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# IRREGULAR MIGRATION INTO AND THROUGH THE OCCUPIED PALESTINIAN TERRITORY

*Asem Khalil*

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**CARIM Analytic and Synthetic Notes 2008/79**

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**Irregular Migration Series**

*Legal Module*

Cooperation project on the social integration  
of immigrants, migration, and the movement  
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**CARIM**  
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**for Applied Research on International Migration**

**Analytic and Synthetic Notes – Irregular Migration Series**  
**Legal Module**

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**Irregular Migration into and through the Occupied Palestinian Territory**

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This publication is part of a series of papers on the theme of Irregular Migration written in the framework of the CARIM project and presented at a meeting organised by CARIM in Florence: "Irregular Migration into and through Southern and Eastern Mediterranean Countries" (6 - 8 July 2008).

These papers will also be discussed in another meeting between Policy Makers and Experts on the same topic (25 - 27 January 2009). The results of these discussions will be published separately. The entire set of papers on Irregular Migration are available at the following address: <http://www.carim.org/ql/IrregularMigration>.

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The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and has been financed by the European Commission. Until January 2007, it referred to part C - “*cooperation related to the social integration of immigrants issue, migration and free circulation of persons*” of the MEDA programme, i.e. the main financial instrument of the European Union to establish the Euro-Mediterranean Partnership. Since February 2007, CARIM has been funded as part of the AENEAS programme for technical and financial assistance to third countries in the areas of migration and asylum. The latter programme establishes a link between the external objectives of the European Union’s migration policy and its development policy. AENEAS aims at providing third countries with the assistance necessary to achieve, at different levels, a better management of migrant flows.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 12 countries observed by CARIM: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey and, since February 2007, also Libya and Mauritania. All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
- Early warning system.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

Results of the above activities are made available for public consultation through the website of the project: [www.carim.org](http://www.carim.org)

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## Abstract

The concept of irregular migration refers, by definition, to **non-citizens** who happen to enter, reside and work in a **third country, different from their country of origin and/or citizenship** in violation of domestic law. In the light of the exceptional case of the occupied Palestinian territory, this paper challenges the concept of “irregular migration” in the absence of a clear cut division between who is a citizen/resident and who is not, and between what is legal or regular and what is not.

The state of Israel is, *de facto*, in control of Palestinian borders and the Palestinian population registry; thus, it strictly and unilaterally decides and regulates entry to, stay in and exit from the occupied territory, for both Palestinians and foreign nationals. This paper suggests it should do so only in accordance with International Law since Israel has obligations under International Humanitarian Law and International Human Rights Law.

Israeli Military Orders and policies contradict basic human rights in several respects, including the right to life, dignity and health, but also the right to move within, exit from and return to the occupied Palestinian territory.

This paper insists that human rights should not be applied arbitrarily; or that, at least, they should not be selected or applied in discriminatory way, based on ethnicity, origin or religion.

## Résumé

Le concept d’immigration irrégulière renvoie, par définition, au non national qui, en violation des normes nationales, entre, réside et travaille dans un pays tiers, autre que son pays d’origine et/ou dont il est un national. Ce papier questionne la notion de « migration irrégulière » à la lumière de la situation tout à fait particulière des Territoires occupés palestiniens. Cette particularité résulte, du point de vue juridique, de l’absence de ligne de démarcation claire entre le national (citoyen) et le résident et de qui est ou n’est pas en situation légale ou régulière.

L’Etat d’Israël exerce, de fait, la maîtrise des frontières palestiniennes et du registre palestinien de la population. Il décide et régule donc de manière unilatérale, tant pour les Palestiniens que pour les étrangers, qui entre, séjourne et sort des territoires occupés. Ce papier suggère que cette gestion devrait être opérée en conformité avec le droit international applicable (soit le droit international humanitaire et le droit international des droits de l’homme).

Or, les décrets militaires israéliens et leurs politiques violent ces droits fondamentaux à divers égards, en ce compris le droit à la vie, à la dignité et à la santé, mais aussi le droit de se déplacer dans et en dehors des Territoires occupés et d’y revenir.

Cette contribution insiste sur l’importance d’une application non arbitraire des droits fondamentaux, à tout le moins, sur la nécessité d’une application non sélective ou discriminatoire, en fonction de l’appartenance à un group ethnique, de l’origine ou de la religion.

## 1. Introduction

The concept of irregular migration refers, by definition, to **non-citizens** who happen to enter, reside and work in a **third country** in violation of domestic law. The concept may cover irregular labour and transit migrants. But it is also extended to refugees who are, by definition, a massive and involuntary group displaced from a country of origin that then falls under specific legal regimes, different from the laws applicable to foreign nationals who enter a country regularly or not. Although irregular, these migrants enjoy intrinsic rights, guaranteed by domestic and International human rights Laws. As refugees, they also enjoy rights and protection in International customary and treaty law.

