must include a summary of the plea, the testimony of the witnesses, the exhibits, the verdict

and the sentence²¹. Convictions and sentences passed by a three member court require the authentication of the Area Commander²² who has power to vary, annul, or accept them²³. Convictions and sentences passed by a single judge courts do not require similar authentication, but the Area Commander has power to vary the sentence, and written representations can be made to him for this purpose²⁴. No appeal is possible from the decisions passed by either court²⁵.

The absence of any right of appeal breaches a fundamental principle of the rule of law. Firstly, it makes it impossible to correct judicial errors, which may occur in any court. Secondly, experience in many parts of the world has shown that it induces a laxity in the court in following proper procedures, applying strict standards of proof and strict interpretation of the law, and resolving any doubts in favour of the accused. The court is, and knows itself to be, beyond power of correction.

It is submitted that the absence of appeal of the decisions of the military courts also contravenes the provisions of the Geneva Conventions. Even common article 3(1)(d), which applies to internal armed conflicts, prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." In Pictet's Commentary, the following comment is made about the above subsection: "All civilized nations surround the administration of justice with safeguards aimed at eliminating the possibility of judicial errors. The convention has rightly proclaimed that it is essential to do this even in time of war."²⁷

Military courts in the West Bank have jurisdiction to hear any cases regarding acts committed in violation of the provisions of the criminal law in force in the West Bank, whether the offence was committed before or after the Israel Defence Forces entered the area²⁶. In practice they try cases relating to offences which the Israeli authorities consider to be security offences, and any cases against Israeli citizens for offences in the West Bank. The trial by a military court of offences committed before the occupation is contrary to the Geneva Conventions.

When hearing criminal cases in violation of any Jordanian criminal law, the military court has all the powers which a local regu-

lar court would have if it were hearing the case. More frequently they try charges of offences in violation of military orders, the most relevant of which are military orders 378 and 101²⁸.

The Defence Emergency Regulations of 1945 are also often used. These were drawn up by the British mandatory power over Palestine as a repressive measure against acts of terrorism, including those of zionist organisations. After the merger of the West Bank with the East Bank in 1950, these defence regulations were considered repealed and were never in fact used in the West Bank. The Jordanian constitution in article 128 declared that all laws in force before the date of the constitution shall continue to be in force until repealed or amended by any subsequent legislation. The first such legislation was the criminal code of 1951 which was then replaced by the code of 1960. Both these codes deal with matters dealt with by the Defence Emergency regulations and both specifically declare as repealed all previous Jordanian or Palestinian legislation to the extent that such legislation differs from the provisions laid down in these codes. Therefore in theory and in practice the Defence Emergency regulations of 1945 were considered as repealed in Jordan.

After the occupation, however, Israel revived these regulations and reactivated them. When some lawyers argued that these regulations could not be invoked because they were repealed during Jordan times, the military court refused to accept their plea. To circumvent the possibility that some higher tribunal might one day decide to the contrary, the military government passed Order No. 224, article 2 of which states that to remove any ambiguity, an emergency regulation is not automatically repealed by subsequent legislation which is not also an emergency regulation. Then to stress the point, it stated in another subsection of the order that an emergency regulation is not repealed save by legislation which specifies the repealed emergency regulation by stating its name. This subsection was included because the Jordanian criminal codes repealed all previous legislation dealing with the same matter without specifying the name of the repealed laws. Finally, to leave no doubt that the order is intended to reactivate the emergency regulations of 1945, article 3 states that "the Emergency regulations which were in force in the area as of the 14th of May 1945 shall continue to be in force as of the 5th of June

1967 and henceforth as though they were passed as an emergency regulation, unless they are repealed specifically by mentioning them by name as provided in the article above.”

The jurisdiction of the Military courts has been further widened in practice by a recent order which gives the military prosecutor the right to withdraw the file of any person under investigation by the police²⁹. From the time that this is done, only the procedures laid down in military orders, including trial before a military court, are applicable to the case³⁰.

Lawyers who accept cases of people accused before military tribunals have difficulty in getting permission to meet their clients. Order No. 29 dealing with the prisons gives the Commander discretion to allow or refuse to allow the prisoner to see a lawyer (art. 11 of Order 29).

The sentencing policies of the military courts change from time to time. During the last few years the sentences of the military courts have become more severe. They usually combine imprisonment, actual or suspended, with a fine. The fines which the courts may now levy have been substantially increased³¹. The maximum fine for a case which is punishable by one year's imprisonment amounts to 150,000 Israeli Shekels (approx. US\$ 3,000). For offences punishable with imprisonment for a period exceeding five years the fine is 750,000 Shekels (approx. US\$ 15,000). Even relatively minor offences, such as the offence specified in Order 101 of participating in a meeting which can be construed as political in nature, are punishable with imprisonment for a period of up to 10 years.

Attorneys practicing before military courts are frustrated by the feeling that, since there is no appeal, the judge's authority is absolute, and the whole procedure appears to be a mockery. 90% of the convictions are made on the basis of a signed confession which their clients tell them has been extracted by coercion, and the result is nearly always a foregone conclusion.

Israeli High Court of Justice

It has become appropriate when discussing the West Bank judiciary to refer to the Israeli High Court of Justice, because this

court has, by assuming some of the powers of the Arab High Court of Justice, become a court which the residents of the West Bank are increasingly resorting to. Having reduced the jurisdiction of the local West Bank courts, abolished the Court of Cassation and reduced the instances when an appeal can be submitted to the High Court of Justice of the West Bank as shown above, Israel has made available its own High Court of Justice to applicants from the West Bank. This has been heralded by Israel as the first occasion in the history of military occupations when citizens of an occupied territory have been allowed a direct appeal to the high court of the occupying power³². It has also been interpreted as a step in the direction of normalization of relations between inhabitants of the West Bank and Israel³³.

In law the High Court of Justice in Israel does not have jurisdiction beyond the territory of Israel; therefore, it has no jurisdiction to hear writs brought by the inhabitants of the West Bank. However, Meir Shamgar, who was the Attorney General when the first case was brought before the court, raised no objection on the basis of lack of jurisdiction³⁴. Succeeding Attorneys General have followed his lead. However, the situation continues to be that an objection to the jurisdiction could be made at any time, and the practice of allowing applications to be made to this court could be changed. If this were done, the inhabitants of the West Bank would be deprived of recourse in many matters either to the West Bank High Court of Justice or to any other court.

Section 3

Usurpation of Powers of Civil Tribunals and Administrative Bodies

Soon after the occupation of the West Bank the Israeli military government began to usurp powers of the courts and concentrate them in the hands of military officers of the Israeli army, as well as to modify Jordanian law in matters not relating to military security. At first, the military government moved slowly and cautiously. Later, however, the pace quickened as it became clear that the judges of the Arab appeal courts, appointed by the Israeli military government, were not willing to question the legality of any steps taken by the occupiers.

This unwillingness was reflected in a case challenging an Israeli military order permitting Israeli attorneys to appear before West Bank Courts³⁵. A judge of the Hebron Court of First Instance had found that the order permitting the appearance of an Israeli advocate in West Bank Courts went beyond the lawful authority of the Military Governor. The Court of Appeal sitting in Ramallah, accepted the appeal but decided that "... the occupying power is the proper authority to decide whether or not there exists a necessity to make any amendment or addition to the laws in force in the occupied region."³⁶

This decision made it very clear that the courts would in no case challenge the legislative powers of the Area Commander, however far he might go in exercising such legislative power. When the same point was raised in a traffic case before the Military Court of Bethlehem³⁷, the court, although disclaiming a gen-

eral power to examine the validity of the orders of an Army Commander, did reserve the freedom to challenge such orders in cases where they appeared invalid on their face. The court said: "... The presumption of validity of a military order is rebuttable only when the order is on the face of it so unreasonable and extraordinary, is so contrary to the principles of natural justice and international morality common to civilized peoples that it is intolerable and the Military Court must ignore it by virtue of its inherent powers, because it was enacted on the basis of considerations deriving from malice and arbitrariness and not in order to achieve some lawful purpose." In the case in point the order was upheld.

It can thus be seen that an Israeli military court has gone further than the local civil court by laying down the grounds upon which it will challenge an order passed by the Military Commander, whereas the civil court was unwilling to do this in any case whatsoever.

Another significant result of the decision of the Court of Appeal referred to above was that it assured the Military Commander that, having altered the law on appointment of the judiciary to place the power of appointment exclusively in the hands of the Military (as will be shown later), the appointed judiciary was not going to question any acts of the military authorities. With this assurance, the Military Government proceeded to enact legislation which has had the effect of placing the judiciary entirely under the control of the Military Command, and usurping many powers and functions which were, according to Jordanian law, within the domain of the courts. It has also forbidden judicial review of the any administrative act of a local government employee except with the approval of the Area Commander of the Israeli army. Some of the more important changes in the judicial and administrative systems will now be considered.

Assumption of Power

One of the typical and common changes that have been made to Jordanian laws was to transfer all the powers and privileges granted by these laws to "the Jordanian Government," "the

Council of ministers," a particular minister, or a particular official or governmental subdivision, to the "person responsible", or to "the person who shall be appointed by me (the Area Commander)," as the military orders put it. The effect of these amendments are:

- to transfer these powers and privileges from the Arabs to the Israelis;
- to transfer these powers and privileges from the civilian authority to the military administration; and
- to remove whatever checks and balances were introduced by the Jordanian legislation.

In the order amending the Law of Crafts and Industries, for example, all the powers and privileges exercised by the administrative ruler, the District commissioner, the Mutassarif of the sub-District, the head of the governorate, and the Jordanian Government through any one of its branches or by any other person, were vested in the "person responsible," or, the person to be appointed by the Area Commander³⁸. In Order 397 on trademarks, the responsible person is vested with the powers of the registrar of trademarks, the Minister of Commerce, and the Council of Ministers. Order 398 vests in "the responsible person" all the powers vested by virtue of the Companies Law in the King, the Council of Ministers, or any of its members, or the Registrar of Trademarks.

Similarly drastic power and authority is exercised by the officers of the military government (called officially "the civil administration of Judea and Samaria") replacing each of the Ministers in the Jordanian system of Government. For example, the officer of the Israeli army replacing the Minister of Justice, called "The Officer in charge of the Judiciary," holds and exercises all of the following positions, functions and powers:

- the powers and privileges vested in the Minister of Justice by virtue of Jordanian laws as they existed at the date of the occupation³⁹;
- the post of Registrar of Lands and the Director of the Survey Department⁴⁰;

- the post of Registrar of Companies⁴¹, as well as the powers of the King, the Council of Ministers or any of its members;
- the powers given by virtue of the Law on the Independence of the Judiciary to the Minister of Justice⁴²;
- the post of Registrar of Trademarks⁴³, as well as the powers of the Minister of Commerce and the council of ministers;
- the post of Registrar of Tradenames⁴⁴;
- the post of Registrar of Patents⁴⁵;
- the powers of the officer responsible for settlement of disputes over land⁹⁶;
- the power to grant permits for approving land transactions (no transaction in land can proceed without his approval)⁴⁷;
- the power to authenticate the signatures of Notaries Public for all documents authenticated and legalized abroad (no such document unless it bears his signature can be used in a court of law in the West Bank)⁴⁸;
- the powers of the Bar Association to allow lawyers to begin their training, to decide on the law schools to be recognized, and to supervise the training of lawyers⁴⁹.

Objection Committee

The creation of an Objection Committee under Military Order No. 172 is another way in which the Israelis usurped powers which, according to Jordanian law, should be in the hands of the courts, and transferred them to a tribunal composed entirely of Israeli military officers. By virtue of this order, dated 22.11.1967, an Objection Committee is convened from time to time from a panel of reserve army officers. The Committee has jurisdiction to hear objections against decisions made regarding one of the matters listed in the appendix attached to the order. This appendix has been amended eight times since the order was passed each time adding more matters to its jurisdiction.

The matters to which this Committee may hear objections and over which it has exclusive jurisdiction include the following:

1. Decisions to expropriate land in accordance with the Jordanian law on expropriation, which has been amended so as to abolish the need to publish the intention for expropriation in the local newspapers and the official gazette if the authority wishing to expropriate is the military authority. The law has also been amended to vest in the objection committee the power to hear any challenges to the expropriation and to assess the compensation payable to the owner. These powers were previously within the jurisdiction of the regular courts.
2. Assessments made by the Income Tax Officer for the purposes of payment of tax. According to the Jordanian law, such assessments were appealable to the Court of First Instance.
3. Decisions on pension rights taken by the Special Pensions Committee whose decisions relating to civil servants were, according to the Jordanian Pension Law, appealable to the High Court of Justice.
4. Appeals of pension rights of members of the police force.
5. Objections on decisions taken by the Registrar of Companies, which were previously appealable by virtue of the Jordanian company law to the Minister of Commerce and the Council of Ministers.
6. Decisions relating to granting of driving licences, previously appealable according to Jordanian traffic law to the civil courts.
7. Decisions taken by the Customs and Excise Officers and assessments of value of locally produced goods for purposes of payment of customs duty and value added tax.
8. Decisions by the Custodian of Absentee Property to the effect that any property belongs to an absentee, as well as decisions concerning property which the Custodian considers property of the Jordanian government. The importance of these decisions will be considered in Part Two, Section 2.
9. Decisions by the Higher Council for town planning.

The members of this Committee are appointed by the Area Commander. The first appointments included Arab residents of the area, some of whom were lawyers. When one of those whose name was published soon after the order had been passed as hav-

ing been appointed to serve as a member was approached, he remembered having once been notified about this appointment, but he did not recall ever having been convened to attend any of the meetings. As can be seen from the published list of appointed members, the Arab members were soon replaced, and all the succeeding appointments have been of Israelis, few of whom had any legal training.

The Objection Committee is empowered to recommend the Area Commander to cancel any objectionable proceeding or decision, to amend it, or to take any other decision which the authority whose decision is under review by the Committee, is empowered to take. If it does not advise that any of the above be done, or if the Area Commander does not accept its recommendations in whole or in part, the proceedings or the decision which was the subject of the objection shall continue in force. The decisions of the Committee are not appealable.

In its proceedings, the Committee is not bound by the rules of evidence or procedure and it decides on its own on procedure. It may decide to hold its proceedings *in camera*. There is no fixed place or secretariat for its meetings. It sometimes meets at the military headquarters in Bethel, and sometimes in the court room of the military court in Ramallah. The submission of an objection to the Committee does not prevent the authority against whom the objection is submitted from carrying out its own decision, unless the Area Commander so orders.

West Bank lawyers who have appeared before the Committee raise several complaints. They claim that, because the Committee has no fixed secretariat or meeting place, it is difficult to have the objections submitted to it. Often it depends on the Israeli officer whose decision is the subject of the complaint. At other times the hearing of the objections is delayed because, they are told, enough cases have to be pending before it is worthwhile to convene the Committee, some of whose members work in various parts of the country. In one case an objection before the Committee remained pending for over one and a half years. No means for objecting to such delay is available.

Another complaint is the lack of legal knowledge of the members of the Committee. In one case a decision was made which was clearly based on a misreading of the Jordanian law. Since no

appeal is available these decisions become final, even when they are clearly wrong in law. Another common complaint is the lack of objectivity on the part of the members of the Committee. Litigants and lawyers find it frustrating to submit objections to decisions, which are often based on the policies of the occupier, to a committee appointed by the same authority which has laid down the policy. The outcome is rarely favourable and the success rate of litigants submitting their objections to this Committee is very low. This results in a small number of cases being submitted despite the wide jurisdiction of the Committee. During the months of January to August 1980, it appears that only four cases were submitted, judging by the serial number given to a recently submitted case. Because the proceedings of this Committee are not published, it is not possible to review past precedent or to make references to earlier decisions, which makes the task of the lawyer more difficult and less predictable, especially since the Committee is not bound by precedents, rules of evidence, or procedure.

The effect, therefore, is that in this wide field of administrative decisions, many of them of vital importance to the complainants, the residents of the West Bank have been deprived of their rights to appeal decisions to the local courts. Instead they have a feeble and uncertain procedure which, under a semblance of legality and due process, deprives them of their legal rights and remedies.

Changes Affecting the Independence of the Judiciary

Jordanian law No. (2) on the Independence of the Judiciary has been significantly amended by Military Order No. 310 which has effected the following alterations:

- the powers vested according to the law in the Minister of Justice have been transferred to 'the person responsible' who is defined in the preamble as 'whoever the Military Commander of the West Bank area appoints for the purposes of the order';
- the Judicial Council constituted by the law, described in Section 1, has been replaced by a committee appointed by the Area Commander. Although the order states that the composi-

tion of this committee shall be announced, no such announcement has so far been made. It was learned however from a one-time member of the judiciary who had been interviewed by this committee that it is composed entirely of military personnel amongst whom are the officers responsible for security, the judiciary and arab affairs. Article 5 of the Jordanian Law provides that all appointments, transfers, and promotions in the judiciary must be made by the Judicial Council, and it prohibits the transfer of Judges to other functions. This article has been repealed;

- the disciplinary powers previously exercised by the Judicial Council are to be vested by a later amendment of Order 310 in a special court which shall be appointed by the Commander of the Area. No announcement has been made concerning the constitution of such a court.

