

Notes to Discourse 2 - Pages 179-181

1. *Ayyub et al. v. Minister of Defence et al.*. High Court of Justice (H.C.J.) 606/78, 610/78 (1979) 33 *Piskei Din* (2) 113, here cited as the "Beit-El case," with official translation into English by the Ministry of Justice of Israel, here cited as "transl."; *Dweikat et al. v. Government of Israel et al.*, H.C.J. 390/79, judgment of Oct. 22, 1979, here cited as the "Elon Moreh case", with official translation into English by the Foreign Ministry of Israel, here cited as "transl." This aspect is discussed in the preceding discourse.
2. The Geneva Convention 1949 was signed by Israel August 12, 1949, and ratified May 31, 1951. It came into force in general, Jan. 6, 1952, but whether it is by its terms applicable to the West Bank and Gaza under Israel control is a separate question. Thus, under Article 2 of that convention, the convention applies only to occupation by one state of territory belonging to another high contracting party. Insofar as Jordan has, by virtue of the principle *ex iniuria non oritur ius* [No right can arise from wrong] no territorial rights in the territories concerned, the case would not fall within the convention. While taking this position as to her legal obligations, the state authorities of Israel have claimed that their administration has in fact conformed to the substance of the convention provisions. The present examination is directed to that claim.
3. See, e.g., *U.S. v. Milch* (1947) U.S. Military Tribunal, Nuremberg, 7 L.R.T.W.C. at 46.
4. Art. 6 (b). A number of authorities suggest no other context or relevance of Article 49(6). See, e.g., M. Greenspan, *Modern Law of Land Warfare* (Berkeley, 1949), pp. 268 ff.; G. von Glahn, *Law Among Nations* (New York, 1965), p. 674; M. Sorensen, *Manual of Public International Law* (London and New York, 1968), p. 831.
5. Jean S. Pictet, Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958), pp. 278-79.
6. *Ibid.*, p. 283.
7. The ambiguity reflects the *travaux preparatoire* [French. preparatory work]. The addition of the final paragraph of the present Article 49 (then Article 45) was proposed by Danish delegate Cohn at the Legal Commission of the 17th International Red Cross Conference (*Summary of Debates of the Sub-Commissions*, pp. 61-62) and adopted (*ibid.* pp. 77-78). The protection of the indigenous inhabitants from "invasion" was there expressed as an objective, though M. Pillaud (C.I.C.R.) thought that the International Red Cross should rather be concerned to protect the nationals of a country than prescribing duties for occupying powers. At the Diplomatic Conference of Geneva of 1949, Final Record, vol. II-A, 759-760, the Rapporteur, in presenting the whole of Article 49, stated its object as being "to prohibit, once and for all, the abominable transfers of population which had taken place during the last war." The whole article, including paragraph 6, was

adopted on this basis (*ibid.* p. 60).

8. J. Stone, *Legal Controls of International Conflict* (1954), pp. 704-5.

9. See E. V. Rostow, "'Palestinian Self-Determination': Possible Futures for the Unallocated Territories of the Palestine Mandate," *Yale Studies in World Public Order* 5 (1979): 147-72, esp. pp. 154-61, and in his brief "Of Israel's Future and American Folly," *Washington Star*, March 21, 1980, and earlier articles cited in Chapter 7, n. 73.

10. See 2 Lauterpacht-Oppenheim, *International Law* (7th ed., London, 1952), p. 447; Stone, *Legal Controls*, pp. 698-99.