



The Fourth Geneva Convention

Eli E. Hertz

The language of Article 49 was crafted in the wake of World War II and the Nazi occupation – an occupation that led to a war of aggression in which Nazi Germany attacked its neighbors with impunity, committing a host of atrocities against civilian populations, including deportation and displacement of local populations in occupied Europe. Millions were sent to forced labor camps and those of particular ethnic origin, most notably the Jews, were sent to their deaths in the gas chambers. The drafters of Article 49 were concerned with preventing future genocide against humanity. Critics and enemies of Israel, including members of the UN and organs such as the International Court of Justice (ICJ) have come to use the Geneva Convention as a weapon against Israel, even when statements by authoritative analysts, scholars and drafters of the document contradict everything said by those who distort history for politically motivated reasons.

It is common knowledge that from its birth, Israel follows customarily international humanitarian law without being told or forced to do so by outside authorities.

“Occupied Territory”

The term “occupied territory,” which appears in the Fourth Geneva Convention, originated as a result of the Nazi occupation of Europe. Though it has become common parlance to describe the West Bank and Gaza as “occupied territories,” there is no legal basis for using this term in connection to the Arab-Israeli conflict.

Professor Julius Stone, a leading authority on the Law of Nations, categorically rejected the use of the term “occupied territory” to describe the territories controlled by Israel on the following counts:

- (1) Article 49 relates to the invasion of sovereign states and is inapplicable because the West Bank did not and does not belong to any other state.
- (2) The drafting history of Article 49 [Protection of Civilian Persons in Time of War] – that is, preventing “genocidal objectives” must be taken into account. Those conditions do not exist in Israel’s case.
- (3) Settlement of Jews in the West Bank is voluntary and does not displace local inhabitants. Moreover, Stone asserted: that “no serious dilution (much less extinction) of native populations” [exists]; rather “a dramatic improvement in the economic situation of the [local Palestinian] inhabitants since 1967 [has occurred].”

Deportation and Forced Transfer

Arab opposition to Jewish settlements is based on the last paragraph of Article 49. The “Occupying Power” may not “Deport or transfer parts of its own civilian population into the territory it occupies.”

One can hardly believe this baseless ICJ assertion that Israel, the only free and democratic country in the Middle East used “deportation” and “forced transfer” of its own population into “occupied territories.”

Article 2 of the Fourth Geneva Convention

Article 2 of the Fourth Geneva Convention applies only to conflicts that “arise between two or more high Contracting Parties,” which is not the case at hand, as

Israel is the only High Contracting Party (or state) in this conflict, and Jordan never was. Thus, the Fourth Geneva Convention is inapplicable!

Professor Stone touches on the applicability of Article 49 of the Geneva Convention, writing on the subject in 1980:

"That because of the *ex iniuria* principle [unjust acts cannot create law], Jordan never had nor now has any legal title in the West Bank, nor does any other state even claim such title. Article 49 seems thus simply not applicable. Even if it were, it may be added that the facts of recent voluntary settlements seem not to be caught by the intent of Article 49 which is rather directed at the forced transfer of the belligerent's inhabitants to the occupied territory, or the displacement of the local inhabitants, for other than security reasons.

Support to Stone's assertion can be found in Sir Professor Elihu Lauterpacht's writing in 1968:

"Thus Jordan's occupation of the Old City-and indeed of the whole of the area west of the Jordan river-entirely lacked legal justification; and being defective in this way could not form any basis for Jordan validly to fill the sovereignty vacuum in the Old City [and whole of the area west of the Jordan River]."

Professor Eugene Rostow, past Dean of Yale Law School, U.S. under Secretary of State for Political Affairs, and a key draftee of UN Security Council Resolution 242, concluded that the Fourth Geneva Convention is not applicable to Israel's legal position and notes:

"The opposition to Jewish settlements in the West Bank also relied on a legal argument - that such settlements violated the Fourth Geneva Convention forbidding the occupying power from transferring its own citizens into the occupied territories. How that Convention could apply to Jews who already had a legal right, protected by Article 80 of the United Nations Charter, to live in the West Bank, East Jerusalem, and the Gaza Strip, was never explained."

It seems that the International Court of Justice never explained it either.

Article 80

Article 80 of the United Nations Charter specifically created in San Francisco on 26 June 1945, recognizes the continued validity of the rights granted to all states or peoples, or already existing international instruments including those adopted by the League of Nations, such as the "Mandate for Palestine." Jews legal rights of settlements survived the British withdrawal in 1948.

The International Court of Justice [ICJ], Rome Statute of the International Criminal Court [ICC], and the Fourth Geneva Convention lack the authority to affect ownership of the Territories of Judea and Samaria known also as the West Bank.