

January 22, 1993

SHEER DISTORTION

WHY does our government not come out in forthright terms to denounce and refute the charge, repeated almost daily, that the deportations of the Hamas and Islamic Jihad terrorist leaders and inciters contravenes the Fourth Geneva Convention of 1949, and is therefore "illegal"? This kind of charge has for years been bandied about in the international arena in order to press the Israeli government into stopping Jews from settling in Judea, Samaria and Gaza. It was the centerpiece of the major publicity campaign waged by the Carter administration in order to promote its avid pro-Arab purpose - of squeezing Israel out of Judea, Samaria and Gaza. The Reagan administration, be it said, while continuing to express opposition to "settlements," at least recognized the absurdity of the charge -and dropped it.

The Fourth Geneva Convention of 1949 is not a mysterious esoteric document beyond the understanding of ordinary mortals. It consists of a text which was, moreover, composed for a specific purpose: to proscribe repetition of the horrendous behavior of the Nazis in occupied Europe. Its applicability is limited to a particular set of circumstances.

Its second article reads: "The present convention shall apply to cases of partial or total occupation of the territory of a High Contracting Party." Israel did not and does not occupy the territory of a High Contracting Party. The territories it wrested in 1967 from Jordan and Egypt did not belong to them. They had acquired them in their act of aggression in 1948 and were, therefore, only illegal occupants.

Even their sister Arab states did not recognize Jordan's annexation of Judea and Samaria (Gaza was never even claimed by Egypt). The annexation was recognized only by Pakistan and Britain (itself an active promoter of the Jordanian invasion of Western Palestine). Israel has indeed announced formally from time to time that the convention does not apply to its status and policy in those territories.

However, having failed to recognize that public education is a vital part of national policy - nay, a crucial part for a country so embattled as Israel - it has never established anything remotely resembling an adequate hasbara machinery. The government compounded its blunder of omission by announcing that while the convention was not applicable to our case, it would implement the humanitarian elements in it. Thus, it enabled the deportees to appeal to the High Court against its decision.

The appeal rests on Article 49 of the convention, which deals with deportations. The Nazis deported people, sometimes whole communities, some to Germany, others to German-occupied territory, some to labor as slaves, some to be killed. Article 49 lays down that "individual or mass forcible transfers as well as deportations of protected persons from occupied territory to the territory of the Occupying Power, or to that of any other country, occupied or not, are prohibited, regardless of motive." The article continues: "Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand." By what stretch of a sick malevolence can the deportation of a group of terrorist inciters, organizers and executioners, whose declared immediate objective is the

murder of Jews and sometimes of Arab dissenters, and whose ultimate declared purpose is the destruction of the Jewish state, be twisted into a reflection of the terms of Article 49? With admirable juridical restraint, Julius Stone, one of the great jurists of our time, declared simply: "It seems reasonable to limit the sweeping literal words of Article 49 to situations at least remotely similar to those contemplated by the draftsman, namely the Nazi World War II practices of large-scale transfers of population whether by mass transfers or transfer of many individuals to more hostile or dangerous environments, for torture, extermination or slave labor." It is indeed in this spirit and in such terms that, over the years, the Supreme Court, sitting as a high court of justice and headed successively by Justices Sussman, Landau and Shamgar, have rejected the petitions submitted by the advocates for deported terrorists.

Their judgments have been accompanied time after time by characteristically detailed and painstaking analyses of every conceivable argument brought before them. One would expect then that the government, faced by a heavy attack on the legality of its actions, would use the replies by these, the leading jurists in Israel - and they have earned the reputation of being in the front rank of the world's jurists - to rebut unequivocally the charge brought in the UN Security Council. One could expect the Israeli ambassador to tell the members of the council (some of whom have possibly not even read what is written in the Fourth Geneva Convention) that the convention is irrelevant, and explain to them why the flourishing of Article 49 in Israel's face is an abysmal slander.

Whatever the council decides, that message should go out to the world, to provide Israel's friends - first of all the Jews - with the ammunition to state Israel's case, to fight Israel's battle. Imagine that Israel's current ambassador to the UN, facing the Security Council, delivered a speech of more than 2,000 words, long enough to enlighten them on the truth. He gave the members of the council a lecture on the activities of the terrorists and on their motives; he assured them that Israel would continue to combat them, and that it would continue with the peace process.

About the accusation that Israel was acting illegally, he said not a word. He did not even mention the Fourth Geneva Convention, which was the reason for his being at the meeting. This was a month ago.

Is there nobody in the Knesset who will call on the government to explain this footling conduct of Israel's critical affairs?