The concept of citizenship entitles its holder to the right to enter, exit, stay and work without permission, within the framework of the law. Sovereign states are entitled though to regulate the movements and activities of foreign nationals. Accordingly, irregular migration is intrinsically connected to the regulation of citizenship and to State regulation on the rights of foreign nationals to enter, stay, work and exit. What is more, irregular migration varies depending on the country concerned, the policies and laws in place there, the period in question, and the economic, social and political environment

In the Palestinian context, the exception becomes the rule for the following reasons:

First, there is no such thing as Palestinian citizenship simply because there is not (yet) a Palestinian State. Most Palestinians, including the residents of the West Bank and the Gaza Strip (*hereafter* WBGS), are stateless. The Palestinian Authority (*hereafter* PA) is not a sovereign entity and the “Autonomous Territories” (*hereafter* AT), falling under its jurisdiction,<sup>1</sup> did not change their legal status as part of the “occupied Palestinian territory” (*hereafter* oPt).<sup>2</sup> This means that there is not a clear-cut division between “citizen” and “resident”, “foreign national” or “legal”, “illegal” and “irregular”.

Second, control over the external borders of the oPt and the passage between its two territorial entities (WBGS) is under direct Israeli control: while East Jerusalem, annexed by Israel in 1980,<sup>3</sup> in contradiction of International Law, is completely disconnected from the rest of the oPt. Accordingly, the right of foreign nationals to enter, stay, work and leave the oPt depends largely (if not exclusively) on Israel.<sup>4</sup>

A “foreign national” for Israel refers to any person who has not (or has no longer) an ID number issued by the Israeli Civil Administration,<sup>5</sup> in control of the population registry of the “area”.<sup>6</sup> Israel is

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<sup>1</sup>The West Bank is divided into Zones A, B and C. Zone “A” is completely under PA jurisdiction; the jurisdiction of the PA extends over Zone “B”, security remaining though in the hands of the Israeli forces, while Zone C remains completely under Israeli control. The AT is part of the so-called oPt, a term used since 1967 to refer to the West Bank (including East Jerusalem) and the Gaza Strip. The oPt forms the basis of the PLO territorial claim for statehood.

<sup>2</sup> The status of the Gaza Strip did not change following the unilateral Israeli withdrawal; for more information see Dugard 2007.

<sup>3</sup> The enabling legislation for the extension of Israeli law and Israeli municipal boundaries was the Municipalities Ordinance (Amendment No. 6) Law, 27 June 1967; while the act of annexation was the Basic Law: Jerusalem, Capital of Israel, 30 July 1980. For more information see Takkenberg 1998, 211.

<sup>4</sup> Largely because for many issues, such as the regulation of foreign workers in the territories falling under PA control, the PA has issued several legislative texts in which conditions are stated.

<sup>5</sup> Residents of Jerusalem have been granted a different kind of ID number. Israeli citizens do not fall under the restrictions imposed on foreigners.

<sup>6</sup> The “area” is used here to refer to the Israeli moniker for the WB after 1967, where it always negated, notwithstanding

also the only authority that can regularize illegal stays, through family unification procedure for example or through the renewal of short or longer (so-called permanent) visas and work permits. This means that holders of WBGS ID numbers are treated as if they are “citizens of WBGS” at external borders; however, their status under the occupation has nothing to do with citizenship in the sense of entitlement to civil, political, social and economical rights. Rather we are talking of “residency” that entails the conditions necessary to keep their status and subject to Israeli restrictions, restrictions that reflect Israeli policies in the oPt. This means that those Palestinian nationals, currently outside historical Palestine, without a WBGS ID number, are denied entry to the oPt without Israeli authorization, authorization which is, in fact, often denied. In other words, WBGS residents are treated by the Israeli occupation as if they are, what might be called, “local foreigners”.

## 2. The Israeli Occupation of the WBGS in 1967<sup>7</sup>

In the aftermath of the June 1967 war, Israel found itself in control of the WB that had previously been under Jordanian rule,<sup>8</sup> the Gaza Strip which had been administered by Egypt since 1948, and East Jerusalem, previously part of the West Bank, which came under Israeli law at this point and which was formally annexed on 30 July 1980 (Takkenberg 1998, 211).<sup>9</sup>

In addition to the occupation of the WBGS, the 1967 war caused a second massive wave of displacement for thousands of WBGS Palestinians. Those Palestinians, never re-admitted to their homeland, can be divided into four groups (Shaml 1996, 12-13): First, Palestinians displaced, because of the war, between June 1967 and September 1967, when the first Israeli census was made in the area. Second, Palestinians, whose habitual residence was in the WBGS, who happened to be outside WBGS when the war started in June 1967 and who were not allowed to return. Third, Palestinians who had been denied re-entrance to oPt, despite having an ID card issued by Israeli authorities; as their (exit) permit or travel document (*Laissez Passer*) had expired. Fourth, Palestinians who were deported for Israeli political and security considerations.

Israel started a systematic change of the pre-existing legal system(s) in force in WBGS; these changes applied to residents of the WBGS regardless of their status, e.g. being originally from WBGS or having the status of refugees, enjoying services provided by UNRWA. The WBGS, separated since 1948, were, in fact, united under the occupation! Palestinians could initially move freely between these territories while keeping a legal distinction fact, two IMGs, and later on, two Civil Administrations were instituted to rule the WB and the GS. Each issued hundreds of military orders, often with similar content.<sup>10</sup>

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international disagreement, the status of the oPt, and its presence as being one of an occupying power. Besides, Israel issued Order No. 187, Interpretation Order (Additional Provisions) (No. 3) on 17 December 1967 in which it is stated that the term “Judea and Samaria region”, used in Israeli Military orders, is identical to “West Bank Region”. The change of appellation reflects historical and religious attachment and the rejection of a name that might be taken to imply Jordanian Sovereignty (Takkenberg 1998, 211).