Changes Affecting Inspection of Courts

The important duties of inspection of the courts are now nominally carried out by the President of the Court of Appeal. As will be seen later, the President presides over the High Court of Justice as well as the Court of Appeal, both of which only have two other judges and are overburdened with work. Consequently, he is too busy to be able to carry out his duties as inspector according to law, especially when it is recalled that the law provides that at least 15% of all the work of the persons under investigation must be inspected. The transfer of these duties to the President of the Court of Appeal is also procedurally improper in that it makes the Court of Appeal subject to no independent inspection.

This virtual abolition of the system of inspection is reflected in the deteriorating state of the courts and the various judicial offices, as will be described later.

Section 4

Access to the West Bank Courts

Proceedings involving Israeli authorities

The Jordanian Constitution guarantees the right of all citizens to bring cases in the regular courts, civil or criminal, against the government or any of its departments⁵⁰. This right has been denied by Military Order 164⁵¹ which forbids the courts of the West Bank to hear any case or issue any order or decision or any other instruction which provides for or enables anyone to submit a proceeding without a permit against any of the following:

- the State of Israel and its branches and employees;
- the Israel Defence Forces and its members;
- the authorities which have been appointed by the Area Commander or those who have been delegated by him to work in the area;
- persons employed by such authorities;
- whoever works in the service of the Israeli army or is empowered by it.

The Order empowers the Area Commander, or whomsoever he appoints for this purpose, to issue a permit allowing the courts to hear any specific case.

The order also restricts the right of the courts or litigants to

summon any person employed by any of the above-mentioned categories to give evidence, submit documents, or submit details or answers to interrogatories orally or in writing without first obtaining the approval of the Area Commander. This is a fruitful source of delay.

The scope of this order was widened by a later amendment requiring a similar permit before the courts may hear cases involving property owned or possessed by any of the categories mentioned above⁵².

The effect of this order has been to reduce substantially the cases actually heard by the courts concerning any of the categories against whom no litigation can be commenced without prior approval by the commander. In practice, when an application for permission to begin proceedings is submitted, it takes between four months and one year to obtain the permission, if it is granted at all, which is infrequent. Cases which are not against authorities or persons within the categories mentioned in the order, and which may therefore commence without a permit, are delayed when a government employee is required to give evidence or submit pertinent documents. It is not uncommon for a party who can benefit from the delay to ask the court to summon such witnesses knowing that in this way the case would remain pending for several months.

Another effect of this order is to render a sizeable segment of the population immune from legal action. In one case where the question arose of the applicability of this order to cases brought against an employee in the Health Department on a personal matter which did not have to do with his official functions, the court decided that, even in such matters, the permission of the Area Commander was needed. It therefore held that the proceedings which were carried out without first obtaining such a permission were void *ab initio*⁵³.

This Order is, of course, at variance with the fundamental principle of the rule of law that the executive, and its servants or agents should, like other bodies and individuals, be subject to the normal processes of the law. If it be said that this does not normally apply to a military occupying power, it must be pointed out that a military occupying power does not normally assume the powers of a sovereign in all areas of government.

Court fees and facilities

Another amendment brought about by the military orders which has affected the access of the public to the courts and judicial departments has been the disproportionate increase in fees.

In eight months the fees for transactions in immovable property required by law to be carried out in the land registry were amended four times. Similarly, the fees levied by the Survey Department, the Registrar of Companies, trademarks, patents, and tradenames, notaries public, and the courts were considerably increased. These amendments of the Jordanian regulations concerning fees are not warranted by the drastic devaluation of the Israeli pound, since they are expressed in Jordanian currency. The value of the Jordanian dinar increases in relation to the Israeli pound as it is devalued.

Furthermore, the increases are not proportionate. In the case of notarial fees, for example, for every signature before the notary public the Jordanian regulation imposed a fee of 50 fils*. A recent amendment⁵⁴ has raised it to 1.6 dinars. For every signature on a power of attorney the fee was one dinar, the amendment has made it 10 dinars. Fees for notarial notices were 0.6 dinars, and now have become 3 dinars. Land Department fees have been increased in the case of land transfer fees for example, from 3% of the market value of the land to 5%. With the great increase in the value of land recently, this is a substantial increase. Court fees have been increased from 3% of the value of the case, subject to a minimum in magistrate's court cases of 200 fils and a maximum of 3 dinars, to 4% with the magistrate's court minimum at 300 fils and the maximum at 10 dinars.

No noticeable reforms have been introduced to account for these substantial increases in fees. The number of officials has not been increased, and the salaries of those in employment have not been raised. Similarly, there has been no improvement in services or facilities. On the contrary, the problem of having to suspend proceedings because of the unavailability of a clerk to take a record of them, continues to frustrate judges and lawyers. Forms for submitting applications to the office of the Registrar

* 1 Jordanian dinar = 1,000 fils = US\$3.

of Trademarks were unavailable for months in 1979. Similarly many transactions had been refused or delayed in the various court offices and judicial departments for such reasons as the lack of stationary, employees and essential facilities. Very often the lawyer is asked to type out his own forms or make photocopies of them at his own expense, as the Department is unwilling to part with the last copy in its possession.

Law libraries are non-existent in any of the courts on the West Bank. Despite requests to supply the courts with a coin operated photocopier, none have been supplied as yet. An attorney wishing to photocopy the official court records in a case, or any documents that have been entered in the file, must ask for a special permit and then persuade one of the busy clerks at the court to accompany him to a commercial photocopying center. Clerks, who are overworked and underpaid to begin with, have come to expect under-the-table remuneration for such services. Attorneys in Ramallah, the centre of most West Bank courts, have applied for many years, for a permit to instal, at their own expense, a coin-operated photocopier in the court-room, and to pay rent for keeping it there. So far permission has not been granted by the military Officer in charge of the Judiciary.

In addition, the general standard of orderliness and cleanliness of the courts is incommensurate with the recent increase in court fees.

Other restrictions on the jurisdiction of the Courts

In addition to the changes in the law which restricted the jurisdiction and powers of the West Bank courts, there are several practical considerations that reduce the jurisdiction of these courts. This is especially true in any case where Israelis come within the lawful jurisdiction of the courts. These cases are in any event restricted because it is a noticable policy of Israeli governmental and private bodies to stipulate in contracts drawn with parties from the West Bank that Israeli courts shall have sole competence in case of conflict. Furthermore Israelis accused in the West Bank of criminal offences are tried by military courts and never in the local criminal courts. A plea of lack of jurisdic-

tion of the military court in such cases on the grounds that the case does not relate to security has never been accepted.

In other cases, when a local Palestinian attempts to bring a case against an Israeli resident of the West Bank he has to face almost insurmountable difficulties. To begin with, service of process, which according to Jordanian law may only be carried out by the courts' process server, cannot be carried out. The process-server is not equipped with a car or motorcycle and has therefore to depend on public transport. If he succeeds in reaching the Israeli settlements which are often situated in remote places, he would find access to the settlement difficult, because he would be stopped by the security guard who might prevent him from entering, especially after he learns the purpose of this visit.

For such reasons, it is difficult to obtain legal remedies against Israeli settlers, who have on several occasions caused damage to arab-owned property, and this is a cause of deep frustration to Palestinian residents of the West Bank.

If a party to a dispute is a resident of Jerusalem or Israel, service is allowed by registered post. Proof of having been properly served is the signed receipt on delivery. Court officials, however, discourage litigants from using this method of service because, in their experience, it rarely works. The defendant will simply refuse to accept service. The same difficulty is encountered in executing judgments passed against such parties.

No similar problem has to be faced by Israelis in executing Israeli court judgments in the West Bank. A special execution department has been established in the West Bank to handle these matters⁵⁵. No appeal to the local Arab courts is allowed against the decisions of this department. Instead, the appeal may be heard by a special objection committee appointed by the Area Commander. This committee is given all the powers of the court according to the Jordanian execution law. However it is not bound by the rules of evidence or procedure, and may adopt its own rules and procedures. Several amendments have been made to the execution law to be applied by this Committee, removing requirements in the law intended to ensure the participation of community members to oversee the impartiality and proper execution of the case. One of these amendments is the deletion of article 45 of the execution law which required that the execution

officer be accompanied by two witnesses and the Mukhtar (community leader) when placing an attachment over the goods of a debtor. Similarly, article 92(3) requiring sale by auction of attached goods has been deleted.

Military Court judgments, on the other hand, may be executed in Israel in the same way as Israeli court judgments.

Obstruction of Due Process

The two most commonly recurring obstructions of due process complained of by Palestinian lawyers practicing in West Bank courts are:

- The withdrawal by the Israeli military Officer in charge of the Judiciary of cases in progress before the courts. West Bank lawyers cite instances when they went to attend a court session, and were told that the court must be adjourned because the file of the case had been withdrawn from the court by the Officer in charge of the Judiciary. This is usually done when the interests of an Israeli citizen are either directly or indirectly in jeopardy.

A newly promulgated order⁵⁶ gives the Area Commander, the military prosecutor, or the legal advisor of the Military Government the right to close any criminal file dealing with a contravention of the Jordanian law or of a military government security offence, or to order the cessation of any proceedings of any case where sentence has not yet been passed, if he is convinced that no public interest would be served by continuing the investigation or trial. He also has the right to order the closure of any file or investigation or proceedings in any court, if he is convinced that no sufficient evidence is available. The order also gives the military prosecutor the right to request that a police case be turned over to him; in that case only the procedure laid down in military orders will be applicable to the case.

- The delay by the Area Commander in granting permits to local government employees to testify when their testimony is needed. Sometimes the delay extends for over one year, during which time the case cannot proceed.

Section 5

The Functioning of the Courts

Those lawyers who since the 1967 war have been on strike, as will be explained in section 6, give as one of the justifications for the continuation of their strike the present low standard of the courts on the West Bank. They claim that under such conditions a lawyer cannot hope to help his client obtain justice or get a fair trial, and that therefore they are justified in refusing to cooperate with such a system. The non-striking lawyers adopt a different attitude, but the bad conditions of the courts is one matter on which they agree fully with the strikers. Certainly the practicing lawyers are in a good position to assess the present condition of the West Bank courts, and the following are some of their main complaints.

The lawyers practicing at the courts complain that obstructions to their work exist at every level. To submit cases or other applications to judicial departments they have to deal with employees who do the work grudgingly and who have become used to seeking ways and means to supplement their meagre pay from the government. Often they are met with the assertion that no application forms are available and so they cannot submit their applications⁵⁸, or they may be told that there is no stationary and it will become available only after the return of the Israeli officer responsible for providing it, who is on two months' leave doing his reserve military training. Or simply that the clerk cannot help them because he is doing the work of three or four employees and has no time to do all the work.

And when the policy of reducing the number of civil servants employed by the military administration of the West Bank was applied to the judiciary and their staff it made matters even worse. Although the practice of asking a judge to carry out the work of another judge or prosecutor in another town for long stretches of time has been common all along⁵⁷, now matters have become even worse. The court's clerk and recorder has to work in the reception offices and at the telephone as well as in court, so that very often the court cannot proceed because he cannot be made available to record the proceedings. When an employee goes on holiday no substitute is appointed.

Having succeeded in submitting the case or the application, the next hurdle is the scarcity of process servers. For example, with only two for the whole Ramallah district with a population of 88,000 who are not equipped with any vehicle, the lawyer must be patient and understanding for any mistakes that may result from their inefficiency⁵⁹.

When the case finally comes to trial the lawyer has to be content with the long delays in hearing the case, due to the impossibility of fixing a time of day when the case will be heard, and the many adjournments which are typical in every case. If the cause of the delay is not the heavy burden of the court, it is probably due to the many means available to the party who can benefit from an adjournment, as by claiming the need for the testimony of a civil servant. The party requesting the witness can comfort his client that the case will remain pending for at least another six months. After that he could ask for more adjournments, claiming he has not had time to prepare his case, and the court is known to exercise extreme patience and even welcome adjournments, being overburdened with cases.

Adjournments in a country where the currency is more stable might not be so damaging. In Israel the final judgment in civil cases always takes into account in assessing the damages the increase in cost of living index. Not so in the West Bank. Jordanian law allows for 9% interest for the damages claimed from the date of submission of the claim until payment. In cases where the damages are claimed in Israeli currency, as they sometimes have to be, and which are delayed for one or two years, as is normally the case, the claimant receives a small percentage of the real value

of what he was claiming even if he obtains a decision in his favour. The Jordanian laws have been amended in many areas, but nothing has been done to redress the injustice that is caused by the new economic situation in the West Bank.

When all the possible delaying tactics have been used by the party interested in delay, and the decision at first instance is delivered, the case may then be appealed. In the Court of Appeal the case will not be decided for a very long period of time. The Court is at present composed of two Justices and a President.

According to the 1979 Statistical Abstract of Israel 2,090 new appeals were entered in 1978. 1,512 of these and of cases pending from the previous year were decided and 1,030 remained pending at the end of the year.

The decisions of the Court are unimpressive and sometimes arrive at conclusions which are against basic legal principles. Cases which are of great importance to the community, such as a case whereby the category of all the lands of several major West Bank towns was changed thus affecting, amongst other things, the rules of devolution of property, were decided in a poorly reasoned judgment of a page and a half. The Court frequently decides a case on a procedural ruling without dealing with the substantive issue.

The low standard prevailing amongst the judiciary is accentuated by the lack of a law library either in the courts or anywhere else in the community. Some lawyers are fortunate to possess law books, many of which are out of print and cannot be found anywhere. This applies particularly to Jordanian laws which have been replaced in Jordan, such as the civil code. Naturally, no new editions are printed in Jordan of the old defunct laws. As the Jordanian laws made after 1967 do not apply to the West Bank, the relevant laws have become rare items, difficult to find. This imposes a great handicap on the younger lawyers who started work after the occupation and have great difficulty in obtaining law books.

The situation is not much better with regard to military orders. The collected volumes of the orders have long been out of print, and no copies are now available. The new orders are made available only to practicing lawyers and the rest of the public has no means of being informed about changes in the law. Regulations concerning specific vocations, crafts or departments are sent only

to the interested party. When a lawyer handles a case for such people he has no means of getting hold of the pertinent order or regulation if his client has lost his copy. Expropriations of land for example are made known to some elderly figure in the community, like the muktar, and he is ordered to inform, orally, the interested party⁶⁰.

Among other reasons why the courts are not functioning properly are that magistrates are appointed from amongst lawyers who have just finished their training, or sometimes even before that; low salaries are not attracting those most qualified to work as judges; owing to lack of proper inspection of their work, many judges come to court several hours late and do not carry out their work properly; appeal justices do not always follow their own precedents, and decide cases without setting out any proper reasoning. Finally, the Officer of the Israeli army in charge of the judiciary, who has extensive powers, adopts a laissez-faire policy. The lawyers have on several occasions complained to him about the prevailing conditions. In February 1976, for example, a petition signed by several lawyers was sent to him, deploring the state of the courts and asking that a committee be set up to investigate the conditions and make recommendations. No response was made to this petition. The judges, the lawyers, and society at large continue, therefore, to suffer conditions in the administration of justice which defeat at every level the principles of the rule of law.

Section 6

The Legal Profession

In addition to an independent and qualified judiciary, a second essential pre-condition of a proper administration of justice under the rule of law is an independent legal profession, with a strong professional organisation to represent the interests of the profession, maintain the high standards of professional conduct required, and to be able to express the views of the profession with regard to pending legislation, law reform and the working of the judicial system.

Before the Israeli occupation, all lawyers were members of the Jordanian Bar Association. For reasons which will be explained, there is now no professional body uniting the lawyers practicing in the West Bank.

According to Jordanian Law, lawyers are officers of the law who have chosen as their profession the representation of litigants before courts of law, claiming their rights, defending them, and instituting proceedings on behalf of clients before all courts at their various stages.

After the 1967 war, Israel carried out actions which were considered by the lawyers in the West Bank as illegal. These were:

- the annexation of Jerusalem,
- the removal of the Court of Appeal from Jerusalem, and
- non-compliance with the Geneva Conventions.

The general feeling amongst the lawyers was that to appear before the newly organized courts would give legitimacy to the an-

nexation of Jerusalem, because the Jordanian law specifically designates Jerusalem as the seat of the Court of Appeal. It would also, they thought, imply that the other changes carried out by the military authority were being condoned and legitimized, if they continued to work as usual. Accordingly a large number of the lawyers in the West Bank have been on strike since 1967 and refuse to appear before any courts other than the religious courts.

Using the strike as a justification, the military authorities passed military order No. 145 the preamble of which reads as follows:

“To guarantee the rule of law and to ensure the continuity of the functioning of the courts existing in the area, and to enable the local inhabitants to obtain the services of lawyers I (the military Area Commander) pass the following order...”

