

ISRAEL, THE WEST BANK AND INTERNATIONAL LAW. By Allan Gerson. London: Frank Cass, 1978. Pp. xvii, 285. Appendices. Index. \$25.

Originally written as a doctoral thesis at Yale, this volume is, for the most part, an outstanding presentation of the problems of the West Bank and related subjects. While making his own views clear, the author dispassionately presents the arguments opposed to his conclusions. As a result, the reader is able to reach his own conclusions as the comparison of viewpoints provides solid arguments to support any decision he should make. Such an approach is beneficial as there are no clear-cut solutions to the problems discussed in this book.

Chapter II (The Palestine Controversy: Historical and Juridical Basis) is particularly instructive. In just 42 pages, the author presents a dynamic survey of the events affecting the status of Palestine. The survey begins with the 1915 McMahon letter and continues through Resolution 242 of the Security Council of the United Nations, adopted November 22, 1967,¹ subsequent to the "Six Day War." Chapter III (Management: the Limits of Institutional Change) is concerned with the problems created by Israel's occupation of the West Bank, the Gaza Strip, and East Jerusalem following the Six Day War. Chapter IV (Disposition: Sovereignty and Postliminium Problems) deals with the problems of the ultimate disposition of those areas, probably the core of the entire controversy.

Gerson leaves no doubt that, despite Jordan's constitutional amendment in 1974 that apparently signaled a forthcoming waiver of all further proprietary interest in the West Bank,² such interest continues to exist and will probably play a vital role in the ultimate disposition of this troubled area.³ He discusses and rejects several possible alternatives for the future of the West Bank and astutely concludes that the Palestine Liberation Organization's basic charter⁴ (which asserts that the former British Palestine is an "indivisible territorial unit"⁵ and which flatly rejects the possibility of the existence of a State of Israel⁶)

1. A. GERSON, ISRAEL, THE WEST BANK AND INTERNATIONAL LAW, app. 11, at 265 (1978).

2. *Id.* at 206.

3. *Id.* at 207, 210.

4. *Id.* app. 10, at 262.

5. *Id.*

6. *Id.* at 264.

and the present PLO leadership⁷ would constitute an unacceptable risk to world peace if the PLO were to come to power in the West Bank and in Gaza.⁸

The recent negotiation of the peace treaty between Egypt and Israel (which occurred well after the preparation of this volume) nearly foundered on the problem of the West Bank. While that problem is not one of overwhelming relevance to Egypt as a sovereign state, it most certainly is of great concern to Egypt as an Arab state. The major obstacle to any final solution of the future of the West Bank involves the Jewish settlements in the occupied territory. The establishment of these settlements has long been an affirmative policy of the Herut, the political party now in power in Israel.⁹ The purchase of land in the West Bank (as in Sinai) from Arab property owners by Israeli organizations and individuals was officially approved and adopted as an Israeli government policy in 1973,¹⁰ and has been accomplished, both before and since, through the subterfuge of using Arab "straw men." Consequently, a type of "creeping annexation"¹¹ has been instituted. Such a *fait accompli* will be exceedingly difficult to reverse and will make ultimate settlement of differences much more difficult for any Israeli government.

In December 1968, the General Assembly of the United Nations adopted a resolution¹² which established a "Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories" [hereinafter cited as the Special Committee]. Almost ten years ago, John Carey, a strong supporter of the United Nations, wrote a restrained, but critical, appraisal of the fact-finding machinery used by the United Nations, particularly in the field of human rights.¹³ Nothing that has transpired since the publication of the Carey book, including the activities of the Special Committee, indicates that there has been any improvement in this area.¹⁴ Even the "Third World" countries, generally strong supporters of the United Nations, voiced opposition to United Nations inquisition of alleged vi-

7. *Id.* at 237.

8. *Id.* at 209.

9. The 1968 statement of Menachem Begin, head of the Herut and now Prime Minister of Israel, substantiates this policy. *Id.* at 135.

10. The "Galili Paper" articulates this position. *Id.* at 146-47.

11. *Id.* at 149.

12. G.A. Res. 2443, 23 U.N. GAOR, Supp. (No. 18) 50, U.N. Doc. A/7218 (1968).

13. J. CAREY, U.N. PROTECTION OF CIVIL AND POLITICAL RIGHTS (1970).

14. The Selection of Sri Lanka (formerly Ceylon), Somalia, and Yugoslavia to constitute the Committee is evidence to support this statement. "All three states are rabidly pro-Arab; none has diplomatic relations with Israel; and Somalia actually considers itself in a state of war with Israel." Greenspan, *Human Rights in the Territories Occupied by Israel*, 12 SANTA CLARA LAW. 377, 378 (1972).