<sup>7</sup> In this paper reference is made to those Palestinian refugees and displaced persons who came out of the 1967 war. However, many of the 1967 displaced Palestinians were 1948 refugees and thus were displaced for a second time.

<sup>8</sup> The West Bank refers to that territory that lies between the river Jordan and Israel proper, i.e. Israel in its pre-1967 borders; it fell under Jordanian rule in 1948 and was unified to the Emirate of Transjordan, forming the Hashemite Kingdom of Jordan in 1950; a constitution was adopted in 1952 and a New Nationality Law was adopted in 1954, when WB Palestinians became Jordanian nationals.

<sup>9</sup> Those zones form what is called in UN resolutions the oPt; however, Israel had occupied the Golan Heights, parts of Syria and the Sinai Peninsula, the last of which remained under Israeli control until it was returned to Egypt with the 1979 Peace Treaty (Takkenberg 1998, 211).

<sup>10</sup> For this reason, analysis will be limited to IMOs issued for the WB. Unless specified differently, all references to IMOs in

### 3. Residency in the “Area”

The first Israeli census for the population of WBGS was carried out in September 1967. Only those who were counted were considered “residents” of the “area”.<sup>11</sup> Those who happened to be outside or who were inside but, for any reason, were not included in the census, were simply denied the status of resident.

As had been the case with 1948 Palestinian refugees,<sup>12</sup> Israeli policy in the immediate aftermath of the 1967 war was contradictory. Only residents of the “area” could be re-admitted to the “area”, while the status of “resident” was granted exclusively to those in the census, i.e. those who were already there! The thousands of Palestinians who were denied re-entry to their homeland were often without a second nationality; when their permit of stay or work in the country where they were residing expired, they thus lost their legality. Their very existence, not to mention their movement and displacement, was regarded with suspicion, by the state that occupied their homeland and controlled its borders, by host countries, and by third countries that might become the object of work, study and residence.

The first reference to “resident” in a Israeli Military Order (*hereafter* IMO) was in Order 65, issued 18<sup>th</sup> August 1967 (Shaml 1995, 89). According to that order, residency did not entitle the resident to rights, but rather to privileges granted by the occupiers and was mentioned only in negative terms when imposing on non-residents the obligation to obtain a permit from the authorized Israeli official in order to be able to work in, open, or manage any commercial activity in the oPt.

Following the 1967 census, the term “resident” was used in many IMOs<sup>13</sup> to indicate those who were “legally” present in the “area” and who had their permanent residence there. While “legally” simply referred to those who were covered by the census. It made no difference whether Palestinians had lived for generations in Palestine, whether they were refugees or IDPs. “Such terms are essentially meaningless within an Israeli-dominated administrative landscape in which Palestinians are either legitimate or illegitimate residents whose status can be altered at whim” (Loewenstein 2006).

Accordingly, many of those present in the “area” who had not been included in the census, became illegal and needed, in order to stay, as well as to work, a permit issued by Israeli officials. If they did not comply then individuals were subjected to various sanctions, which included fines, imprisonment and deportation. In other words, those who remained in the “area” could stay there “legally” only if conditions imposed by the occupying forces were respected. Their legal status was fragile and totally dependent on Israeli regulation.

The occupation used another technique to reduce residents in the “area”: exit permits. In fact, residents of the “area” were subject to strict regulations with regards to any stays abroad. In case of departure through Israeli Airports, a resident of the “area” had to obtain a Laissez Passer issued for that purpose. If the travel document was not renewed within a year, his or her ID card and thus their resident status was automatically revoked. Those who traveled using a permit (across the Bridge) and

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this paper relate to the WB.

<sup>11</sup> It should be noted that residency is often used with regards to foreign nationals who are temporarily present in a third country. By using the term “residents” then the Palestinians of WBGS were treated by the Israeli occupation forces as foreign nationals and aliens, who just happened to be present in the “area” when it came under Israeli control in 1967; accordingly, residency is nothing else but an authorization to stay and work granted by the Israeli governor; but, of course, this same logic means that any violation of the conditions imposed by successive (and continuously changing) IMOs would cause the loss of the status of “resident”.

<sup>12</sup> Palestinian refugees who left historical Palestine prior to and during the establishment of the state of Israel in 1948, were denied re-entry, because they were not Israeli citizens, while they were denied Israeli citizenship because they were not in Israel (Khalil 2007a, 25-27)

<sup>13</sup> Such as in IMO No. 234 concerning ID Cards (issued 17 March 1968), substituted by IMO No. 297 concerning Identity Cards and Population Registration (issued 8 January 1969).



remained outside the “area” for more than six years also had their residency status revoked (Shaml 1995, 94).<sup>14</sup>

#### 4. Identification Cards and Population Registry

ID-card regulation was subject to strict and continuously changing amendments by the IMG. The IMO No. 234 concerning ID Cards was issued as early as 17 March 1968, and was substituted less than a year later by IMO No. 297 (issued on 8 January 1969). IMO No. 297/1969 was amended 23 times up until 1995.<sup>15</sup> Reference shall be made only to two of those amendments: Order No. 1206/1987 and Order No. 1421/1995.