The order made it permissible for Israeli lawyers to practice in the West Bank Courts. The reasons cited as providing the justification for issuing the order may not have been the only motivation for promulgating it. Although initially put into effect for a period of six months, the Area Commander passed another order after the expiry of the period, extending it until such time as it shall be repealed by the Area Commander “because he believes that there is no further need for continuing it for the purpose of fulfilling the objectives mentioned in the preamble.” Although the number of local Palestinian non striking lawyers now practising in the West Bank exceeds 130, which is far greater than it had ever been at any previous time, the order has not been repealed.

The decision to strike was not taken at a formally convened meeting of the Bar Association. However, since it represented the general prevailing sentiment, it was at first observed by all the lawyers.

When the decision to strike was taken, the general belief in the area was that the occupation was a temporary state which would not last more than a few months. However, as time passed more and more lawyers came under pressure to break the strike and begin to defend their clients before the courts.

From very early on, West Bank residents were being summoned to military courts for violating security offences. They found no lawyer to defend them. Claimants in civil cases were also raising cases in court. The defendants in some of these cases are for-

bidden by law to appear in person⁶². They beseeched lawyers to represent them. As the pressures by society on the lawyers mounted, some lawyers began to re-consider their position. Before long, a few began to take up cases before the military and civil courts. The response of the Bar Association in Amman was quick and severe. Lawyers who were practicing were warned in an advertisement published in the Jordanian daily newspapers to stop working⁶². Charges were published again in the Jordanian newspapers, accusing them of representing clients before the Zionist civil and military courts in the occupied West Bank, thereby contravening the collective decision of the lawyers of the West Bank, which was ratified by a decision of the Jordanian Bar Association at its meeting on 22.8.1967, as well as contravening the decision which the General Assembly of the association took at its regular meeting held on 22.4.1968. A date was set for them to appear before the disciplinary committee in Amman to answer these charges. The lawyers charged did not attend the meeting to defend themselves. They published a statement in the local newspapers in which they declared their belief that the legal profession imposed on its members national and social obligations, especially in such conditions as those which the inhabitants of the occupied territories were experiencing⁶³. They said that "they had assessed the situation and that motivated by a deep feeling of responsibility and moved by the general wishes of the public, have decided to take the initiative and perform their duty and suffer the consequences."

This declaration initiated a public debate in the newspapers, where several opinions for and against the continuation of the strike were expressed. On the whole public opinion, judging from these newspaper articles, seemed to favour ending the strike.

As more and more lawyers returned to practice the Bar Association made similar charges and summoned contravening advocates to appear before its committee. The lawyers, however, did not appear. They argued that:

- the decision to start the strike was void, because it was not taken by those who were qualified to make it;
- therefore the ratification of this decision by the General Assembly of the bar was also void, and the law did not give the

Assembly the authority to take such a decision;

- a large number of the West Bank lawyers who made the decision to strike had already revoked it;
- the summonses to appear before the committee were not properly served, because notices were placed in newspapers which were not allowed to circulate in the West Bank, and the meeting of the disciplinary committee was held in Amman which is beyond the reach of some of the lawyers.

Based on these arguments, the lawyers decided not to appear, lest it be taken as a recognition by them of the validity of the steps taken so far by the Association.

A decision was then taken by the Jordanian Bar Association to strike out from the list of practicing lawyers the names of those against whom the above charges were made.

As time passed the number of lawyers in the West Bank who were registered at the time of the six day war and who continued with the strike continued to grow smaller, and the number of those taking up practice increased. There were also new lawyers coming into the profession, and these had to make the choice whether to take up practice or to go on strike.

To encourage the strikers the Jordanian Bar Association gave a stipend of J.D. 100 to striking lawyers including the newly qualified lawyers. Those breaking the strike were not only deprived of this stipend, but also of all pension rights due to them according to the regulations of the Bar Association. The stipend made available to every lawyer who went on strike was a lucrative offer for new lawyers and many chose to go on strike, and use their free time to work at other jobs or professions which they are not forbidden to do. As time passed, the number of strikers, therefore, increased and also the number of practicing lawyers. At present the two groups are almost equal in number, those in practice being slightly more.

As with other aspects of West Bank life the regular courts took a few years to begin to operate after the war, but by 1970 they were functioning again. Military courts also were hearing security and other offences. However, with no Bar Association to watch over the profession and advocate reforms in the judicial system, the practicing lawyers began to feel the adverse consequences of

this situation. All attempts at persuading those in charge of the Bar Association in Amman to re-assess the merits of their decision in view of the changing circumstances, proved in vain. The practicing lawyers began to seek alternative measures. One proposal was to establish a section of the Association in accordance with section 10 of the lawyers' law.

Negotiations with the Military Government of the West Bank for obtaining a permit to do this began. The reaction of the Bar Association in Amman was to threaten to deprive those involved in such an endeavour of their Jordanian citizenship and to have them tried for treason. Soon the negotiations with the military government were suspended when a dispute arose between the lawyers and the Area Commander, who insisted that the Arab lawyers from Jerusalem could not be included as members in this branch. This was refused by the lawyers. Without the Jerusalem lawyers, they were unwilling to carry on with their plan, and for this reason the attempt failed.

Although public debate of the question of the strike continues until this day, there have been no serious attempts to end the strike, or for the working lawyers to regroup in any shape or form to acquire more control over their profession and advocate reforms in the courts and the judiciary. Only in April of 1980 was some action by working lawyers taken to attempt to settle the dispute with the Association in Amman. The lawyers met on 11.4.1980 to discuss their conditions and it was decided to send a delegation to Amman to discuss the matter with those concerned there. The Jordanian Bar Association refused to meet them. They have not abandoned hope, however, and are continuing with these efforts.

The strongest motivation of the lawyers to organize themselves is to enable them as a body to advocate reform of the courts. As individuals they made several attempts, amongst which is the letter sent in February 1976 to the military Officer in charge of Judiciary in which they demanded reforms in the judicial system. They proposed that an investigation committee be formed to study the conditions and make recommendations. As previously stated, no response was received to this or to any other of their petitions.

The official strike of the lawyers of the West Bank has entered

its fourteenth year. It is possible to point to the following consequences which the lack of any organization of the profession has caused:

- it has allowed the Officer in charge of the Judiciary to assume all the powers that were previously in the hands of the Bar Association such as making regulations governing the course of the training of new lawyers and taking the decision to admit new lawyers into the profession⁶⁴;
- it has allowed the standard of the judiciary to fall and the conditions of the courts to reach a very low ebb, because there was no organized body to resist this deterioration;
- it has caused the society to suffer by depriving it of a well-organized legal profession, the professional ethics of which are controlled by a disciplinary committee;
- it has deprived the society of the learned legal commentary and research which the lawyers could otherwise make on the administrative changes and amendments to Jordanian law which are being legislated by the military government. The consequence of this has been that the military government has had a free hand to promulgate over 850 orders amending the Jordanian law extensively without the voice of the practicing legal profession being heard. On this and on other developments the lawyers have not spoken as a group, and used their skills to advocate and defend the legitimate rights of their people.

References

1. The Jordanian Constitution, article 99.
2. For the changes which have occurred see section 2 below.
3. Law on the Constitution of Regular Courts No. 26 of 1952, Jordanian Official Gazette No. 1105 dated 16.4.1952.
4. *Ibid*, article 3.
5. *Ibid*, articles 4(1)(a) & (b) and 4(2)(a) & (b) which also state that the Court of First Instance has jurisdiction to hear all cases not within the jurisdiction of the Magistrate's court, and that in its capacity as a court of appeal, it shall hear all cases which are appealable according to the Magistrate's Courts Law.
6. *Ibid*, article 6.
7. *Ibid*, article 10. Note that the right to litigate against the Government and its organs is preserved by article 101 of the Jordanian Constitution which states that "The regular courts in the Hashemite Kingdom of Jordan shall exercise the right of litigation against all individuals in all civil and criminal matters including those cases brought by or against the government or any of its organs..."
8. The Constitution of Jordan, article 97.
9. Published in the Jordanian Official Gazette, No. 1224, on 16.4.1955.
10. Article 18 of the Law of the Constitution of Regular Courts. See also Regulation No. 105 of 1965 on Inspection of Regular Courts, published in the Jordanian Official Gazette, No. 1877, in 1965.
11. Regulation on Court Inspection, article 12.
12. Military Order No. 39, later replaced by Order No. 412, dated 5.10.1970.
13. Gerson, Allan, *Israel, the West Bank and International Law*, 1978, Frank Cass and Company Limited.
14. See article by advocate Zidan Juwlan in *Al Quds* newspaper of 24.4.1970.
15. See article by Ahmad Abed Ahmad entitled *The Jerusalem Sharia Court and the Occupation*, in *Al Quds* on 26.4.1974, and another by Shiekh Muhamad Assad Immam El Hussein, entitled *The Sharia Courts: where to?* in *Al Quds* on 27.4.1970.
16. It was also reported on 16.10.1969 in *Al Quds* newspaper that Husein Shieukhi, the Magistrate in Hebron, had sent a memorandum to the Military Commander of the West Bank informing him that he was resigning in protest against the interference in the powers of the courts by the Officer in charge of the Judiciary, and his insistence on preventing the execution departments of the regular courts from executing the decisions of the Sharia Courts.

17. Military Order No. 378, article 4.
18. *Ibid*, article 50.
19. Military Order No. 842, dated 18.5.1980.
20. Military Order 378, article 6.
21. *Ibid*, article 15.
22. *Ibid*, article 41.
23. *Ibid*, article 42.
24. *Ibid*, article 50(c)4.
25. *Ibid*, article 43.
26. Article 2 of Order No. 30 dated 25.6.1967.
27. Pictet, Commentary on the Fourth Geneva Convention relative to the protection of civilian persons in time of war, International Committee of the Red Cross, Geneva, 1958 p. 39.
28. The full text of Military Order No. 101 will be found in the Appendix.
29. Order 842, amending article 7 of order 378.
30. Order 842, amending article 7 of order 378.
31. Order 845, dated 25.5.1980.
32. Gerson, *op. cit.* p. 119.
33. Droti, M, *Legislation in Judea and Samria* (unpublished, in Hebrew) quoted in Gerson, *op. cit.* at page 119.
34. Shamgar, Meir, *The observation of International Law in the Administered Territories*, 1 Israel Year Book on Human Rights, 1971, p. 157.
35. Military Order No. 145, dated 22.10.1967.
36. Civil Appeal case no. 34/68 reported on page 186 of the *First collection of appeal decisions 1967-1970*, compiled by Justice Ghalib Haj Mahmoud.
37. Military Prosecutor V. Zuhad before the Israeli Military Court in Bethlehem on August 11, 1968.
38. Military Order No. 282.
39. Military Order No. 412.
40. Military Order No. 450.
41. Military Order No. 267, later amended by Order 362.
42. Military Order No. 310.
43. Military Order No. 379.
44. Military Order No. 795.
45. Military Order No. 555.
46. Military Order No. 291.
47. Military Order No. 25.
48. Military Order No. 264.
49. Military Order No. 528.
50. Article 102 the Constitution of Jordan.
51. Issued November 3, 1967.
52. Military Order No. 384.
53. See Civil Cases Nos. 290/70 and 35/71 in the Court of First Instance for the South; both are unpublished.

54. Military Order No. 829.
55. Military Order No. 348.
56. Military Order No. 841 dated 15.5.1980.
57. It was reported in *Al Quds*: on 2.2.1969 that the President of the Court of First Instance of the South was appointed as President of the Court of First Instance of Nablus in addition to his first post.
 On 9.8.1970 it was reported that the Magistrate of Hebron was appointed to carry out the functions of the Magistrate of Bethlehem during the month of vacation of the Bethlehem Magistrate, in addition to his work as the Hebron Magistrate.
- The Prosecutor of Hebron was appointed to carry out the functions of magistrate of Ramallah, in addition to his duties as prosecutor, for the period of one month.
- On 30.5.1972 it was reported that Sameer Jaabari was appointed to work as magistrate in Bethlehem in addition to his work as magistrate in Ramallah.
- On 5.6.1973 it was reported that Muhamad Sadr has been appointed prosecutor for Hebron in addition to his function as magistrate of Hebron and Magistrate of Jericho.
- On 24.8.1973 Muhamad Zahran the prosecutor of Ramallah was given a two week vacation and the chief clerk of the Court of First Instance was appointed as prosecutor in his absence.
- On 9.8.1974 Zakharia Abdeen the member of the Court of First Instance in Ramallah was appointed for a month to carry on the functions of Attorney General in addition to his duties as judge.
- On 9.8.1974 Azmi Tanjeer the magistrate in Ramallah was appointed to work for two weeks as magistrate and prosecutor in Bethlehem in addition to his duties as magistrate in Ramallah.
- On 3.3.1974 Fawzi Maswadeh was appointed prosecutor in Hebron for a period of three months in addition to his function as magistrate of Hebron.
58. No applications for submitting trademark applications were available for the months of February, March, April and May of 1980.
59. A lawyer has reported that in one case after a long wait for certain papers to be served on his opponents they were finally served on him. Lawyers report a very large numbers of similar mistakes which cause great delays in the judicial proceedings.
60. In an expropriation order No. 78/1 made by virtue of Military Order No. 393 relating to land in the Bethlehem district, it was stated in paragraph (c) that the mayor and village elders shall be informed orally of the restriction to build in the area.
61. Article 34 of the Jordanian Lawyers' law states that (i) No case before the High Court of Justice may be heard in the absence of a lawyer and (ii) No statement of appeal may be accepted by the Courts of Appeal or Cassation and no statement of claim in a case where the value exceeds JD 500 (approximately US\$ 1,600) unless signed by a lawyer.
62. *Al Difaa* daily newspaper No. 10774 of 22.4.1971.
63. A statement to the public published in *Al Quds* newspaper.
64. By virtue of Order 784 the Officer announced that he will sometimes use his discretion to reduce the period of training for new lawyers from two years (as required by Jordanian law) to six months. By Order 528 he announced that a training lawyer may carry out part of his training at a judicial department.

Part Two:
Restrictions on Basic Rights

Section 1

Introduction

This part will deal with the methods used by the military government to deny or restrict the basic rights of the residents of the occupied territories, and with the means by which this is achieved.

The most basic restriction on their human rights is the continuation for over 13 years of the occupation, denying them, as it does, the right to self-determination and imposing severe hardships, both physical and psychological. The effect of this is more evident on the younger generation of the population, many of whom have been forced to emigrate from the area to find work. The alternative, for most of those who stay, is to work as labourers or in other manual occupations in Israel, leading a frustrating life without hope for the future.

Given the fact of the occupation, it is perhaps inevitable that it will result in various restrictions on civil and political rights. Under international law these should be limited to such measures as are necessitated by security considerations. However, many of the restrictions imposed go far beyond what can reasonably be justified on grounds of security.

This part does not seek to review all the ways in which the basic rights of the residents of the occupied territories are restricted or violated. No examination has been made of the Israeli settlements in the area, for example, or of the physical or psychological torture or other ill-treatment of prisoners, before and after their trial. The choice of the subjects discussed in the fol-

lowing sections has been determined mainly by the intention to draw attention to areas in which the legislation and practices of the military authorities are not generally known.

Section 2

Property Rights

The struggle over ownership of land in Palestine is quintessential to the Arab-Israeli conflict. It is not surprising therefore that the Israeli authorities use their legislative and administrative powers in the West Bank to acquire as much land as possible. Some of the methods employed to achieve this end violate basic property rights. However, since the violations of property rights are not limited to land acquisition, this section will attempt to survey the violations of this right over various forms of property, and not only over land.

The Absentee property law

The first of the methods employed by Israel to claim large parts of the lands in the West Bank was to promulgate Military Order No. 58 on absentee property. This order deals with property in general and is not confined only to immovables. It defines an "absentee" as a person who left the area of the West Bank before, on or after June 7, 1967. It provides for the appointment of a Custodian who acts as a trustee to hold the property in trust for the absentee until his return. No transaction in immovable property including property of non-absentees can commence before obtaining the approval of the Custodian¹. This in effect means that the British Land Transfer Ordinance of 1921 by virtue of which all land transactions had to be approved, and which

was not in force under Jordan, was re-activated. The Israeli justification for the necessity of obtaining permits for land transactions was that it was necessary to enable the Custodian to discover the absentee landowners. Assuming this was the true reason for requiring the prior consent of the Custodian, now, after thirteen years, when it has become established who the absentee landowners are, this requirement should have been cancelled. Its continuation confirms that Israeli policy is to retain full discretion in approving land transactions.

A close analysis of the definition of "absentee" in the order makes it clear that the Custodian has very wide powers. The Israeli absentee property law of 1951, upon which this order is presumably based, defines an absentee in Israel as a person who, on certain specified dates, was in an Arab country with which Israel is at war. The significant difference in the definition in Military Order 58 is that an absentee in the West Bank is defined only as a person who has left the area, whether or not he is in an Arab country. When it is remembered that immigration from the West Bank to Western countries has always been and continues to be very substantial, and that many of these immigrants come to acquire foreign non-Arab citizenships, although they keep their ties with the West Bank, then the application of the law to persons residing in friendly or neutral countries comes to have special significance. Under application of this definition, all those who leave the West Bank are considered absentees regardless of whether they have been granted a permit residence by the authorities of the country where they are living, and regardless of whether they are in countries which are friendly or at war with Israel. Although this strict definition is not usually applied to residents in countries friendly to Israel, there have been instances when permits for land sales have been withheld on the basis that the seller, who holds an American passport, is an absentee.