violations of international human rights law applicable in armed conflicts. Instead, they opted for the creation of a new body¹⁵ which, should it ever be called upon and permitted to conduct an investigation, would be more qualified to conduct an impartial investigation than the existing United Nations organizations, including the Special Committee.¹⁶

While not affecting the basic worth of the book, there are several debatable statements made by the author which warrant some comment. To begin with, in distinguishing between "belligerent occupation" and "post-surrender occupation," the author states that, in the former, "fighting will have been brought to a close by means of a cease-fire or armistice."¹⁷ Actually, belligerent occupation occurs when one party to the conflict attains territorial control and exercises administrative control over part of the territory of another party to the conflict while the hostilities continue in other areas.¹⁸ During World War II Germany occupied an extensive area of Russia from 1941 to 1945 and Japan occupied the Philippines (at that time territory of the United States) while the hostilities continued. Both of these situations were instances of belligerent occupation. The situation in France, where there had been an armistice, appears to resemble more closely a "post-surrender" occupation.

Secondly, the author states that the 1907 Hague Conference was convened because the provisions of the 1899 Hague Convention with Respect to the Laws and Customs of War on Land¹⁹ (1899 Convention No. II) "remained unrefined and difficult to implement,"²⁰ and that "the composite rules of law applicable to the scope of authority of the occupying power in managing conquered territory find their first codified expression in treaty form in the 1907 Hague Convention No. IV."²¹ An article-by-article comparison of the provisions of the Regulations

15. 1977 Protocol Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 90, 16 INT'L LEGAL MATERIALS 1391, 1429 (1977) [hereinafter cited as 1977 Protocol].

16. The Special Committee's lack of impartiality pointedly surfaced in its dealings with the International Committee of the Red Cross. After an unfortunate experience of being misquoted and misinterpreted by the Committee, the Red Cross, in effect, declined to cooperate further with the Special Committee. Shefi, *The Protection of Human Rights in Areas Administered by Israel: United Nations Findings and Reality*, 3 ISRAEL Y.B. ON HUMAN RIGHTS 337, 341 (1973).

17. A. GERSON, *supra* note 1, at 3.

18. See L. OPPENHEIM, 2 INT'L L. 432 (7th ed. H. Lauterpacht 1952).

19. 1899 Hague Convention with Respect to the Laws and Customs of War on Land, 32 Stat. 1803, T.S. No. 403, *reprinted in* 1 AM. J. INT'L L. SUPP. 129 (1907) [hereinafter cited as 1899 Hague Convention No. II].

20. A. GERSON, *supra* note 1, at 26 n.22.

21. *Id.* at 6.

attached to the 1899 Convention No. II²² with the provisions attached to the 1907 Hague Convention No. IV²³ will disclose very few changes of substance. For example, of the 15 articles in Section III on "Military Authority over the Territory of the Hostile State"²⁴ contained in the 1899 Regulations, only four were reworded in the 1907 Regulations; while Article 54 of the earlier Regulations was rewritten to cover a new subject (undersea cables), no new articles were added to the section. Thus, the 1907 Hague Conference was convened not so much to improve the 1899 Convention No. II, but rather because so much remained to be done, as evidenced by the fact that the 1907 Conference drafted 11 completely new conventions.

Finally, the author suggests the possibility that "the procedure of an *ad hoc* U.N. Investigation Committee to investigate occupation practices may, however, be proscribed by the 'Protecting Power' provisions of the Geneva Convention."²⁵ Neither the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War,²⁶ nor the 1977 Protocol²⁷ which is intended to supplement it, gives the Protecting Power exclusive jurisdiction in the area of investigations of alleged violations of the Geneva Convention. Thus, there is nothing to prevent the parties from agreeing that the International Committee of the Red Cross, the International Fact-Finding Commission of the 1977 Protocol,²⁸ or any other organization, *ad hoc* body, or individual, conduct such an investigation. In fact, the 1949 Civilians Convention specifically provides for such action.²⁹

Of the hundreds of volumes written and published on various aspects of the problems of the Middle East, it is indeed a pleasure to find one which is both as readable and as informative as Allan Gerson's ISRAEL, THE WEST BANK AND INTERNATIONAL LAW.

Howard S. Levie
Saint Louis University Law School Emeritus
Saint Louis, Missouri

22. 1899 Hague Convention No. II, *supra* note 19.

23. 1907 Hague Convention No. IV Respecting the Laws and Customs at War on Land, 36 Stat. 2277, T.S. No. 539; 1 BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776-1949, at 631 (1968).

24. 1899 Hague Convention No. II, *supra* note 19, at Annex, § III, arts. 42-56.

25. A. GERSON, *supra* note 1, at 157.

26. 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, T.I.A.S. No. 3365 [hereinafter cited as 1949 Geneva Convention].

27. 1977 Protocol, *supra* note 15.

28. *Id.*

29. 1949 Geneva Convention, *supra* note 26, art. 149.