- **IMO No. 234/1968:**

This Order was simple and brief (6 articles only); it allowed males, who were 16 years old, and legally residing in the “area”, to request an ID card before 1 August 1968. The ID card was not a right but was in the gift of the IMG: it could be negated if any of the conditions (imposed by the IMG) were not respected. What is more, it was not obligatory to request an ID card nor, indeed, was it possible for all: as we have stated it was available only to males over 16 years of age.

- **IMO No. 297/1969:**

This order was more detailed since it also regulated how people were registered (deaths and births). Contrary to IMO 234/1968, this order required that all males over 16 years of age request an ID card, that they should have it with them at all times, and that they should show it when requested by a soldier or an authorized person. The card could be requested by a female of sixteen years or older but was not mandatory.<sup>16</sup> The ID card was to include, *inter alia*, religion, nationality, spouse name and children’s names, date of birth, gender, and address.<sup>17</sup> The order also demanded that any birth be reported to the authority within 10 days or within 30 days if the birth was outside the “area”. The same order imposed a penalty for those who transgressed any of the provisions: namely, a fine of 1000 L. or one year in prison.

- **IMO No.1206/1987:**

This order amended Article 11a Para.15 of IMO No. 297/1969, requiring that ID cards, besides the name, date of birth and sex of children, should include an ID number; this means that since then the ID number has been given to children at birth and not, as before, when an ID card was requested at 16.<sup>18</sup>

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<sup>14</sup> Having their permit renewed by family members each year after the third year of departure. If there was no renewal after the third year then the ID card would be revoked. Following the Oslo Agreements and the Israeli recognition of the PA TD, stays abroad were no longer limited in this way.

<sup>15</sup> The Institute of Law - University of Birzeit in Al-Muqtafi has collected most available legislations, including IMOs, in the Al-Muqtafi database; according to that source, the last amendment was IMG Order No. 1421 concerning Identity Cards and Population Registration (Amendment No. 23), issued on 17 January 1995.

<sup>16</sup> IMO No.396 had amended IMO No. 297/1969 and interestingly distinguished between the “area” and the “controlled area”, referring to those territories that fall under the control of Israeli Military Army. Since the order makes reference to Israel and to Jerusalem in an explicit way, the researcher understood the “controlled area” as covering the Gaza Strip, the Golan Heights, and until the 1980s, Sinai. The order also forbids those having obtained an ID number from Israel or the Controlled Area to obtain an ID number issued for residents of the “area”.

<sup>17</sup> IMO No.996/1982 added two elements to be included on the ID card: the date and place of entry; and the date that the holder became a resident.

<sup>18</sup> According to some researchers this obligation was imposed by IMO No.911/1981 (SHAML 2005, 95); however, I could

As for the registration of newly born children, the order extended the period for the registration of children for resident parents, to 16 years (instead of 10 days) if born in the “area”, and five years (instead of 30 days) if born outside the “area”.

The order was revolutionary in that it linked the registration of children to their mothers and not to their fathers; in other words, if one of the two parents was not resident, only the children of resident woman could be registered and they had to be registered within five years of the date of birth. This new provision was explained by some observers (Shaml 1995, 99) as a way of reducing the Palestinians in the “area”: it was more common to have resident males married to non-resident women than *vice versa*. In many families, where the mother was not a resident, there were some children who were registered and others were not, depending on the date of birth (if before or after the entry into force of IMO No. 1206 in August 1987).

Accordingly, children who were not registered in time through negligence or ignorance of IMO provisions, lost their right to an ID card and thus their resident status. The same applies to children of non-resident women. Those persons, although present in the “area” become, through the IMO, illegals, subject to sanctions unless they obtained a permit or authorization, for example, for family unification, a long and complicated procedure.

- **IMO No.1421/1995:**

This order was a positive step in that it prolonged the registration period for children of residents to 18 years of age, regardless of the place of birth. What is more, it enabled, as before August 1987, for the registration of a children whose parents were resident. However, it added that this was only possible if the authority was convinced that permanent residence was in the “area”. This meant that the Israeli authority had discretion to decide on a case by case basis. It should also be noted that the children, whose permanent residence was not the in “area”, might not be registered.

## 5. Issue of Family Unification

Persons who are not registered in the population registry can acquire residency status in the oPt only through a family unification procedure. This procedure is meant to include those who were not counted in the census; first-degree relatives of residents who became refugees following the 1967 war; Palestinians whose residency was revoked following a prolonged stay abroad; and children born abroad, or whose mother was not a resident, and were, therefore, registred by Israel. However, the largest group in need of family unification is composed of families wanting to live together in the Occupied Territories where one of the spouses is not a resident (B’Tselem 2006, 7).