Although on the face of it Military Order No. 58 implies that the Custodian is a trustee and that his powers of possession over the property must be used only to safeguard the interests of the owner, the reality is much different. As was the case with Arab property of Palestinian refugees who fled after the 1948 war, the Custodian who took over that property, also as a trustee, has used it with a freedom equivalent to absolute ownership². When

some of the landowners whose land had been disposed of ceased to be absent, according to the definition of the law, they were offered only nominal compensation. Through the tight control exercised by the Custodian over land transactions and through surveys carried out to determine the areas of land the titles of which have been registered, the military authorities have now a thorough knowledge of the conditions of land registration and the percentages of the areas of land in every category on the West Bank.

Land expropriation

The Jordanian Constitution (article 11) forbids expropriation of private property for public benefit unless fair compensation is paid according to law. The expropriation law provides for the necessity to publish the intention to expropriate in a local newspaper and it gives the person whose property has been expropriated the right to appeal the decision to the Court of First Instance³.

Soon after 1967, Israel took several steps to decrease the requirements which have to be met before expropriation of land can take place.

Firstly, by Military Order 321 the requirement to publish the intention to expropriate was removed. Secondly, the right of appeal to civil courts was replaced by a right of appeal to the Objection Committee (see Part 1, section 3). Thirdly, by virtue of Military Order No. 291 the former procedures for the settlement of land disputes by a settlement court under which title to land was conclusively determined and recorded in the land registry, were abolished. At the time when the occupation took place, only about a third of the area of the West Bank had been registered and its titles "settled".

By this means the Israelis ensured that title to large areas of land remained in dispute, providing the possibility of conflicting claims.

Individuals who wish to prove title to land in areas where no "settlement of titles" took place must seek do so by oral testimony, tax receipts, purchase agreements and other forms of in-

conclusive evidence. Through a series of procedural steps, the government placed the burden of proving ownership of land it wishes to expropriate upon the Arab land-owner. If he fails to carry that burden, he loses his land. The land is then treated as state land, which Israel claims to have legitimately inherited as a successor of the Jordanian Government. It has been estimated that 30% of the entire area of the West Bank has already been expropriated, of which a large proportion was obtained in the manner described above.

Some of the expropriated lands are in fact used for military purposes. The majority of it, however, is turned over to Jewish civilian settlements.

Acquisition of water rights

A similar treatment has been given to water rights. The Custodian has claimed the wells and shares in water rights owned by non-residents. A prohibition similar to that for transactions in land is placed over the water rights making it illegal to transfer them without prior permission.

In addition drilling of new wells is rarely allowed, which means that large tracts of Arab owned land cannot be developed⁴.

Perhaps the most extreme example of denial of rights over water is that of the El Auja lands where an Israeli well benefiting a burgeoning Jewish settlement was dug just near an Arab spring which was used by Arab farmers to water their fields. This new well, combined with a low rate of rainfall, caused the spring to run dry and plants in thousands of Arab fields withered and died.

Israel's justification of its water policies over the West Bank is that since only a limited quantity of water exists in the subterranean levels, strict control must be exercised. In practice this has meant that new Jewish settlements are well supplied with water, whereas Arab farmers suffer shortages.

Destruction of Houses

The Israeli authorities, appreciating the cultural importance to

the Arabs of owning a house, followed a policy of destroying any house where a guerilla who has been caught lived or slept or which he in any way used, whether or not the owner consented to this use. Several thousand houses have been destroyed under this policy, and no compensation was given or offered.

Closing Banks

By virtue of Military Orders No. 7 and 194, all the banks in the West Bank were closed and their assets and deposits transferred to Israeli accounts under the name of the Custodian. They remain closed until today and only Israeli banks are allowed to offer services to the inhabitants of the West Bank.

Legality of these measures

As to the legality of these measures, it is submitted that the interference with land and water rights cannot be justified on grounds of the security of the military forces, that the destruction of houses is plainly illegal, and that the closing of Palestinian banks is also a measure which cannot be justified on grounds of security. Any necessary currency controls could be imposed without the closing of the banks.

Section 3

Right to Development and Adequate Government Services

Increasingly, the international community is beginning to recognize social and economic rights as basic human rights. Whereas the Western world usually emphasizes political and individual rights, such as those discussed above, eastern European and third world countries place more emphasis on social and economic rights. The International Covenant on Economic, Social and Cultural Rights gave expression to this trend.

It is unrealistic to postulate universal standards with which to determine whether or not these rights are safeguarded. That must depend in each case on the resources and capabilities of the government in question. However a minimal obligation that can be expected to be met is to provide the proper atmosphere and strive towards development, progress, and improvement in health, education industry and other vital areas.

In considering whether or not the Israelis are meeting this obligation in their policies over the West Bank it must be recognized that an occupying power will not normally be expected to strive towards the development of the society it is occupying, but at the very least it should refrain from hindering or obstructing such development. However, Israel does not consider itself to be an occupier of the West Bank but rather an administrator. Furthermore, whereas the belligerent occupation by one country of the territories of another is usually expected to be a temporary state of affairs, the present occupation/administration by Israel

of the territories has continued for over thirteen years.

During this time Israel has assumed full legislative and administrative power and has been exercising total and complete control over all aspects of life of the inhabitants⁵. This administration is not responsible to any electorate or subject to the scrutiny of any international body or organization. Furthermore, no end is in sight to this state of affairs. Instead, Israel has sought in the Camp David agreements to give it international legitimacy and make it a semi-permanent state of affairs.

Under such circumstances it is legitimate to hold Israel accountable for the preservation of this right to development and proper government. In the following sections an attempt will be made to investigate how Israel has acted in this respect.

It is clear to any observer of the legislative and administrative changes carried out by Israel in the West Bank that they were carried out to achieve the following objectives:

- the preservation of Israel's security;
- the acquisition of land and control of water resources;
- the creation of economic relations between Israel and the West Bank favourable to the former; and
- the prevention of the development of independent Palestinian institutions which might constitute the basis for a Palestinian state in the West Bank⁶.

The active pursuit of a policy of fulfilling the last two objectives results in clear violations of the social and economic rights of the Palestinian population in the West Bank. Some examples of the way this policy is implemented may be given.

Withholding permits to drill artesian wells

In a country where rain water is scanty and cannot be depended upon for farming, drilling of artesian wells is the only means of reclaiming land for agriculture. However, since 1967 only two permits have been given to Palestinians to drill wells for agricultural use. In one of these, the applicant was licensed to drill in a specified area. When the well was dug, it was discovered that only

salty water, unsuitable for irrigation, could be found there. These permits are not withheld from Jewish settlers in the West Bank for whom many artesian wells have been dug by the state affiliated water company, Makerot. Settlers utilize these wells along with the water rights which the Custodian of absentee property has acquired and which are put to their use as well.

According to Israeli statistics⁷, in the year 1977/78 there were 314 Arab owned artesian wells in the West Bank from which were discharged 33 million cubic metres of water. There were 17 wells drilled by the Israeli water company to serve the Israeli settlements, from which were discharged 14.1 million cubic metres. In other words, 30% of the water was taken from the 17 modern wells constructed to serve the settlers, while the Arabs were denied permits to construct similar wells.

This policy of withholding permits for drilling wells has meant that a large sector of the population who would otherwise be engaged in agriculture began to seek work in Israel as unskilled labourers, with the result that the West Bank has become dependant on Israel even for agricultural products.

Withholding permits for importing industrial equipment

No industrial equipment may be imported into the West Bank without a permit from the responsible officer in the West Bank military government. Here again this requirement is used to control and determine the direction and pace of the development of the West Bank's industrial sector. The effect and presumably the intention is to integrate the West Bank into the Israeli economy in a subservient role, and to render the West Bank totally dependant on Israel. When in the East Jerusalem District the Nablus and Hebron electricity companies applied for permits to import electrical generators, the authorities procrastinated and applied pressure to force these companies to hook up their lines to the Israeli electric grid. In the case of the East Jerusalem company, having denied the company the means to develop its generating capacity to a level whereby it could satisfy the increased demands put on it from the rapid development of the settlements falling within the area of its concession, the Israeli ministry of energy

terminated the company's concession on the grounds of its failure to satisfy its customers.

Restrictions on Exports to Israel

Needless to say, for an economy to prosper the existence of an authority which supervises and guards the best interests of the producers is essential. The situation now existing on the West Bank is that whereas export from Israel into the West Bank is unrestricted, strict control is applied over import to Israel of West Bank products. Since the West Bank is not industrialized and cannot compete with Israel in industrial production, it is primarily in the marketing of agricultural products that the adverse effects of this situation is felt. Military Order No. 47 prohibits the export of such products without a permit. The way this order is implemented is as follows.

Just before a certain agricultural product is ripe for harvesting and marketing the Israeli officer in charge of agriculture in the West Bank and a representative of the relevant Israeli marketing board (for example the Israeli Fruit Board), visit the field. They test the crop to decide upon the quality of the produce and the time of its maturation. Then, depending on the assessment of the representative of the Israeli marketing board, the officer determines what quantity of the produce may be allowed into the Israeli market. Having established this quota, he issues permits to West Bankers desiring to export their products to Israel. Each permit states the time when this product will be allowed into Israel, the amount that may be exported by that farmer, the name of the Israeli wholesale market to which it may be sold, and description of the truck which is to transport it. Patrols are then instructed to keep the roads under surveillance and to seize all vehicles exporting any product without a permit or contrary to any of the terms laid down in the export permit.

No restrictions are placed on Israeli producers intending to sell in the West Bank. Thus the West Bank becomes a protected market, located conveniently close to Israeli manufacturers and farmers, into which it is also possible to dump excess products includ-

ing those forbidden in Israel for contravening safety or other health regulations⁸.

Restricting the Co-operative Movement

In 1967 the West Bank Co-operative Movement was cut off from its parent organization, the Jordan Co-operative Central Union (JCCU) located in Amman. This meant that access to the Co-operative Bank was closed. The Central Auditing Union and the Co-operative Training Institute, which provided education in co-operative management to members, co-operative executives and staff, was now out of reach.

Under Israeli Occupation, this infrastructure, so necessary to maintain and stimulate co-operatives was not replaced. There were three regional offices prior to 1967, with over 40 staff and six cars. At present there are four regional offices (the Hebron region having been split into the Hebron and Bethlehem regions in 1979) with only 12 employees and one car.

All registration of co-operatives must be done through the military Government. At the end of 1979, there were 43 co-operatives waiting for registration, some for as long as three or four years. There was one Union established in the West Bank prior to 1967. Since that time there have been numerous attempt to form more Unions, but only one, a regional electrification Union has been approved. Attempts for the last 7 years to establish an auditing department have received no response. Application for loans and grants from foreign agencies, both in the private sector and those using US AID funds, face long delays and sometimes permission to receive the funds is not granted by the Military Government. A large sum of money has been granted to the Jordan Co-operative Organization (formerly JCCU) for West Bank Co-operatives. At the time of writing, none of the co-operatives which have been granted loans from this source have been permitted to receive them.

Though Israel has a world famous co-operative movement, bringing persons from third world countries for training in co-operative management, it has not used this expertise to benefit the Palestinians. Persons in the movement stress that they are not

asking the Israelis for financial help, only for the freedom to use the resources already available to them.

Reduction of Government Services

In 1967, the military government took over control of all government departments in the West Bank. By law and in fact, they assumed all the functions of government in all areas including health, education, agriculture, administration of justice, road-building, and the like. West Bankers now had to depend on the Military government for providing services and guiding development. The Israeli authorities did not attempt to expand or improve these services. On the contrary, existing government departments were neglected, their staff and budgets reduced, and the effectiveness of their services to the community severely curtailed. This was the result of a budget cut, reduction in staff, and curtailment of authority. In Part One, Section 5, this phenomena is described as it relates to the administration of justice. In all other areas a similar process has occurred. The severity of the situation becomes apparent from the most cursory comparison with parallel departments in Jordan, Israel, or even in the West Bank before 1967. Israeli authorities often claim that they are prohibited from making improvements by the Geneva Convention's strictures against altering the *status quo ante* in occupied areas⁹. Such an argument must be rejected in light of Israel's extensive tampering in all areas of West Bank legislation, when that is in its interest¹⁰. To the extent that the Military authorities have taken over governmental functions and collect taxes, they may reasonably be expected to discharge adequately those responsibilities. Failure to maintain the services required by West Bankers and to enable the population to achieve progress in those fields is a denial of their basic economic and social rights.

Failure to Provide Police Protection

The maintenance of law and order is a basic function of government. The Israelis are extremely sensitive to the issue of secu-

rity and act swiftly and massively to prevent or punish any breach of public order that threatens the security of Jews. The local inhabitants, however, enjoy no such protection. The local police force is very weak and ineffective in curtailing common law crimes. On the other hand, Israeli settlers present a danger to the population from which the military government offers little protection.

Leaving aside the issue of the legality of settling the occupier's civilians in an occupied territory¹¹, it must be noted that such settlers form a coherent power structure that, at times, appears to be outside the control of the Military Government. They are well-armed and there is a lot of animosity between them and the unarmed local population. They often resort to force in dealing with the Palestinians. The military authorities, if they interfere at all, side with the settlers as would naturally be expected.

In April, 1980, a group of settlers from Ofra terrorized the town of Ramallah by driving through it at night, shooting in the air and smashing the windows of more than 120 cars and 70 homes¹². Similar incidents occurred in Halhul, Ein-Yabroud and the Jalazoun refugee camp.

The authorities reacted very mildly to these actions, in marked contrast to their reaction to any disturbances by the Palestinians. The political context of the conflict between the settlers and the population makes it unlikely that the population can depend on the military authorities for protection in such situations.

Not only are the West Bankers unable to count on the Israelis for police protection from such attacks, but the settlers themselves often act as if they were the proper authority and assume the functions of the military government. They man checkpoints, stop and search Arabs and chase and discipline stone throwers. A settler once shot dead a student demonstrator¹³. Settlers in Keryat Arba', near Hebron, sometimes arrest Hebron youths and detain them in Keryat Arba' where they interrogate, beat and abuse them. There appears to be a large degree of cooperation between the settlers and the military authorities, but they do not appear directly accountable to the military government.

The population cannot arm itself or be organized to defend itself against the settlers. They are totally dependent on the Israeli military authorities to defend them and maintain their safety. So far, the authorities have been remiss in performing this obligation.

Section 4

Freedom of Movement

Freedom of movement for Palestinians in the West Bank is denied in a variety of ways. Such restrictions are often necessary and legitimate functions of a military occupation that faces internal resistance, as well as threats of infiltrators who enter the area with the aim of carrying out military operations. Quite often, however, restrictions on movement are intended for political purposes, such as the harassment of the population, the facilitation of land expropriation and the building of Jewish settlements, or the prevention of political gatherings. The methods for carrying out these restraints are as follows.

Travel Restrictions

Military Order No. 3, article 70¹⁴, gives the Military Commander power to declare "closed areas" and prohibit movement into or out of such areas without a permit. This authority was used to declare the whole of the West Bank a closed area¹⁵. The consequences of this order continue to be felt on the West Bank today.

No one can leave the West Bank without obtaining a permit to do so unless he wants to forfeit his right to return. This permit is given, or denied, at the sole discretion of the military governor. The reasons for denying a permit sometimes appear arbitrary, but there is quite often a specific political motive behind it. The occasion for granting the permit is often used as an opportunity for

the military government to exert pressure on a particular person. A mayor, or political activist, may be granted or denied this permit depending on the acceptability of his views to the Israeli government¹⁶. A student's permit to study in the Arab University of Beirut may be withheld or delayed if he refuses to become an informer; another may be granted a permit only if he relinquishes the right to return to his homeland. A variant of the last case is the regulation which prevents any West Bank resident under the age of 26 who travels abroad from returning to the West Bank before 6 months have elapsed. This regulation is apparently intended to encourage young people to find employment and permanent residence outside the West Bank. A West Bank resident who overstays his visit abroad faces great and sometimes insurmountable difficulties in attempting to return. The result is that West Bankers feel that they are in a large prison, and that they have to choose between staying there or relinquishing their right to return to their homeland.

Declaring the West Bank a closed area not only restricts travel out of the area, but also into it. A limited number of Palestinians were granted permits to return under the family reunification plan for separated families. Such permits are now rarely granted. West Bankers who were out of the country in 1976, or who lost their papers or failed to renew them during their stay outside are also denied entry into the West Bank without a permit. Visitors from Arab countries may enter across the bridges from Jordan on a special visitor's permit obtained by a local resident. However, the resident must certify, by signing the requisite form, that the visitor is not or has not been a resident of Israel, Jerusalem or the occupied territories.

Palestinians who are denied by these methods the right to travel to and reside in their own homeland are convinced that the reasons for these restrictions are not related to security consideration but refer to the Israeli intention to rid the land of its original inhabitants.

