

David Knoll

ON Tuesday May 4, 1993 the ABC Law Report on *Radio National* broadcast a special episode examining the legality of Israeli deportations of Palestinians. It was far from a dispassionate examination of the international law applicable. Rather it was a not altogether unwitting platform for the campaign of Al Haq and the Palestine Human Rights Campaign to have Israel branded an international outlaw.

Three crucial errors of law pervaded the program.

**Error 1. The Geneva Convention relative to the protection of civilian persons in time of war forbids Israeli settlements in occupied territories.**

Drawing a parallel between Israeli action and the actions condemned by the Nuremberg Tribunals, Jonathan Kuttab, a lawyer at Al Haq, presents the argument that: "an occupying power is not allowed to bring its own civilians into the occupied territories, ie. the Jewish settlers. They are not allowed to bring anyone outside the occupied territories, and on this point the Geneva Convention is very clear. Individual or mass deportation, no matter what the reason is, is illegal".

Yet this is not the law. First, there is no general prohibition on relocation of citizens of a belligerent occupant in international law. Secondly, international law, including the fourth Geneva Convention does not preclude all movement of people into occupied territories. Thirdly, international law provides a set of circumstances in which deportation is permitted.

The legitimacy at international law of acts by a belligerent occupant is tested against the Geneva Convention relative to the treatment of civilian persons in time of war and the predecessor Hague Regulations. This is the fourth Geneva Convention. Israel and each of her Arab neighbours are party to the Convention.

Article 49, paragraph 5 prohibits deportation or transfer of the occupying power's population into occupied territory, but it does not prohibit voluntary migration to those territories. Heavily subsidised immigration is only formally voluntary, and arguably is conduct that Article 49 seeks to enjoin. This heavy subsidisation is a Likud policy that the Labour Government of Israel appears to have reversed. This reversal was not focussed upon by the ABC, and it is important because it is an example of a change in policy towards legal compliance.

As Deputy Foreign Minister, Yossi Beilin acknowledged on his recent visit to Australia, if residents of the occupying power wish to relocate to the occupied territory, they accept the risk that upon a peace settlement they may become citizens of a different country. The relocation itself is quite valid at international law.

Article 49(5) of the fourth Geneva Convention was directed against the Nazi practice of forcibly moving populations such as Jews it wanted to be rid of, often to concentration camps for the Nazi genocide policy. Israel has not been reported as sending anyone to concentration camp. The parallel drawn by Mr Kuttab is inappropriate legally, and offensive to the families of Holocaust survivors morally.

**Error 2. West Bank military courts are "Kangaroo Courts" lacking all procedural fairness.**

The program also informs the listener that the Hamas deportees were not charged with any offence, and were given inadequate notice of breach of any standing administrative regulation. This misses the point.

The deportees still in Lebanon were quite reasonably suspected of being saboteurs. Sabotage is of course a key tenet of Hamas policy which calls for the violent removal of Jews from

Islamic land. These facts simply escaped the attention of the Law Report team.

Article 5 of the fourth Geneva Convention authorises the detention incommunicado of persons suspected of sabotage. The convention refers quite clearly to persons 'suspected' and not to person 'convicted'. The law is realistic in its benevolent goals. Civilians get protection. Sabotage is not civilian conduct, and saboteurs lose much of their legal cover.

Israel nonetheless must concede that deportation is not the Convention punishment for saboteurs.

International pressure has been well and truly brought to bear upon Israel for this error, and it is one which Israel has begun to correct, to her credit.

**Error 3. Israeli deportations violate the fourth Geneva Convention.**

Far from examining the Convention, Mr Kuttab omits to mention that there is a circumstance in which forcible deportation is permitted. This exception arises if "the security of the population or imperative military reasons so demand."

An organised group, dedicated to killing Jews to free the land from them, clearly meets this test, a point mentioned in a brief interview clip with Dan Meridor (presumably inserted to achieve the smallest degree of balance). Certainly, the military imperative has not been explained by the Israeli Government, but then no country makes full disclosure of its national security decision making. It is therefore difficult to support the view that the legal burden of justification lies with Israel, an impression delivered unmistakably by the program.

### Conclusion

Had the program stated that it was presenting the legal arguments of Al Haq on behalf of Arab Palestinians, it would not have been misleading. Even then some analysis of the arguments presented could, and in my view, should have been entertained.

By saying that the program examined the applicable law and then getting that law confused with the advocacy of one side to a very real and difficult dispute, this episode of the Law Report did a disservice to the listener. □

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Condemn him! He's a human rights abuser!

*The Jerusalem Post, December 20, 1992.*