For Israel, family unification is both a security and political issue;<sup>19</sup> accordingly, Israeli policy was clear in agreeing to unification only in exceptional cases where humanitarian arguments were overwhelming or where a positive decision was in Israel’s interests.<sup>20</sup> The low number of approvals for family unification is significant<sup>21</sup> and the justification often provided by Israeli officials is the “*fear*

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not find a copy of the order and, accordingly, was unable to ascertain the validity of this information.

<sup>19</sup> As recognized by ISC decision 90/1979 (Shaml 1995, 102).

<sup>20</sup> As recognized by ISC decision 106/1986 (Shaml 1995, 103).

<sup>21</sup> As admitted by Rabin, then Minister of Defense, in a letter to a Knesset Member on 16/11/1989 (Shaml 1995, 103): in 1967-1987, only 15% of 85163 demands were accepted, while from 1987 to 1989, only 20% of 3266 were accepted. According to data from the Ministry of Defense collected by B’Tselem (1991, 9), during 1989, 24% of the requests for unification of West Bank families and 63% of the requests of families from the Gaza Strip were approved. In the first seven months of 1990, 41% of the requests from the West Bank and 71% of the requests from the Gaza Strip were approved. According to the data for 1989, obtained from the Office of the Coordinator of Activities in the Territories, of

*of the demographic growth of the population in the territories*” (B’Tselem 1991, 9). Israeli policy also demonstrates that the issue of family unification is not treated as a question of human rights. Rather, it is a privilege, that can be granted for some and denied for (many) others (Shaml 1995, 107). For Israel, family unification in the oPt is not a vested right, but a “*special benevolent act of the Israeli authorities*”, to quote the State Attorney’s office in response to 18 November 1992, Section 7, in the Israeli Supreme Court (*hereafter* ISC) Case 4494/91 (B’Tselem 2006, 8).

Following a famous case in which hundreds of Palestinians were deported for “illegally residing” in the “area”, mostly wives and their children, a petition was submitted to the ISC in 1990. The ISC rejected the petition following an announcement by the State Attorney's Office of a change in policy (B’Tselem 1991, 10). The new policy granted “permanent visitor” status to wives married to residents and their children renewable each six months, without having necessarily to leave the country (Shaml 1995, 106). Israeli policy in terms of approving family unification or granting permanent visitor status varied over and according to the political climate: in fact, it was often employed to temper internal and international hostility to its policies.<sup>22</sup>

The complex procedure for family unification and the (relatively) high cost for permanent visitors discouraged many from proceeding with the administrative act, preferring to remain as illegals, with all the fragility, instability and immobility that that inevitably involved.

## 6. Access of non-Residents to the “Area”

Israel, the occupying authority, is the *de facto* holder of sovereign powers and the sole regulatory authority in matters of border control and entry or termination of stay. In these areas military orders, such as IMO No. 5/1970 on the general entry permit for Israeli and foreign residents (in force on the West Bank), in which conditions of entry and stay are strictly regulated to and from territories under Israeli control, remain in force (Khalil 2006, 10).<sup>23</sup>

According to the above order, an Israeli citizen and a foreign national, legally staying in Israel, are authorized to enter the “area” if they are over 16 years old unless forbidden by an Israeli military

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the 1053 requests for family unification submitted on the West Bank, 250 were approved, and of the 305 submitted in the Gaza Strip, 192 were approved. In 1990, through to the end of July, 139 of the 334 requests submitted in the West Bank were approved, and of the 261 requests from the Gaza Strip, 187 were approved. According to data published by the Red Cross, between 1967-1987, 140,000 requests for family unification were submitted; of these only some 19,000 were approved.

According to a recent B’Tselem report (2006), Israel started in 1993 to set a quota of 2000 for family unification which did not meet the real need of the population. In 1995, the PA demanded that Israel cancel the annual quota, or at least increase it substantially. Israel refused. In protest, in early 1996, the PA refused to forward family unification requests to Israel for approval. It was not until early 1998 that the PA again forwarded requests to Israel, which were based on the quota that had been set in 1993. According to press reports, in mid-1998, Israel and the PA had more than 17,500 requests for family unification waiting to be processed. In October 1998, in the framework of the Wye Agreement between Israel and the PA, Israel raised the quota to 3,000 a year. In early 2000, in the framework of peace negotiations between the parties, Israel raised the quota, to 4,000 a year. This policy remained in effect until the outbreak of the second Intifada, in September of that year. Following the outbreak of the second Intifada in September 2000, the process of family unification was frozen.

In 2007, Israel started to receive requests for family unification once more and many thousands have received approval since then. The PA claims that there are some 54000 Palestinians who have entered the oPt since early 1990 and who are considered by Israel to be illegal. The number may now be double that if natural reproduction is taken into account. See: <http://afp.google.com/article/ALeqM5iELLOiiiiCoG2eVFkFjCAi6fAYHw>

<sup>22</sup> For more details about Israeli policies on family unification (B’Tselem 2006, 15-16).