Another restriction on travel arising from Military Order No. 5 is that West Bankers are restricted from sleeping overnight within the area of pre-'67 Israel without a permit. This causes great hardship for labourers working in the heartland of Israel, forcing them to commute long distances or risk breaking the law with all the

punishment this might bring to them if they were apprehended.

Within the West Bank itself, the Commander may use his authority to declare certain areas closed. This is sometimes done for military purposes. More often, it serves as a prelude to expropriating land and building settlements on it. In one instance, the Commander declared the whole Ghor valley a closed area, enabling Israelis to build their settlements there¹⁷.

Extended curfews

The Israeli authorities routinely impose curfews in areas where a guerilla operation or political demonstration took place. This measure could serve a security function in restoring order or apprehending suspects. However, in a large number of cases, an extended curfew has been used as a means of collective punishment of the entire population of the area, with no relation to apprehending suspects¹⁸. Examples of these are the extended curfews imposed in Halhoul, Hebron, Dheishah refugee camp, Anabta, and Talazoun refugee camp¹⁹.

In certain cases, a curfew in a centrally located village effectively restricts the access of residents of surrounding villages into main towns, because access to the town lies through that village²⁰.

Road Blocks

A restriction on freedom of travel that is experienced by West Bankers on a daily basis is the very frequent use of road blocks between towns. The military governor of an area, by virtue of his authority under Military Order No. 3, article 68, may prohibit, restrict, or regulate the use of roads generally or the roads in a particular area. He may control in this way the movements of people generally, or of particular classes or categories of people, or certain individuals²¹. This authority is very often used, and the harassment experienced by residents of the West Bank at these check-points has now come to be a common feature of West Bank life. Any soldier may stop and search the car or person

of the traveller, and ask the driver to remove the tyres and seats. He may also order a traveller who reacts to this humiliating treatment in a way which he does not like, to stand by the side of the road for such a period of time as, in his calculation, is sufficient punishment for what the soldier considers to be an improper grin or unbashful gaze.

This use of the road block as a means of punishment of a whole area or of individual groups is not uncommon. When word reaches the military authorities that certain people are travelling to other areas to participate in a political discussion or to express solidarity with victims of some Israeli action, their names are passed to the soldiers on the checkpoint and they are prevented from crossing. Roadblocks are also frequent on Fridays, the Moslem holy day, when many Moslems congregate in the Al Aqsa Mosque in Jerusalem to pray.

West Bankers often complain that these checkpoints serve no security function and that they are merely intended to harass the population or restrict their movement. Whatever is in fact the security value of these checkpoints, they are a definite restraint on the freedom of movement of the people of the West Bank.

Other Restrictions

Another restriction on movement is the house arrest. This is not frequently used, however. More common is the order forcing an individual to stay within the confines of a town or village.

The most effective means, however, through which the military authorities exercise their large and widely discretionary power of restricting the freedom of movement of the inhabitants of the West Bank is the identification card. These cards have come to symbolize to the West Bankers their precarious status as residents, whose right to stay and right to move freely is dependent on possession of this card. It is against the law for any resident to leave his house without carrying his card on him. It is a common practice for soldiers to confiscate the cards of any passerby who happens to be in the vicinity where a demonstration or unlawful assembly of whatever nature is taking place. The withdrawal of the card on its own means that until it is returned, at the will of the

police or military interrogator, its owner is restricted from leaving his house, because if he is apprehended without it he would be breaking the law.

When the cards of large numbers of people have been withdrawn, and the intention of the military authorities is not to bring them all to trial because of the lack of evidence against them, they are asked to come to the interrogation centre. There they are made to wait under the sun or in the rain the whole day. Then they are asked to return the next day, and so on. After a few days some of them may be chosen for questioning or they may all be given their cards back, and this in the eyes of military would have been enough punishment for whatever they are thought to have been involved in.

This practice of inflicting punishment through extra-judicial means is not uncommon. It happens repeatedly at road blocks and it also happens to members of a family whose relative was sentenced. In one case the father of a student who was sentenced to 18 days imprisonment was summoned to the office of the military governor of Bethlehem and ordered to surrender his own identity card. He waited from 8 a.m. until 5 p.m. to retrieve it. He was then told to return the following day and every day for the next 17 days. The reason for this, as it was put by 'Abu Fahd', the code name of the military governor of the Bethlehem area, was that it is only fair that he should get the same punishment as his son was getting.

The military officers who imposed these restrictions are sometimes aware that they are exceeding their authority, and they therefore communicate their order verbally by telephone.

Members of the West Bank municipal councils have become used to the telephone call from the office of the military governor of the area threatening them with punishment if they leave their town and go to a meeting which the governor has learned is being planned. Although there is no evidence that the order was given, they do not dare to contravene it, given the wide discretionary powers of the military authorities with whom they have to deal.

The harsh agony and humiliations of Palestinian life may be summed up in this Israeli identity card. The agony of the exile and the dispersion of thousands and thousands of Palestinians

can be stated in terms of their inability to obtain from the Israelis an identity card, evidence of their acceptance and status as residents in the country they were forced to leave. On the other hand, the humiliation of the million Palestinian holders of this coveted cards and the discrimination to which they are subjected is symbolised by this card which may at any time be confiscated, terminating their right to stay in the area.

Section 5

Collective Punishment

The Fourth Geneva Convention on the treatment of civilians in occupied territories prohibits the imposition of collective or vicarious punishment²².

The concept of personal responsibility is essential to the rule of law. Laws and practices which impose punitive measures upon non-offenders are inherently unjust and oppressive. The imposition of collective punishment involves taking summary action without any trial or the possibility of judicial review. The intention is to achieve immediate results through the intimidation of whole sectors of the population. Another intention is that through punishing entire groups for the acts of an individual, community pressure will be brought to bear against that individual.

Over the last 13 years of the occupation, collective and vicarious punishment in various forms has been part of the Israeli policy of keeping the West Bank under check. This is not denied by the Israeli authorities, who justify it as being necessary for the maintenance of security in the occupied areas²³.

The policy of inflicting collective punishment upon the inhabitants of the West Bank can be traced to the early stages of the occupation, when the West Bank was divided into administrative regions and all cars were forced to carry distinctive license plates clearly identifying the region to which the owner of the car belongs. This enabled the authorities to single out groups for punishment and harassment, as the need arose.

Similarly, all West Bank residents were forced to carry identification cards showing their address, religion and religious denomination²⁴. It is not unusual for soldiers at checkpoints to make members of a group understand that those amongst them who are Christian Armenians, for example, would be treated with more consideration.

Since collective punishment has been pursued as a policy for the past thirteen years there are numerous examples of its use. Some have been described in the section on freedom of movement. The following are some cases of its use to punish families, landlords, neighbours, and whole towns and villages for the acts of individuals belonging to each of these groups.

Punishment of families

On suspicion of throwing a stone at an Israeli vehicle, Tariq Shumali, aged 16, was arrested on May 13, 1980. He was beaten so severely that he had to be hospitalized for internal kidney haemorrhage. No other member of the family was charged or suspected of any wrong doing. Nonetheless, his father was jailed, his sister was dismissed from her job as a teacher in a public school, the Shumali house in Beit Sahour, near Bethlehem, was sealed off, and the family was forcefully deported to a deserted refugee camp in Jericho and ordered to make their new home in one of the dilapidated mud houses in the desolate conditions of the camp, which had been abandoned since the 1967 war²⁵. The intention of the authorities was to make of the Shumalis an example of the treatment that will be inflicted on the whole family of any suspected stone-thrower. They also intended to introduce into the West Bank the method of internal deportation which hitherto had been used only in Gaza. It must be noted here that all this punishment was inflicted on the Shumalis before the accused son had been put on trial and his guilt established.

Less extreme cases of family punishment occur when children receive heavy fines which, of necessity, must be paid by their parents. Also family members of security offenders are not left in peace even after one of their members has been sentenced to a

long prison term. Family members are routinely called for interrogation, harassed, and denied travel permits.

Punishment of landlords

It is a well known practice of the military authorities that the house or entire apartment block where a member of a guerilla group is apprehended, or where he resided or visited, is sealed or, as is more often the case, demolished. The site of the house then becomes a closed area where it is illegal to build. No accusation is made that the landlord assisted or even knew that a member of a guerilla group was amongst his tenants, nor is there a trial to prove this²⁶. A decision is taken very quickly and executed after giving the tenants a few hours' notice to remove their belongings. In a matter of few hours totally innocent people are rendered homeless.

Punishment of neighbours

Shops in the whole vicinity from which a stone is suspected to have been thrown at an Israeli vehicle are punished by closure. In Bethlehem many shops situated near the vicinity from which a stone was thrown at a passing Israeli army vehicle were closed for several weeks in May, 1980. Similar punishment was inflicted on all shops and houses in a block of buildings on the roof of which a Palestinian flag was raised²⁷. Shopkeepers are notified that they will be punished for any such acts taking place in their vicinity.

Punishment of by-standers

Individuals who happen to be passing by in a vicinity where an illegal act is carried out are inevitable targets of Israeli retaliation. The authorities move speedily in a drag-net fashion and arrest all persons in the vicinity. These individuals are then interrogated, harassed, humiliated, and punished by being forced to stand in the sun or rain for hours. It is understandable that some routine

security check is legitimate to enable the police to apprehend the suspects; however, it is often clear that the soldiers are merely using the opportunity to take revenge for what has just happened. This is revealed by the fact that the intensity of harassment, length of detention and severity of the punishment is noticeably proportionate to the seriousness of the incident.

Punishment of entire towns or villages

The collective punishment of whole towns or villages for the acts of a few is not uncommon. Throughout the thirteen years of occupation it has taken many forms, some harsher than others. One case in point, is Hebron.

On May 2, 1980, three guerillas attacked a bus carrying Israeli settlers near the Hadassah building in Hebron²⁸. There were a number of casualties amongst the Israelis, including some fatal. The authorities retaliated by punishing all 60,000 inhabitants of the city of Hebron. This they did in the following ways:

- They imposed a strict curfew which lasted for over a month. The Israelis were not unaware of the consequences which ensue from the imposition of such a curfew on an agricultural town. Having been prohibited from attending to their crops and livestock the Hebronites suffered severe losses. Similarly economic loss to owners of workshops and glass factories was severe and students lost many days of study.
- They deported the mayor and qadi of the town.
- Long after the curfew was lifted Hebronites were still prevented from travelling outside the West Bank as well as receiving visitors from abroad.
- All telephone lines were disconnected for 45 days.
- Merchants from Hebron were not allowed permits to export their produce across the bridge to Jordan until the middle of June, 1980, when the ban was lifted.
- The owners of cars bearing Hebron licence plates continued to be harassed and delayed at road blocks placed at the entrances of the city, which were not removed until several months after

the incident. They also received similar treatment at checkpoints throughout the West Bank.

- All the male inhabitants of the town were made to go through long hours of questioning and waiting in extreme weather conditions.
- The inhabitants had to submit to house to house searches. Eye-witness accounts of these searches by soldiers who took part in them revealed that in the process food supplies were destroyed, furniture wrecked and parents were beaten and humiliated before their children. All this was done pursuant to specific instructions by their officers²⁹.

Measures similar to the above were taken against the 'Dheisheh' refugee camp near Bethlehem, the Jalazoun refugee camp, the village of Halhoull and other towns and villages³⁰.

In addition to the above measures, the military authorities also punish towns by withholding permits for needed development projects, or by denying the municipalities permission to bring in relief funds.

Although collective punishment continues to be a feature of the Israeli policy in the West Bank, this policy has come under attack from some Israelis who find it repugnant. Following the shocking revelations made by soldiers whose eye-witness accounts of the Hebron curfew were given coverage in the Israeli press, Deputy Defence Minister Mordechai Zipouri stated that no future measures against the population in the West Bank entailing collective punishment will be taken without direct orders from the Defence Minister³¹.

It remains to be seen whether or not the Defence Minister will continue to make such orders as energetically as his deputies have so far been doing.

Section 6

Freedom of Assembly

The inhabitants of the West Bank are denied the freedom of assembly. The basis on which this restriction is based and the broad definition given to an assembly are to be found in Military Order No. 101 concerning the Prohibition on Incitement and Adverse Propaganda³². Among other things, this order prohibits the gathering or convening without a permit of ten or more people for a march or a meeting where it is possible to hear a speech or talk on a political subject or a subject which may be considered political.

This law has been widely used to prohibit demonstrations, protests, sit-ins, meetings, and various other collective actions. The order has been very broadly interpreted by the military courts. In one military court case in Ramallah, the judge interpreted the definition of "meeting" given in that order as the "meeting of ten or more people where politics is discussed". He said that even the gathering of the members of a large family where politics is discussed can be said to be a violation of the provisions of the order.

In the Abu Dis case³³, eighty students who gathered for a silent sit-in to protest the closure of their school were convicted of illegal assembly contrary to the provisions of Order No. 101, even though there was no allegation that any political "speech" was given or heard. The Court easily assumed that since the meeting apparently was political, and placards and flags were seen there, the meeting was illegal and violated Order No. 101.

Illegal assembly under Order No. 101 carries a maximum sentence of ten years' imprisonment and a fine of 750,000 Israeli Shekels (equivalent to about 15,000 US dollars).

It is clear that in view of the breadth of the provisions of the Order, its enforcement can only be selective, but the very draconian penalties which can be administered by a military court, from whose decisions there is no appeal, has an intimidating effect on the population. This being the case, there can be no doubt that Order No. 101 considerably restricts the freedom of assembly in the West Bank, both in theory and practice.

Section 7

Freedom of Speech and Expression

Israel often claims that its administration of the Occupied Territories is very benign, and that it allows the inhabitants of these territories full freedom of speech and expression and only prohibits those activities that are hostile to the state of Israel or its citizens.

Such intentions are very laudable. In fact, the military orders promulgated in the territories and the practises of the authorities do not always support these claims.

Amongst the modes of expression that are prohibited on the West Bank are the following:

Symbolic Speech

In April of 1980, several students from Bethlehem University were arrested and accused of wearing T-shirts which carried the emblem of the Bethlehem University Student Council. The emblem contained streaks of Green, Black and Red on a white T-shirt. The authorities claimed that this added up to the four colours of the Palestinian flag. The University was warned that wearing these T-shirts was illegal, and the students were tried and convicted by a military court under Military Order No. 101.

This Order entitled the Order on the Prohibition on Incitement and Adverse Propaganda provides in section (5) that it is prohibited to raise, exhibit or attach any flags or political em-

blems except after obtaining a license issued by the Military Commander³⁴.

Commercial Strikes

Palestinians on the West Bank often express their political feelings by declaring commercial strikes, because of the prohibition placed on other modes of expression.

The legal basis for prohibiting such strikes is found in the Emergency Defence Regulations of 1945³⁵.

When a decision is taken to break up a commercial strike, the soldiers begin to weld stores shut as a punishment, or, alternatively, to break the locks and open the doors by force. The merchants are then forced to sit in their stores to prevent looting. At other times they paint an "X" sign on the closed stores, and return later to impose substantial fines, interrogate, harass or put the storekeeper on trial. At other times, they proceed to the houses of some of the merchants and escort them to their stores and force them, at gunpoint, to open up. In one incident, on May 13, 1980, the Israeli military, anticipating a strike, rounded up 120 merchants from East Jerusalem at midnight, took them to the police station and forced them to sign undertakings to open for business the next day.

A number of them were detained at the station until morning when they were escorted to their shops.

Books, Pamphlets and Other Publications

All printed matter in the West Bank is subject to censorship. Regulation 88(1) of the British Emergency Defence regulations grant the following sweeping power to the Censor:

"The censor may by order prohibit the importation or exportation or the printing or publishing of any publication (which prohibition shall be deemed to extend to any copy or portion of such publication or of any issue or number thereof), the importation, exportation, printing or publishing of which, in his opinion, would be or be likely to be or become, prejudicial

for the defence of palestine or to the public safety or to public order.

(2) Any person who contravenes any order under this regulation and the proprietor and editor of the publication, in relation to which the contravention occurs, and any person (unless in the opinion of the court he ought fairly to be excused) who has in his possession or his control or in premises of which he is the occupier, any publication prohibited under this regulation or who posts, delivers or receives any such publication, shall be guilty of an offence against these regulations."

The Military Commander assumed these powers by virtue of Order No. 101³⁸. These powers have been widely used to prohibit the distribution, sale or possession of a large number of prohibited books.

In the 23 appendices already published listing the thousands of prohibited books appear such books as Shakespeare's Merchant of Venice in Arabic, the complete collection of the love poetry of the Syrian poet Nizar Kabani, a book on creativity by Khaladeh Said, and hundreds of books on history, religion, science and literature.

Furthermore at the points of entry from Jordan, books and other written material are closely examined and their carriers interrogated regarding their content.

All material published in the West Bank is also subject to censorship.

Press Freedom

Three Arabic newspapers are published in Jerusalem for distribution mainly in the West Bank. These newspapers are under very strict censorship. Everything they print, including sports news and advertisements, must first be cleared by the Censor.

Censorship is not limited to matters warranted by security considerations, but extends to other areas as well.

A study undertaken by an Israeli newspaper, *Al Hamishmar*, showed that one Arabic newspaper, *Al Fajr*, had 30% of its editorials crossed out by the censor during a period of 45 days³⁹. News reports are also carefully screened so that the public is pre-

sented with the picture that the censor wishes it to see. Phrases and even adjectives which the censor disapproves of are systematically crossed out. Even in the literary sections, words having a symbolic political meaning such "the stalk of wheat", "the soil", "the beloved", are crossed out⁴⁰. The Israeli censorship law prohibits leaving a blank where the Censor has crossed out material, so that poems and short stories often sound truncated and incomprehensible after the censor has made his deletions.

Newspapers published in Israel enjoy greater freedom, but even these newspapers, if they wish to be distributed in the West Bank must go through the same draconian censorship. Military Order No. 50 prohibits the importation into the West Bank of newspapers or other publications without a permit⁴¹. This permit is usually given on a yearly basis by the authorities, pursuant to this Order and to the British Emergency Defence Regulations, section 94 of which states,

"94/1

no newspaper shall be printed or published unless the proprietor thereof shall have obtained a permit under the hand of the district commissioner of the district in which the newspaper is being, or is to be printed.

94/2

the district commissioner in his discretion and without assigning any reason thereof, may grant or refuse any such permit and may attach conditions thereto and may at any time suspend or revoke any such permit or vary or delete any conditions attached to the permit or attach new conditions thereto."

On the basis of this provision, the yearly licenses of *Al Fajr* and *Al Shaa'b* newspapers were withdrawn in May and June 1980, with the result that they were cut off from their public and their revenue sources. The reason given by the military officer making the order was that he was "convinced that publishing and distributing *Al Fajr* newspaper in the area of the West Bank affects security and public order in the area."⁴² It is difficult to see how this could be the case since every word published in the newspaper was pre-censored. Two weeks later the papers were again permitted to distribute in the West Bank, after a warning that the permits might be withdrawn again. The object of the

temporary closure appears to have been to seek to moderate the tone of the newspaper.

In addition to censorship and restriction on distribution, newspapers also suffer various forms of harassment by the authorities. Their editors are interrogated and sometimes prevented from coming to work by a "stay-at-home" order⁴³.

They also face great burdens in obtaining telephones, telex, and international news agency services, which are offered to Israeli newspapers on a priority basis.

Gag Orders

Israel uses different means to restrict the freedom of speech of different types of people. No direct restraints are imposed on the majority of the population, who exercise self-restraint because of their fear of informers. Vocal or prominent Palestinians, however, are subjected to direct controls. These range from severing their telephone lines, to issuing to them direct "gag orders" prohibiting them from making political announcements, public speeches, or speaking to news reporters⁴³. Even without a specific gag order, a Palestinian is never sure how far he may go before he is persecuted for what he says. Bassam Shaka', Mayor of Nablus (before the assassination attempt that left him crippled), was jailed and faced deportation because of statements he made in a private conversation with an Israeli officer on Nov. 6, 1979⁴⁴. His status and standing in the community attracted intense public and international pressure, and resulted in the abrogation of the order for his deportation.

Knowledge on the part of the ordinary man of the possible persecution he may face usually leads to self-restraint and makes direct restrictions on his freedom of speech unwarranted.

In short, it can safely be stated that the law and practice on the West Bank does not permit the exercise of freedom of thought and expression in any manner which is contrary to the wishes or interests of the military government.

Section 8

Academic Freedom

Implicit in the right to academic freedom is an atmosphere in which the attitude of the government towards academic institutions, teachers, students and research activity is favourable if not benevolent. Unfortunately, however, no such atmosphere exists in the West Bank.

From the very beginning of the occupation, there has been tension, hostility and animosity between the military authorities and Palestinian educational institutions⁴⁵. The authorities continue to view them as "hotbeds of radicalism" and "schools of terrorism"⁴⁶. They also viewed students as a dangerous disruptive element which threatens the security of the occupation forces. This attitude was summed up by the Israeli Deputy Attorney General during his defence of the government action in closing Abu Dies Arab College, when he stated before the Israeli High Court of Justice, on July 14, 1980, that "where there are schools, there will be demonstrations, stone-throwings, raising of flags and therefore a threat to security."⁴⁷

It is true, of course, that the student body has become politicised. They have on various occasions given expression to their nationalistic fervour in demonstrations, strikes and other forms of political expression.

When other sectors of West Bank society make any form of political expression, they are treated very harshly. If they are merchants, their shops are closed, if they are professionals their licenses are withdrawn, etc. Students are more idealistic, and have

less to lose. So although the military authorities have not treated the students less severely than they did the rest of society, they have not succeeded in quelling the students' rebellious spirit. With the students' increasing political awareness and the military authorities' determination to daunt their spirit, there are many cases of inhuman treatment and malpractices which violate the right to academic freedom. Described below are some of the practices of the occupation which deny academic freedom and which have aroused the reaction of students, as well as practices resorted to against the students and teachers.

Books and Textbooks

The Israeli Military Governor assumed the authority of the Jordanian Minister of Culture and Education by virtue of Military Order No. 91, and then delegated the authority to an officer in the Israeli army. The officer exercising this authority banned school textbooks and altered others in radical ways⁴⁸. Amongst the subjects to suffer most from the alteration were history, geography, civics, literature and religion.

Elementary and secondary school teachers in public schools were strictly warned not to lecture from external sources and to confine themselves to the approved textbooks. Furthermore, all books in school libraries are censored.

Invasion of School Premises and Provocation of Students

In 1978 there was a tense day in the West Bank. Strikes, demonstrations and protests were expected throughout the West Bank to protest against the Israeli invasion of Southern Lebanon. At the Beit Jala Elementary School for Boys, however, all was quiet. An inspector from the office of the Officer in charge of Education found that everything was normal at 8 a.m. At 9 a.m. several army vehicles invaded the school. Soldiers closed the windows of the classrooms, and were posted outside each classroom door. At a given signal, they opened the doors, threw tear gas canisters into the classrooms, and held them shut. Students suf-

focated, panicked, and jumped out of second floor windows to escape the tear gas. Some of them suffered injuries and broken limbs.

In another tragic incident, the Tulkarem Military Governor and his assistants chased three Palestinian students in the playground of an elementary school in Anabta and shot and killed a 16-year old student called Nader Abu. The Israelis claimed that Nader Abu had been throwing stones and that he tried to stab the Governor with a penknife. As a result of this incident, the school was closed and the town was put under curfew for several weeks⁴⁹.

School authorities often complain that the presence of Israeli soldiers on the campus and their behaviour provokes the students and invariably results in violent confrontation. They claim that they are able to control demonstrations on school premises, and that the army's presence and interference only causes the situation to escalate and results in violent confrontation, closure of the school and the loss by the students of study time.

Closure of Schools

The authorities have often resorted to closing schools as a punishment for political activism or in anticipation of demonstrations, or to prevent a large number of students from assembling in one place. Closing schools results in loss of teaching days, lowering of academic standards and general deterioration of academic institutions.

A well-known example of the implementation of this policy is the closure of Bir Zeit University. On May 2, 1979, following the shooting of a university student by an Israeli settler, Professor Ezra Zohar, the University was closed indefinitely⁵⁰. It was only allowed to re-open the following academic year after an intensive campaign was launched on its behalf, which included protests by Israeli academicians. About the same time, Bethlehem University was closed for a number of days as well as several secondary schools, and two teachers' training colleges were closed for more than three months⁵¹.

In 1979 the students at the Tireh UNRWA Vocational Training

Center lost a whole academic year because of these closures. The Israeli Newspaper, *Davar*, commenting on this policy said that "the closing down of schools and the suspension of studies have become routine security policy of the military government in the administered area."⁵²

In addition to closing schools, the Israelis have amended Jordanian law to make it necessary to obtain a permit from the military governor to open any new academic centre or to continue operating an existing one, and this permit must be renewed annually⁵³. The military governor exercising this newly acquired authority ordered the Arab College of Technology at Abu Dies to close down⁵⁴.

The justification for this order was expressed in very general terms, as being necessitated by "security considerations". This new amendment to Jordanian law consolidates the power of the military government over academic institutions and makes their continued existence dependent upon the absolute discretion of military governor.

The loss of school days, however, is not always the result of the direct orders of the military government. It is often the case that students themselves call for a strike to protest against certain Israeli policies or practices⁵⁵.

Neglect of the Public School System

Under Military Order No. 91, the entire public school system in the West Bank came under the direct authority and control of the Military Government. Public school directors complain that since that time the Military Government has shown no interest in improving or expanding the educational facilities, laboratories, libraries, buildings or teaching standards. The quality of public education in the West Bank has shown a steady decline in the last thirteen years. In spite of the considerable increase in the school population, few new schools have been built during this period, and this has led to severe overcrowding in the classrooms. In addition, deterioration of existing buildings is left to the initiative of the local community to redress. Budgetary allocations have not kept pace with the inflation and the increased needs.

There have also been staff reductions in most areas. The staff of the Technical Office of the department of education, for example, was reduced from eleven to two. The salaries at present offered do not attract competent teachers. At the beginning of the occupation, teachers could subsist on the Israeli salaries, because the Jordanian Government continued to pay their regular salaries. Now teachers have only the Israeli salaries paid in Israeli currency which are inadequate for their needs, especially as, unlike the salaries of Israeli schoolteachers, they are not tied to the cost of living index. The resulting deterioration in teachers' morale is deepened by the strict control imposed over the opinions and political views of the teachers. Those whose views are not acceptable may be dismissed or transferred to distant locations⁵⁶. Individuals guilty of "security offences" are denied teaching positions.

The Military Government exercises strict control over all activities in the school. It must approve any meetings, clubs, cultural or extra-curricular activity in the school. This also applies to private schools, but it is not strictly enforced in their case. No play may be performed, tour given or even teachers' meeting held without the prior approval of the Military Governor. Even sports events are sometimes cancelled for fear that they might turn into political demonstrations⁵⁷. It is clear that such control cannot be exercised continuously, but it casts an ugly shadow over academic freedom and stifles creativity and initiative.

Measures frustrating the Development of the Colleges and Universities

There are no public universities in the West Bank. The four existing ones are all private institutions. The authorities, however, have not made it easy for these Universities to function. For example, they refuse to allow Bir Zeit University to import laboratory equipment, office machines and building materials free of customs duty and taxes, in spite of an agreement to this effect made between the University and the Jordanian Government and contrary to the practice followed with institutes of higher learning in Israel⁵⁸.

Furthermore, the University has been denied permission to subscribe to some 60 Arabic academic periodicals all of which deal with non-political subjects such as history and economics⁵⁹.

In addition to the measures described above directed at academic institutions, teachers and students are often singled out from among the population for harsher treatment.

The teachers, for example, face particular difficulties in obtaining work permits. Those who come from abroad (including Palestinian professors who were not in the territories when the census was taken after the Six Day war) are often denied work permits⁶⁰. Some of them enter and remain in the country on temporary tourist visas. If the authorities are displeased with them, they refuse to renew their visas, thereby in effect terminating their services.

Obtaining a permit provides no security of status. A foreign professor may have his permit cancelled and be deported, as happened in June 1980 to the head of the geography department at Najah University in Nablus⁶¹. No reason was given in that case for this action and the professor had to leave within 72 hours.

Israeli Arab professors, need a special permit from the military governor of the area in which the university is situated to work in the West Bank. Sometimes they are served with "restraining orders" forbidding them to set foot on the West Bank⁶².

Strict control is also exercised against public school teachers employed by the military authorities. No teacher is appointed who was convicted of a security offence (a wide category covering almost any political activism) and teachers who have views of which the authorities disapprove are often punished by being transferred to positions far away from their place of residence⁶³.

It is the students, however, who face the worst problems. They are singled out at road blocks for harassment. They are often turned back on their way to or from school, without being given any reason⁶⁴. They constantly live under the threat of being called in for interrogation where they are required to give information about their political views and those of their professors and fellow-students. Hardly any university student escapes these interrogations. During times of strikes and demonstrations hundreds of students may be called in for questioning⁶⁵. According to students' reports these are frequently accompanied by physical

beatings and humiliations. Every effort is made by threat or promise to recruit students to act as informers. Those wishing to study abroad are sometimes threatened with being denied travel permits if they do not consent to act as informers. The result of all this is that an atmosphere of fear, intimidation and lack of trust prevails in schools and academic institutions. Teachers and students feel that they must choose their words carefully. They cannot discuss freely any subject that may be viewed by the authorities as political.

The practice of calling students for interrogation at examination times is also common. The trauma of the interrogation, even if the student is released in time to take his examinations, affects his academic performance. If he is not released in time, he is forced to repeat the academic year as the matriculation examinations are held only once a year. Often the mere threat to detain a student at the time of his final examinations is effectively used to intimidate him.

Discouragement of Research

The military authorities of the West Bank have been generally suspicious of attempts to gather data or conduct research. They refused, for example, to grant a residence visa to Mr. Paul Quiring, a representative of the Mennonite Central Committee, a relief agency, when they learned that he had researched and published an article concerning settlements. Another researcher who was doing field research on cooperatives was arrested and harassed. Even those intending to carry out research that has no political significance must obtain prior permission which is rarely granted and if so only after a long delay⁶⁰. Public school principals have orders not to permit anyone to carry out research on their schools without the permission of the military government.

References

1. Military Order No. 25.
2. See Sabri Jiryis, *The Arabs in Israel*, Monthly Review Press, N.Y., 1976, ch. 4.
3. Law of Land Expropriation for Public Purposes, 1953.
4. See Section 3 below on the Right to Development.
5. See Military Proclamation No. 2.
6. According to a recent report in *Ma'ariv*, an Israeli newspaper, the security authorities were suspicious of the activities of international voluntary agencies in the West Bank and Gaza in the areas of education, social services and development, although such programmes are approved by the authorities. The report went on to say that the reason for this suspicion is that the dependence of the population on Israel is thereby reduced, and they eventually may come to be capable of standing on their own feet (*Ma'ariv*, 17.7.1970).
7. *Monthly discharge of underground water in Judea and Samaria, 1977/78*, Water Dept. of the Military Government of the West Bank, cited by Dr. Hisham Awartani, Research Bulletin No. 1, Al-Majah National University, Nablus, West Bank, Nov. 1978.
8. For example, exploding "Tempo" soda bottles, which were banned in Israel, were allowed to continue on sale in the West Bank until the stock of dangerous bottles was consumed.
9. Article 64, Fourth Geneva Convention, 1949.
10. See Part Three of this study on changes to Jordanian laws.
11. Article 49 of the Geneva Convention; for an examination of the Israeli arguments on this issue, see *Review of the International Commission of Jurists*, No. 19, December 1977.
12. *Jerusalem Post* of April 25, 1980.
13. See section 8 below on academic freedom.
14. Later replaced by Military Order No. 378.
15. Military Order No. 5.
16. "West Bankers Travel Dependent on Obedience", *Jerusalem Post*, 29 Aug. 1979.
17. Military Order No. 151.
18. See section 1 (collective punishment).
19. In each of these cases, extended curfews of over 10 days each were imposed during the year 1979-1980.
20. An example of this was the curfew at Ein Yabroud in April of 1980, which cut off Taibeh, Ramoon and other villages from the town of Ramallah.

21. This order was later replaced by Military Order No. 378, which retained the same provisions.
22. Article 33. However, the acceptance of the applicability of the Convention is not essential to this chapter. The principles enunciated here are valid concerns of the rule of law regardless of the applicability of the convention.
23. Interview with Binyamin Ben Elieser, Military Commander of the West Bank, *Jerusalem Post*, 20 Sept. 1979.
24. See Section 4 above.
25. *Al Fajr* (English edition), May 18, 1980.
26. One of many such cases was recently reported in the *Jerusalem Post*, July 2, 1980. Three houses were demolished and two others sealed. They had been occupied by suspected guerrillas.
27. *Al Fajr* (English edition), May 18, 1980.
28. This building was taken over by Jewish families who were trying to start an illegal settlement in the heart of the Arab town of Hebron.
29. *Testimony of Soldiers*, report by Israel Shahak, published in *Al Fajr*.
30. Each of these places suffered some such measures during the extended curfews they were subjected to. See Part Two, Section 4 (curfews) below.
31. *Jerusalem Post*, June 10, 1980.
32. This Order is printed in full in the Appendix.
33. See Section 8 below.
34. See full text of the Order in the Appendix.
35. See Section 2 on Military Courts.
36. Military Order No. 101, section 5.
37. *Jerusalem Post*, May 14, 1980.
38. Military Order No. 101, section 8.
39. Quoted in *Al Fajr* 27/10/79. It is curious that *Al Fajr* could not tell its readers directly about censorship, but was able to inform them only through translation of an Israeli report.
40. The stalk of wheat refers to the future, and to hope. The soil and the beloved represent the homeland and the love of it. A whole Palestinian genre of symbolic literature has arisen, due to the repression of political speech. The Censor however, attempts to keep abreast of this literature, and to censor it.
41. Issued July 11, 1967.
42. Cancellation of Yearly License and Order against Importation No. 1/80.
43. For example, see *Jerusalem Post*, July 15, 1980.
44. The *Jerusalem Post*, Nov. 7, 1979, *et seq.*
45. The first academic year after the occupation was marred by a long general strike of students and teachers to protest against the new textbooks Israelis tried to impose.
46. See *Birzeit University in the Israeli Press*, 1.3.1979–15.5.1979, published by Birzeit University.
47. Case No. 322/8 (unpublished).
48. Military Order No. 107, for example, listed 55 textbooks which were prohibited outright in schools.