<sup>23</sup> This order expressly abrogated IMO No. 2 of 1967.

commander or by an Israeli court. They must have the identification documents needed for their stay in Israel. However, they must enter the “area” using certain roads and during certain day-light hours unless authorized by a military commander to do otherwise. And they are not entitled to enter refugee camps, military posts, and closed areas. Those who transgress the authorization conditions may be punished by up to two years of prison and a fine of 2000 Israeli Lira.<sup>24</sup>

IMO No.5/1970 was amended in 1974 so that it became illegal for Israeli citizens and foreign nationals legally residing in Israel to transfer place of residence to the “area” unless personally authorized by a military commander. It was also forbidden to visit the “area” for more than 48 hours, unless authorized.

According to IMO No.5/1972,<sup>25</sup> residents of the “controlled area”<sup>26</sup> might enter and stay in the “area” only with exit permits issued by the authority. This meant that residents of Gaza Strip were entitled to enter the West Bank only if their exit permits, issued by IMG of Gaza Strip, allowed them to do so. IMO No.5/1972 added new conditions: they were to carry their ID card at all times and show it when requested, and they were not to enter Military posts.

## 7. The Special Case of East Jerusalem

WBGS is usually taken in Palestinian and (largely also) in international literature to include East Jerusalem. East Jerusalem was annexed by Israel but without its people; in fact, the Palestinians of East Jerusalem, unlike those Arabs who remained within the territory forming the state of Israel in 1948, were not granted Israeli citizenship. They were treated simply as 'permanent residents' in the state of Israel (Abu Mukh 2006, 2). This position was even confirmed by ISC decision No.282/88 in which it was stated that the permanent residence granted for the East Jerusalem population is the same as a residence permit granted to foreign nationals (Shaml 1995, 123).

The Palestinians of Jerusalem (*hereafter* Jerusalemites) enjoy certain rights related to their status, such as the right to work and the right of movement in Israel, not to mention the right to enjoy social security and medical services which other Palestinians (from the WBGS) do not enjoy. They are also treated differently when it comes to leaving the country and use the exit borders of Israel and the oPt. On the other hand, Jerusalemites suffer under restrictive Israeli measures, especially in terms of permits for construction and in their right to choose the place of residence without having their ID withdrawn.

Israeli policies towards Jerusalemites have developed in parallel to those applied to WBGS Palestinians. So a census was carried out in East Jerusalem immediately after the war; and those who were outside the city (abroad or even in the “area”) were not registered and thus lost their status as “residents” in Israel. Those included in the census, obtained an ID card that was different from the one granted for residents of the “area”.<sup>27</sup>

Many Jerusalemites, subject to different regulations adopted by the Israeli Ministry of the Interior, have lost their ID card. This has happened either because they remained abroad without having their

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<sup>24</sup> Israeli Currency from 1948 until 1980, replaced by Shekels from 1980 to 1985 and afterwards by the New Shekel.

<sup>25</sup> IMO No.5/1972 substituted IMO No. 4/1969.

<sup>26</sup> See footnote 16.

<sup>27</sup> Those living on the West Bank had orange cards, those in the Gaza Strip had maroon ones and East Jerusalemites carried blue cards. Later on, when the PA was established, green cards were issued for the West Bank and the Gaza Strip by the Ministry of the Interior, containing the ID number granted by Israeli authorities who were, it should be remembered, in complete control of Palestinian population registry.

permit or Laissez Passer renewed, so as to obtain citizenship in a third country,; or because they resided outside of East Jerusalem. Similar complications also arose with regards to family unification, where children of resident women (in Israel), married to non-residents, were often denied registration and had to apply for family unification which was rarely approved (Shaml 1995, 121-131).

## 8. Access of “Residents” of the “Area” to Israel

It is instructive to consider the General Exit Permit No.3/1968, which expressly abrogated IMO No. 2 of 1968; the order regulated entry of residents of the “area” to Jerusalem for prayer in holy places. It entitled Muslims to enter Jerusalem without personal permit on Fridays exclusively so as to visit Muslim Holy places, and likewise Christians exclusively to visit Christian holy places. It also entitled residents to pass through Jerusalem to other places . The same order stated expressly that this authorization did not entitle the visitor to remain outside the place and time indicated in the order and did not entitle that person to work or have commercial activities therein. General Exit Permit No.3/1972 entitled Palestinians to enter Israel without staying overnight. This authorization did not allow commercial activity in Israel or work outside the place which the Labor Office had authorized.

The general exit permit given here for residents of the “area” to enter Israel, has been limited since the first Intifada when Israel imposed severe restrictions on movement, imposing a comprehensive permit system after the Oslo agreements, forbidding entry to Israel save with a permit, permits to enter Israel hardly ever being granted. Since the second Intifada, permits have been needed even to move between Palestinian territories (WB and GS) and within WB cities (Abu Mukh 2006).

To work in Israel, permission is be obtained and quotas are unilaterally decided on by the Israelis. The Israeli-Palestinian agreements did tackle the issue of Palestinian workers in Israel; but this did not prevent Israel from applying unilateral measures against Palestinian workers, as a 'security measure' or a punitive instrument, a response to 'violence'. Even when permission for work is granted, it does not entitle the visitor to stay in Israel if the zone is declared a closed area. Palestinian workers depend then on the Israeli permits system and the whims of the regulation of entrance, visits and work in Israel which change continuously according to administrative acts handed out by the IMG and its civil administration.<sup>28</sup>

Those working illegally in Israel are under the continuous threat of being punished. Israeli law is very strict in this area: Israeli citizens who hire illegal Palestinian workers can be held legally responsible. For this category of legally non-existent workers, rights are fragile, and in case of discrimination or violation of rights there is obviously no access to the Israeli justice system (Kelly 2004, 6; Khalil 2008, 4).