49. Reported in *Jerusalem Post*, May 2, 1980.
50. *Ha'aretz*, May 2, 1979.
51. Statements about disruption of education, issued by the Council of Higher Education, Jerusalem, May 9, 1979.
52. *Davar*, June 8, 1979.
53. Military Order No. 854.
54. The decision to close Abu Dies college is at present the subject of an appeal before the High Court of Justice in Israel.
55. On rare occasions the administration or the student council call for a strike, as was the case when Birzeit University declared a one day strike on March 13, 1977 to protest against the invasion by soldiers of the University campus, which resulted in the shooting and injuring of four students who were participating in a peaceful strike. See Birzeit University statement, March 13, 1977.
56. See section 4 on freedom of movement.
57. *Jerusalem Post*, May 7, 1979.
58. An application to exempt Birzeit University from these taxes was made in 1970, but was refused. Israeli educational institutions are rebated for any customs duties or value added tax that they incur. Official statement circulated by Birzeit University, January 15, 1979.
59. Press Conference, Gabi Baramki, Acting-President of Birzeit University, Dec. 1, 1978.
60. Several professors at West Bank universities are employed pending receipt of the permit. Others, who do not accept such a precarious employment situation and who fail to get a permit in time, opt for taking employment elsewhere.
61. *Al Quds* newspaper, 22.7.1980.
62. *Birzeit University Protests Renewed Harassment*, Official statement issued by the University, January 15, 1979.
63. One Ramallah teacher was assigned to a part-time position in Jericho, a journey that takes 1 1/2 hours each way by public transportation.
64. For an example of this frequent occurrence, see report published in *Al Quds* daily newspaper on June 13, 1980.
65. See, for example, the *Jerusalem Post* of May 7, 1979.
66. The authorities, for example, refused to grant permission to five Birzeit students who needed to conduct research in public schools as part of the requirements of the graduate program. All the topics were non-political in nature. Birzeit Statement published on March 16, 1979.

Part Three:
Israeli Alterations to Jordanian Law

Section 1

Introduction

Immediately after the cessation of hostilities in 1967, The Israeli Military Commander in the West Bank issued Military Proclamation No. 2 concerning the assumption of government by the Israel Defence Forces, section 3 of which states:

Every governmental, legislative, appointive and administrative power in respect of the region or its inhabitants shall henceforth be vested in me [The West Bank Area Commander] alone, and shall only be exercised by me or by persons appointed by me for that purpose or acting on my behalf.

Initially, the military authorities exercised their wide-ranging legislative powers cautiously. The Area Commander generally prefaced military orders with some justification explaining his rationale as to why he believes the order to be necessary for security reasons. Later on, however, this ceased to be the case, and the military freely and confidently legislated in the most sweeping manner. For instance a recent order changing land law is boldly introduced. It reads as follows: 'By virtue of the powers vested in me as Area Commander, I order as follows...' This confidence is also reflected in the fast pace and volume with which new orders are issued, drastically changing Jordanian law so as to adapt it to Israeli policies.

Although the development of official Israeli thinking over the past thirteen years is difficult to piece together from the limited material available to the general public, it is possible to discern it

by analysing policy statements and changes in the practices of the military government of the West Bank.

In the beginning the primary considerations were to safeguard the security of Israel, exercise strict and total control over the West Bank, and present an image to the world of a benevolent occupation. The first military orders passed confirm the primacy of these objectives. The first order announces the assumption of control of the Israeli army over the area. The second declares the transfer of all legislative and administrative powers to the hands of the Area Commander and announces that (consistently with international conventions on military occupation) the laws in force in the area shall continue to be applicable. Subsequent orders dealt with security matters and confirmed the obligation of compliance with the provisions of the Fourth Geneva Convention concerning the protection of civilians during times of war. Then there were other orders by which legal, financial, property, educational, banking and other basic matters were dealt with. These vested various powers and discretions some in the hands of government ministers and others in the hands of military officers.

A survey of the orders passed during the first three years confirms that they fulfil the above objectives in the order of priority listed above. After that the picture begins to change.

The Israeli occupying power came to realise that the control over close to a million Arabs in the occupied territories was easier and more manageable than they had expected. They found that they had also succeeded in neutralizing opposition to administrative and legal changes. The judiciary which they had established proved unwilling or unable to challenge in any way the administrative and legislative acts of the occupation.

The Western world had become convinced of the benevolence of the occupation and the compliance of the occupying power with international conventions. However, Jordanian law continued to be a stumbling block on the way to achieving Israel's now changing policies over the West Bank.

In 1970 Moshe Dayan proposed that a governmental committee be set up to study Jordanian laws with a view to replacing them with Israeli laws. A month later, Dayan withdrew his suggestion. After evaluating the situation he realized that applying Israeli law over the West Bank would be tantamount to annexation.

tion, which was not a step that Israel was politically ready to take, in addition to the many problems which annexation would entail. The same advantages for Israel could be gained if Jordanian law were preserved and the Area Commander made substantial amendments to it. In this way, none of the disadvantages of annexation would have to be suffered. The Area Commander, then began to exercise more freedom in amending Jordanian law to meet Israel's needs, and the subject matter and the pace of issuing new orders underwent a basic change.

In effect the Area Commander assumed full legislative power. Judging from the quantity of military orders already passed, numbering 854, these powers have been fully exercised. Each of these orders is equivalent to a new law. The number of orders dealing with security matters or matters that may be said to be related, even remotely, to security matters, is small. The rate of passing new laws on the part of the military commander exceeds by far that of the Israeli kneset or of the Jordanian parliament before 1967. The reason for this is that unlike a government which has to legislate through a duly elected Parliament, the Commander has full and unfettered powers, which to date have not been effectively checked. All attempts at challenging them in the civil or military courts of the West Bank or in the High Court of Justice In Israel have proved unsuccessful.

Among the advantages of this arrangement were

- there was no need to annex the territory, with all the consequences that would entail in terms both of external relations and of having one and a half million arab citizens of the State;
- it avoided giving to Arabs of the West Bank the legal rights of Israeli citizens, rights which are denied to them under the occupation;
- whenever the question arose, the claim would still be made that it is Jordanian law that is being applied to the West Bank. The fact that this body of law has been altered beyond recognition is not mentioned or generally known.

In this way the population were denied on the one hand the protection afforded by a strict application of the rules of international law governing militarily occupied territories, and on the

other hand the legal rights which would result from Israeli citizenship.

It is curious that although other areas of West Bank life have been investigated by interested international bodies, the general prevailing belief, as far as the law is concerned, is that Jordanian law continues to be in force and that the judiciary is allowed to function normally. This mistaken image has been repeatedly confirmed by apologists for Israel. Allen Gerson in his book written in 1976 on International Law and the West Bank, writes that "the Israeli military authorities have made few additions or revisions to the laws and regulations in force at the time of their assumption of power. New or amending penal legislation was confined to security offences. Legislative enactments and revisions on the civil side were generally concerned with the maintenance of public order and safety."

Nor is the awareness of the true legal situation any more enlightened amongst residents of the West Bank. Until very recently new Military Orders were never the subject of any discussion, comment, or debate. This is due to the fact that these orders are not made available to the public. They are not reported in the press or on the radio. They are not published in an official gazette, but merely distributed amongst practicing lawyers and collected later and bound into volumes which are made available only to the lawyers. New lawyers cannot obtain back issues because very limited numbers were published. Non-lawyers asking to be sent these orders are refused copies. No public library on the West Bank has a set of the Military Orders. Some regulations affecting specific groups of people in the society are distributed only to those with whom they deal. Lawyers are not provided with these.

If a member of this class wants to challenge these orders but has lost his copy, the lawyer is unable to take up his case because there is no place where he can obtain these orders. If the order is for expropriating land or building a road, the people concerned are only notified orally.

With such limited circulation of these orders, it is perhaps not surprising that although the law has been substantially changed, public awareness of this change is very limited.

There are many indications now that the objectives specified

above as being the concerns of Israel during the first 3 years of the occupation no longer have the same order of priority. Although security continues to be an important concern of the military government, it is no longer given as a justification for passing new orders. As mentioned above, whereas the preamble used to mention the Commander's belief in the necessity of the order" for preserving the security and public order," now the Commander prefaces new orders with such phrases as "In my capacity as Area Commander," or, "Pursuant to the powers given to me by virtue of [a named Jordanian law]." This change in style indicates also that projecting an image of Israel as a mere occupier is not any longer a priority. The new contention is that Israel is an administrator rather than an occupier of the territories. A significant change which further indicates the disappearance of this objective is the deletion of article 35 of Proclamation No. 3 of June 7, 1967. This article states that the military forces and their officers must apply the terms of the Geneva Conventions of 12 August, 1949, concerning the protection of civilians during times of war and concerning everything that affects legal proceedings, and that if there should be any contradiction between this Proclamation and the said Convention, the terms of the Convention must be followed. This article was soon repealed by Military Order No. 144 of October 22, 1967, and it has not since been restored.

First in the order of priorities now is the exercise of strict and absolute control. To this end hundreds of military orders have been passed. With the assurance that the legislative activities of the military government are not being monitored internally or internationally, the authorities have proceeded with confidence to make far-reaching changes in many crucial fields of Jordanian law.

Some of these orders purport to be amendments when in fact they do not amend but create new laws. One such order is Military Order No. 658 entitled "Order amending the law on local products." This order has created a new tax, the value added tax, which did not previously exist.

Others amend existing law to achieve a concentration of power in the hands of an officer appointed by the Area Commander. In other cases, Jordanian law is amended to make it a requirement to obtain a permit for carrying out certain activities which did

not previously require official sanction. An officer in the Israeli army is then appointed and vested with the power of giving such permits.

Still other orders make it illegal for certain categories of people, such as those who have been convicted of security offences, to be nominated for any post in a labour union or to teach in universities or schools.

Military orders dealing with the judiciary and the legal profession and affecting the independence of the judges, the constitution of the courts as well as those which reduced the jurisdiction and powers of the courts have already been discussed in Part One. Specific orders, the effect of which was to deprive the population of the West Bank of basic rights previously guaranteed by the law, were reviewed in the Second Part. In this Part some of the other main areas of Jordanian legislation which the Military Orders have affected will be surveyed.

Section 2

Land Laws

Land expropriation

The Jordanian law applicable to this subject is Law No. 2 on Expropriation of Land for Public Purposes of 1953. According to this law an authority or corporate body wanting to expropriate land must first publish in the Official Gazette its intention to submit to the Council of Ministers the application for expropriation of the land specified in detail in the Gazette. If no objections are submitted within 15 days the approval of the Council of Ministers is applied for. When this approval is obtained, it must be endorsed by the King. It is then published in the Official Gazette and thereafter the person, authority or body interested in making the expropriation submits to the Registrar of Lands in the area where the land is situated the list of names of the owners of the land in question, as well as a copy of the decision of the Council of Ministers endorsed by the King. The body requesting the order must then compensate the owners of the land with an amount equal to the market value of the property on the date of the expropriation. The competent court to which any of the above decisions may be appealed is the Court of First Instance in whose area of jurisdiction the land falls.

The Military Orders amending this law¹ have brought about the following changes:

- A military authority appointed by the area commander has been given all the powers and privileges which according to the Expropriation law were vested in the Jordanian government.

- The requirement to publish the intention to carry out an expropriation, the need to obtain the approval of the council of ministers and endorsement of the king, the necessity to publish again the approval, and the requirement to submit the pertinent documents to the land registrar are not applicable when the body seeking the expropriation order is one appointed by the Military Commander.
- The right of the owner of the land to appeal against the expropriation or the compensation to be paid for the land has been transferred from the Court of First Instance to the Objection Committee. The effects of this change has already been discussed in Part One, Section 3.
- A new article has been added to the law whereby the area commander may order that force be used to evacuate the owner of the land if he refuses to vacate it within the period decided upon by the Area Commander. Anyone resisting such an order may be imprisoned for a period of five years or fined or made to suffer both punishments.

The effect of the above changes is to make it possible for sponsors of Israeli settlements and any other body of which the military government approves to expropriate land quietly without having to go through the requirements of announcing his intention or obtaining permissions from non-military bodies. It also removes from the local courts the power to review decisions as to expropriation or as to the compensation to be paid for the expropriated land. The aggrieved party is left with the remedy only of appealing to the Objection Committee which, as explained earlier, is composed entirely of military personnel. Finally in many cases, it has imposed a heavy punishment on any owner resisting the execution of the order.

As a result of all this a very large number of expropriations orders have been made quietly by the military authorities affecting a substantial percentage of the Jewish held lands in the West Bank. The victims of these orders feel aggrieved and few bring appeals to the Objection Committees in view of their nature.

Another tactic used by the authorities is to announce that in their opinion a certain area of land is public land² and that they have therefore the right to expropriate it for the building of a

settlement on it. They inform the village elder (mukhtar) and ask him to let anyone who makes any claim to the land know of the intention to expropriate the land. In this way the burden is then placed on the owners to prove their ownership, and this they are obliged to do before the Objection Committee³. The difficulties they have to meet there are often insurmountable. To begin with the Objection Committee is not legally qualified to decide matters of land ownership and in no other case do they have jurisdiction to do so. There is then the difficulty of proving in a conclusive manner the fact of ownership. Usually lands which are the subject of such orders are lands surrounding villages whose owners do not possess certificates of registration of the land, because the area has not been subjected to the operations of the committee settling disputes over land. Their evidence of possession usually consists of certificates of payment of tax on the land, deeds of purchase of the land and the oral evidence of elderly persons who can swear under oath that they know these lands to have been since their youth in the ownership of the family claiming ownership. None of this evidence, however, is conclusive proof. The Objection Committee, which has little or no knowledge of the prevailing land law and the law relating to the accepted methods of proving title to land, usually rejects this evidence and decides in favour of expropriating the land. This decision is not subject to any right of appeal.

Restrictions on the use of land

Restrictions on building

The Military Commander has powers by virtue of Military Order No. 393 to prohibit building or to stop construction activities or to make them conditional, if he believes that this is necessary for the security of the Israeli army in the area or for public order. He may also order that any building erected contrary to the provisions of this order be demolished. By building is meant, according to the order, "any building whether of stone, cement, brick, iron, wood or any other material or any part of a building, or any wall of a building." Similarly, building activity is defined in the widest terms.

Transfer of land and water rights

Under Jordanian law any sale, transfer or other disposition of any right over land and any contract for the lease of land or water rights for more than 3 years has to be registered with the Land Registry before it takes effect. By Military Order No. 25 no such transaction and no lease which is automatically renewable can now be entered into without first obtaining the approval of the Custodian of Absentee Property (see Part Two, section 2).

Closed areas

The Military Commander, pursuant to his powers described in Part Two, section 4 above, has declared vast areas of land "closed areas"⁴. This means that except for those holding permits from the Commander no one may enter or leave the area. Military Order No. 388, for example, declared the Ghor area (the River Jordan valley) a closed area as a prelude to the building of settlements there.

Irrevocable powers of attorney

The period of effectiveness of irrevocable powers of attorney was increased from 5 to 10 years and then a short while later to 15 years⁵. The significance of this amendment can only be appreciated when some aspects of the land law prevailing on the West Bank are explained.

Sale or any other transaction in land must always be carried out at the land registry department. Contracts signed outside are usually void. However, it is possible to enter into a binding agreement to dispose of land through the instrument of an irrevocable power of attorney, which serves also as proof of receipt of the sale price. A sale which is agreed to in this way takes effect when it is registered and must be registered by the attorney within the period of five years. According to Jordanian law this is the life-span of an irrevocable power of attorney.

Apparently many Israelis bought land from West Bank residents in this way. The West Bankers who sold these lands preferred this method because it is less public and does not require them

to go to the department of land registration. It seems that some of the Israelis who bought lands in this way, either due to negligence or ignorance of the law, did not register the lands at the registry within the five year period. The military authorities came to their rescue and issued an order prolonging the period from five years to ten. Apparently other Israelis, who had bought lands even ten years before and had not registered, then lobbied the authorities to make yet another order to extend the period to 15 years. The military authorities did not disappoint them. Now the law has been changed by Military Order No. 847 to make the life span of irrevocable powers of attorney 15 years.

Restrictions on land purchases by foreigners

Jordanian Law No. 61 of 1953 restricts the right of legal bodies (defined in the law as charitable and religious institutions) to own more land than is necessary for realizing the objectives for which the 'body' was established. Military Order No. 419 gives the Military Commander discretion to permit them to purchase land even if they do not fulfil the conditions provided in the law. This gives greater flexibility to the acquisition of land for purposes of settlements.

Property possessed or leased by the Custodian of absentee property

Such property is declared immune from the provisions of the rent laws by Military Order No. 293. The prevailing rent laws provided a great measure of protection to the tenant. A tenant could not be evicted, except in very few cases, despite the fact that the term of the contract of lease has expired. This measure of protection has been denied tenants who rent their property from the Custodian who may, as is often the case, merely hold the share of the property belonging to someone who was a sister or brother of the owner of the other shares in the household, who happened to be outside the West Bank at the time when the 1967 war took place.

Orders declaring certain areas natural parks

The progression of these orders is as follows. It begins with Military Order No. 166 dealing with the preservation of natural areas, where it is stated that no person may injure or interfere with an animal or plant or object found in an area called a natural preserve. Interference is defined as demolishing, breaking, injuring, plucking, uprooting, taking, changing the shape of, etc. This order was then amended⁶ by adding to the prohibited actions that of constructing any building on the land. Soon after that, another order was passed stating that the phrase "interference includes any action for building" is to be struck out⁷.

If the motivation for passing this order was ecological then this latest amendment whereby building in the area is no longer prohibited is hard to explain.

All powers which are vested by the Jordanian Law for Regulating the Conditions of Natural Resources, No. 37 of 1966 in the department of Natural Resources, the President of the Authority for Natural Resources, the Prime Minister, the King or the President of the Civil Service Department, are given by Military Order No. 389 of Nov. 6, 1973 to a department established by the Military Area Commander.

Section 3

Military Orders Amending Laws Dealing with Water Rights

The Jordanian Law on the Supervision of Water No. 31 of 1953 provides for the necessity of obtaining the approval of the manager of the Department of Irrigation and Water for any irrigation scheme. This is a civil department which will grant permission unless convinced that the irrigation scheme will cause damage to any land or any other scheme or road. Military Order No. 158 provides that installations for drawing subterranean water may be set up only in accordance with the provisions of the order. Article 4(A) of the order states that "it shall not be permissible for any person to set up or to assemble or to possess or to operate a water installation unless he has obtained a licence from the Area Commander." Owners of such water installations are then exempted from the necessity under Jordanian law of obtaining a permit for the irrigation scheme. Those who prior to November 19, 1967, owned such installations have to submit applications to the Area Commander for new licences⁸. The Commander may refuse to grant the licence without showing any cause⁹. The order also gives him the power to cancel any licence or amend it or make it conditional or change any of its conditions as he wishes¹⁰. Finally, to make the power of granting licences for irrigation projects completely discreet and under the absolute control of the military authorities, the requirement of having to publish any matter relating to the law by posting it in the village in question and by sending notice to the inhabitants of

the village, is done away with. The Area Commander can now publish the matter merely by posting it in his office.

The importance of the amendments made by this order can be appreciated when the case of the "Auja" spring is recalled. It was only by virtue of this order that the Jewish settlers in that area could obtain a licence to dig their well near the Arab spring, causing it to dry up and the plants of the nearby farmers to wither. If the previous law was applicable, such a licence would have been denied because it is clear that damage would be caused by the irrigation scheme to adjacent schemes and lands.

Section 4

Amendments to Laws Dealing with Municipalities and Town Councils

The Jordanian municipality law has undergone many amendments. The first was soon after the war and it extended the term of office of the mayors on the ground that it would endanger public order to hold elections¹¹. In April of 1980 after elections had been held without endangering public order, the Area Commander issued Order No. 830 which stated that despite anything in the law or in previous orders, the term of every municipal council shall continue. Another article of the order further provides that "if the number of members of the council falls below the number provided for by the law, or the quorum provided by the law, the council shall continue to exercise its office in its diminished number until [the Area Commander] makes a new order."¹² After having declared the members of the municipal council to be members for an indefinite period, and doing away with the requirement to hold elections to give the residents of the town the opportunity to choose their representatives on the municipal council, the Area Commander went on to ensure that the present members do not resign and force the Commander to allow elections to be held. This was done by an amendment to the Jordanian municipality law whereby the resignation of the members of the municipal council only becomes final after it has been accepted by the Area Commander. The situation under the law before it was amended was that the resignation became final upon its submission to the various relevant departments¹³. The

Jordanian Law for the Administration of the Villages No. 5 of 1954 was amended by Military Order No. 366 to enable the military officer appointed by the Area Commander to order any mukhtar (head of the village council) to resign if he considers that he has not carried out his duties or has been negligent in carrying out his duties¹⁴. The same military officer is empowered by the order to "appoint a mukhtar, if he believes that it is necessary for public order and for the continuance of administration in the village or in any part of the village, or in any clan, and the mukhtar appointed in this manner shall have the same powers and capacities as any other mukhtar appointed according to law."¹⁵

Section 5

Amendments to the Law on Town and Village Planning

The military orders amending this law have concentrated in the Higher Planning Council greater powers than those which the Jordanian law had vested in it. The main functions of the Council according to the Jordanian law were the following:

- to designate, enlarge or amend planning areas;
- to approve district plans and provisional plans for districts;
- to cancel or amend any licence issued by virtue of the law if it is proved that it has been given in an illegal manner or contrary to plans.

The law provides for the establishment of a Central Department for Planning of Towns and Villages, District Committees for the Planning of Towns and Villages which have to be constituted in every district, and finally local Town Planning Committees which have to be constituted in every municipality. The Higher Town Planning Council is composed of 8 members; amongst them are representatives of the Ministry of Public Works, the president of the Housing Institute, and the president of the Engineer's Association.

Military Order No. 418 has amended the law abolishing the District committees for Town Planning and transferring its powers to the Higher Town Planning Council¹⁶. At the same time the powers of the Council were increased. For example, it may amend

or cancel for any period of time, any plan or licence even though it has not been proved that the plan or licence was given in an illegal manner, as was formerly required by law¹⁷. It may also allow any person to build without obtaining a license¹⁸.

The power of appointment of the members of the Higher Town Planning Council have been vested by article 4(a) of the order in the Area Commander, without a requirement that he must appoint a council with representatives of the same functions as provided for in the law. In fact, the council is now composed entirely of military officers without any representation of any civil and professional department.

This composition of the Higher Planning Council, placing all land use planning exclusively in the hands of the military authorities is presumably to be explained by Israel's settlement plans.

Section 6

Amendments to the Labour Law

There have been several amendments to the Jordanian labour law. The most significant is that made by Military Order No. 825¹⁹. This amendment makes it illegal for any person to be elected to the administrative committee of a trade union unless he is working in the relevant trade or occupation or has been employed by the union. The article²⁰ goes on to restrict the possible candidates by declaring ineligible for nomination:

- any person who has been found guilty of committing a crime whose sentence exceeds 5 years' imprisonment;
- any person who has been convicted of a security offence by a court having jurisdiction in the area or in Israel.

The Order vests in the Area Commander the power to appoint a 'person to be responsible' for the purposes of this law. This person is given the following powers to ensure that the above provision is not violated:

- At least 30 days before the election the list of all the nominees must be submitted to him and he may strike out from the list the name of any person who he does not believe complies with the above provisions.
- He may inform the union that he has annulled the membership of any member of the administrative committee who has been elected illegally or who no longer satisfies the conditions mentioned above. If this happens, he may order the committee,

with its reduced number, to continue to operate.

- He may make regulations to ensure that the above provisions are complied with, by asking for details of every one of the nominees for election to the administrative committee to ascertain whether he is ineligible under the above conditions.

Section 7

Amendments to Laws on Taxation, Revenue, Customs Duties and Weights and Measures

In order to subordinate the West Bank economy to that of Israel many changes have had to be made on subjects which are in no way related to security matters. Laws on weights and measures have been amended to bring them into uniformity with Israeli laws²¹. Customs laws have been changed with a view to achieving the maximum security for Israeli producers and making the West Bank market an open market for exports from Israel²². Revenues fees have been increased, sometimes exorbitantly²³. When the Israeli Knesset passed new legislation introducing the value added tax, the West Bank military authorities refrained from overtly creating a new law introducing this tax, no doubt suspecting that this would attract international attention and bring condemnation.

As has been mentioned above, they purported to amend an existing Jordanian law on local products, to make provision for levying this tax on the consumer. In fact the earlier law was not amended and the order was an entirely new piece of legislation superimposed on the existing law.

Section 8

Abolition of the Death Penalty

By virtue of Military Order No. 268 of July 24, 1968, "Whenever the law makes obligatory the passing of a death sentence, the court shall pass a sentence of life imprisonment, but if the law [permits but] does not make obligatory the passing of a death sentence, the court may pass a sentence on the accused of life imprisonment or of imprisonment for a specified period."

This abolition of the death penalty is a commendable and, in the circumstances, remarkable measure of law reform.

Its progressive spirit is perhaps unique, not only when compared with other military occupations, but with any others of the 854 military orders which have been issued up to the time of writing.

Section 9

Conclusion

The above brief survey has attempted to shed light on some of the main areas dealt with by the military orders, but it is in no way comprehensive. Anyone going through this massive volume of orders would come across ones dealing with aspects of the daily lives of the inhabitants of the West Bank which it may seem surprising that the military government has taken the trouble to meddle with. An example is the order prohibiting picking of wild thyme growing on the hills. One can but wonder, when finding such an order, whether the point of issuing it was to protect nature, to safeguard the economic interests of Israeli planters, or perhaps to deprive the Palestinian population of access to a herb which, through the many allusions to it in Palestinian literature, has come to symbolize the attachment of Palistinians to their land and their love of the herbs that are peculiar to it. If explanations can be offered for passing this order, it is more difficult to explain the prohibition made by another which prohibits the planting of azaleas. One can only speculate and wonder, because the military legislator never offers reasons or justifications and, out of motives known only to him, makes new laws which the residents of the occupied territories have no choice but to obey.

References

1. Military Orders 108 and 321.
2. For a discussion of the meaning of public land in the land law of Palestine see an article on the subject by Raja Shehadeh due to be published in the Autumn issue of the Journal of Palestine Studies, published jointly by the Institute for Palestine Studies and Kuwait University.
3. This was the case for the owners of land in the village of Abboud which was expropriated in the Spring of 1980.
4. See, for example, Military Orders 3, 151 and 388.
5. Military Order No. 811.
6. Military Order No. 239.
7. Military Order No. 277.
8. Military Order No. 158, Article 4(c).
9. *Ibid.*, 4(e).
10. Subsection (g) of Military Order No. 158 makes it imperative for the owner of a water installation to give to the military authorities on request any information or details having to do with the installation. Subsection (h) gives them the right to enter any place where there is a water installation for the purpose of observing the implementation of this article or the conditions of the licence or for the purpose of making any inspection of the installation. Subsection (i) gives the military authorities an absolute discretion to withdraw the licence from any installation which contravenes the conditions of the license, whether or not the holder of the license has been accused of the contravention. Finally, by subsection (j) it is stated that the decisions of the military authorities are not subject to appeal.
11. Military Order No. 80.
12. *Ibid.*, article 3(a).
13. Article 36 of The Jordanian Municipality Law states that "The resignation of the President of the Municipal Council and of the Vice-President and of any member of the Council shall become final from the date of registering the letter of resignation in the Registry of the Municipality and the date when it is sent to the District Commissioner and the Minister of the Interior." This article was amended by Military Order No. 312 which provided that "the registration shall become final only after it has been agreed to by the person responsible by virtue of the order for Municipalities, Order No. 194 of 1967, and after it has been registered in the Registry of the Municipality."
14. This is by virtue of subsection (d), which was added to section 22 of the Jordanian law by Military Order No. 366.

15. Subsection (c) added to section 22 of the Jordanian law by Military Order No. 366.
16. Articles 2(3) and 7(2) of Military order No. 418.
17. *Ibid.*, article 7.
18. *Ibid.*, article 7(4).
19. The Order is dated 20 March 1980. See other amendments by Military Orders Nos. 256, 439, 663 & 764.
20. Amending article 83 of the Jordanian Labour Law No. 21 of 1960.
21. See, for example, Military Orders Nos. 245, 281 & 401.
22. See, for example, Military Orders Nos. 31, 90 & 643.
23. See, for example, Military Orders Nos. 31, 32, 38, 58, 215, 227, 229, 250 & 251. For amendments to Income Tax and Tax On Real Estate Laws see Military Orders Nos. 28, 84, 120, 238 & 283. See also Part I, section 3 for the transfer to the Objection Committee of the jurisdiction of the Court of First Instance to hear objections to the assessments of the income tax officer.

Appendix

Military Proclamation No. 101 (as amended by Order No. 718) Concerning the prohibition of incitement and adverse propaganda

Whereas I believe that this proclamation is necessary for the Security of the area and for the maintenance of peace and order I hereby make the following order:

1. Definitions:

In this order:

“Area” shall mean the West Bank.

“Meeting” – a congregation of ten people or more in a place where a speech is heard on a political subject or on a subject which can be explained as a political subject or who are gathered for the purpose of deliberating on such a subject.

“Police force” see definition in Order No. 52 on the police forces working in cooperation with the Israel Defence Forces.

“Printing” includes carving on stone, typing on a typewriter, copying, photographing or any other manner of representation or of communicating expressions, numbers, symbols, pictures, maps, paintings, decorations or any other similar material.

“Newspaper”, any publication which contains news, information, sequence of events or any observations, deliberations, journalistic reporting, or clarifications of news, of information or of the sequence of events or of any other matter of interest to the public which has been printed in any language and published in Israel or outside for sale or for distribution free of charge at fixed or unfixed times.

Publication includes newspaper, scroll, series or book, and any other document which has been published or is prepared for publication even

if only once, and the document shall be presumed prepared for publication unless the contrary is proven.

Publishing includes broadcasting, distributing, handing over, announcing, supplying or submitting to any person whatsoever.

"A march", a march of ten or more people together; or the assembling for the purpose of marching together from one place to another for a political purpose or for a matter which can be interpreted as a political matter whether or not they were in fact walking and whether or not they had congregated.

Every expression appearing in this order which has been defined in the order concerning security regulations has the same meaning that it has there unless expressly stated otherwise.

2. The military commander may authorize any soldier or policeman to exercise his rights in accordance with this order.
3. It is not permitted to carry out any march or convene a meeting except with a permit issued by the military commander.
4. The military commander may order the owner of any cafe, club or any other public place of meeting to close that cafe club or place of public meeting. If such an order is given, then anyone who is found in the closed place is considered to have contravened this order.
5. It is forbidden to raise, exhibit or attach any flags or political emblems except after obtaining a licence issued by the military commander.
6. It is forbidden to print and publish in the area any publication, advertisement, proclamation, picture, or any other document which contains any article with a political signification except after obtaining beforehand a licence from the military commander in the area where the printing or the publication is to be carried out.
7. Any person who
 - a. tries whether verbally or in any other manner to influence the public opinion in the area in a manner which might endanger public security or order, or,
 - b. carries out any action with the intention of carrying out or of facilitating the carrying out of any action mentioned above shall be charged with committing an offence contrary to the provisions of this order.
8. The military commander and any one appointed by me shall have the powers of "inspector" in accordance with the Defence (Emergency) Regulations 1945.
9. Without derogating from the powers given to soldiers by virtue of the order concerning security, every soldier shall have the power to use the necessary force to execute any order issued by virtue of this order or to prevent the commission of any offence which is contrary to this order.

10. a. Anyone who organizes a march or a meeting with a licence or who calls for or instigates them or encourages them or participates in them in any manner whatsoever, or,
 - b. Anyone who contravenes the provisions of this order or any judgment made by virtue of it or who undertakes any action which it is stated in the order is an offence, shall be punished with ten years of imprisonment or by a fine of 10,000 Israeli Liras or by both punishments.
11. This order shall commence from the 27th of August, 1967.
12. This order shall be called the order concerning the prevention of acts of *instigation and adverse propaganda* (For the area of the West Bank) No. 101 for the year 1967.

Aluf Ozi Narkis
Military Commander of the West Bank

August 27, 1967

The International Commission of Jurists

The International Commission of Jurists is a non-governmental organisation devoted to promoting throughout the world the understanding and observance of the Rule of Law and the legal protection of human rights.

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This study is the first survey to have been made of the changes in the law and the legal system introduced by the Israeli military authorities during the 13 years of the occupation of the West Bank. In the words of the Secretary-General of the International Commission of Jurists it argues that, contrary to international law, "the military government has extended its legislation and administration far beyond that of an occupying power, concerned only with the security of its military forces" and has exercised powers "akin to those of a sovereign government", ensuring for the State of Israel "many of the benefits which would accrue from an annexation of the territory".

Law in the Service of Man, which became an affiliate of the International Commission of Jurists in 1979, was formed by a group of West Bank Palestinians to develop and uphold the principles of the rule of law in the West Bank, carry out legal research, and provide legal services for the community. This is the group's first publication.

Raja Shehadeh, the principal author, comes from a family of jurists and lawyers. His grandfather was a judge during the period of the British Mandate in Palestine. His father and uncle are practicing lawyers in the West Bank. In 1973 he graduated from the American University of Beirut in literature and philosophy, and was called to the English Bar in 1976. He is a member of Lincoln's Inn, and since 1976 has been practicing law in Ramallah. He has published a number of articles on legal topics.