Most recently the ISC rejected a petition against temporary order 2003 (the Nationality and Entry into Israel Law, published on 6 August 2003). This law prevents Palestinians from the oPt from entering Israel, thus preventing family unifications between Israeli spouses and Palestinian ones residing in the oPt (Al-Mukh 2006, 9). For many human rights organizations, a law barring Israeli

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<sup>28</sup> As outlined in an earlier paper (Khalil 2008, 3-4), Palestinians working in Israel have several notable characteristics. First, Israel applies its domestic law, considering the Palestinian workers in Israel as an internal issue. Accordingly, no agreements in this direction have been developed, and if any regulations were included in the Israeli Palestinian agreements, they were not always respected. Second, Palestinian workers move daily to and from Israel; in fact, permission for the purpose of work does not include permission to stay in Israel overnight. Third, permission is granted for non-qualified jobs, thus effectively disallowing possible exchange of expertise in areas where Palestinians and Israelis might profit from each others knowledge. As for higher studies, permission is needed to register in Israeli universities, but registration is needed to obtain permission!

citizens and their Palestinian oPT spouses from living together in Israel constitutes unlawful discrimination that cannot be justified by the country's security interests.<sup>29</sup>

## 9. What's new with Oslo?

As we have already suggested Israel has enjoyed exclusive power over population registry and the issuing of IDs for Palestinians since it occupied the oPt in 1967. It unilaterally administers entry visas and work permits for the tens of thousands of non-ID holding Palestinians in the oPt and for foreign visitors (Loewenstein 2006). The Oslo agreements did not end this regime. The only change on the ground was the redeployment of Israeli forces outside populated areas (with the right to return whenever needed) and the establishment of the PA. It can thus be asserted that the PA co-existed with the IMG and its Civil Administration.

Although some administrative authority was transferred to the PA, Israel kept absolute control of borders and the movement of Palestinians between the WB and the GS and within WB cities. Following Israeli unilateral withdrawal from GS in 2005, Israel dissolved civil administration and the 'the military governance in GS ended', to quote an Israeli military commander (Al-Mukh 2006, 1, 16). However, as stated by John Dugard (2007), in his report on the situation of human rights in those Palestinian territories occupied since 1967, "Israel remains an occupying Power in respect of Gaza" since "Israel retains effective control over Gaza by means of its control over Gaza's external borders, airspace, territorial waters, population registry, tax revenues and governmental functions".

Responsibility for issuing identity cards passed to the PA, while Israel continued to give ID numbers, since it maintained control over the Palestinian population registry. Israel also issued PA travel documents, which could be issued by the PA Ministry of the Interior, but needed to include ID numbers in order to be valid on oPt borders. Accordingly, it is Israel that determines the rights and status of all Palestinians living in the oPt (Loewenstein 2006).

The services provided by the PA Ministry of the Interior (registration of births and deaths, demands for permanent residency and family unification not to mention visiting permits) continued to depend on Israel (Shaml 1995, 108), as strictly regulated by article 28 of the Protocol Concerning Civil Affairs of the Interim Agreement of 28 September 1995. In other words, "the PA served as a broker between the Palestinians and the Israeli authorities. However, the PA was authorized to set priorities on requests forwarded to Israel for approval, and to reject requests outright" (B'Tselem 2006, 12).

The protocol gave the PA the authority to register children until the age of 16 if any of their parents were resident. And this provision was a step forward if compared to IMO 1206/1987 in two ways: (i) the birth of children born outside the area could be registered within 16 years as opposed to within 5; and (ii) registration could be made if either of the parents was resident, not only when the mother was resident. However, this agreement was a step backwards when compared to IMO No. 1421/1995, adopted 10 months earlier, which set 18 years old as opposed to 16.

Crossing points of and to the WBGs, for persons, as much as for vehicles and goods, are still under complete Israeli control. This means that many Palestinians and foreign nationals may simply not be admitted to the oPt or allowed to exit from it. Israeli border regulations vary constantly, and the

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<sup>29</sup> For Human Rights Watch "Israel's obligations under international human rights law include the obligation to respect the absolute prohibition on discrimination set out in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 2 of the Convention on the Rights of the Child (CRC), and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Israel has ratified all of these treaties". As published on the website: <http://www.hrw.org/english/docs/2006/05/18/isrlpa13403.htm>

documents needed for traveling change accordingly so that the public is not well informed about the regulation and often only learn what is needed when actually crossing the border.

Since the second *Intifada* in September 2000, family unification has been frozen in the same way as permanent residence. Those concerned had to choose between remaining illegally in the oPt or leaving the country until family unification and permanent residence is granted. If they were in possession of a foreign passport from a country that had relations with Israel, they might leave the country every 3 months and re-enter with a tourist visa.

The first option is risky since, as a rule, whoever remained in the area after the visitor's permit expired, and then left later, was not allowed to return (B'Tselem 2006, 10). The second option was unrealistic because the procedure, in normal times, is long and uncertain, and could take months or years. Indeed, Israel started to accept demands for family unification only in 2007.

For those in possession of a foreign passport, many had to leave the oPt to renew their tourist visas in order to continue living together with their families. Many traveled outside the oPt – typically to Jordan, Egypt or Cyprus – every three months only to return immediately and obtain a new Israeli visa (Loewenstein 2006). This was an expensive alternative to the already long and uncertain process of applying for residency permits from the Israeli government.<sup>30</sup> However, since early 2006, and without any formal announcement of change, Israel has applied a new policy. Palestinians, holding US and European Passports, had ‘Entry Prohibited’ stamped in their passports. And these passport holders now remain stuck in third countries, separated from their families living in the oPt.

## 10. Israeli Obligations under International Law

In time of armed conflicts and occupation, International Humanitarian Law (*hereafter* IHL) starts to apply. IHL, part of international law, is a set of rules which seeks to limit the effects of armed conflict; it protects persons who have not or are no longer participating in hostilities and restricts the means and methods of warfare.<sup>31</sup> Geneva Law, a term that refers to the four Geneva Conventions and the Additional Protocols, includes major part of IHL.<sup>32</sup> Israel signed the four Geneva Conventions in 8 December 1949 and ratified them on 6 July 1951. It did not sign the additional two protocols.<sup>33</sup>

According to international law, territories that fell under Israeli control in 1967 are occupied territories. Accordingly, IHL applies to the oPt. Israel contended the status of occupation, considering it a disputed area. ISC accepts the applicability of Hague Law, considered as customary. As for Geneva Law, ISC contended the *de iure* applicability since treaty-based international law need to be converted by the legislature into domestic law in order to be binding (Khalil 2004; Abu Mukh 2006, 3).

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<sup>30</sup> For more information, see report of IRIN news: <http://www.irinnews.org/report.aspx?reportid=61924>

<sup>31</sup> See official website of the ICRC: <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/humanitarian-law-factsheet>

<sup>32</sup> The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949), the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949), the Geneva Convention relative to the Treatment of Prisoners of War (1949), the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949). The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1978) and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II) (1978).

<sup>33</sup> For more details about Israel's signature and ratification of international conventions we send readers to the Human Rights Library of the University of Minnesota: <http://www1.umn.edu/humanrts/research/ratification-israel.html>.

The application of IHL does not exempt the state from its obligations under International Human Rights Law (*hereafter* IHRL), since IHL is considered as *lex specialis* to human rights law, as confirmed by an influential statement of doctrine of the International Court of Justice (*hereafter* ICJ) Advisory Opinion Legality on the Threat or Use of Nuclear Weapons in 1996 (Abresch 2005, 4).

IHRL is largely codified in those treaties that Israel has ratified.<sup>34</sup> Accordingly, it can be said that IHRL, as much as IHL, is applicable to the oPt (Al-Haq 2005, 35ff.): hence the ICJ Advisory Opinion on the “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” in 2004.<sup>35</sup>

Accordingly, Israel can be held responsible for violations of human rights, based on its obligations under IHL and IHRL. This includes violations of individuals’ rights to life, dignity and health. It also includes the right to movement within the oPt and movement in and out of the oPt. No discrimination based on ethnicity or origin can be justified. The Israeli government and Court cannot exempt itself from applying its regulations based on domestic law. Basic human rights cannot be randomly selected or applied in a discriminatory way.

Israel rejects all arguments related to the applicability of IHRL treaties on the oPt; its position since the Oslo Agreements was based on the empowerment of the PA to administer parts of WBGS (area A) and later on the disengagement plan, applied unilaterally to the Gaza Strip (Abu Mukh 2006, 19).

## 11. Conclusion

Israeli policies towards the “residents” of the “area” were clearly directed to minimize the number of Palestinians and to maximize annexed Palestinian lands; in other words, to the end of having more annexed lands and fewer resident Palestinians on those lands. Those measures were realized through law; Israel made very good use of legal techniques; in fact, it issued hundreds of Israeli Military Orders (IMO) for its colonial objectives on the territories it occupied in 1967.

In this paper, our analysis was limited to the impact of the Israeli occupation in the WBGS since 1967. This, after all, was an occupation which caused a massive displacement of Palestinians outside the WBGS and effectively prevented their return. The Israelis also refused to readmit those who happened to be outside the WBGS during the war, and since 1967, have enforced a strict policy against Palestinians within the WBGS who are often deported for political or security reasons.

This paper tried to prove that many Palestinians who left the WBGS in and after 1967 cannot return to their “homeland”; accordingly, they have no choice but to stay in the country of “first refuge”, despite their illegality/irregularity, or they must find another country ready to admit them. Their presence becomes unwelcome for any host countries or third countries to which those Palestinians may be willing to travel for study, work or, indeed, for any other reason. They are treated as a danger which States must guard against for “national security” considerations, questions of human rights and dignity being left to the side.

A significant part of the paper was dedicated to the question of the regulation of entry and exit, stay and work in the oPt; analyses of the Israeli Palestinian agreements and studies on the ground clearly

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<sup>34</sup> Such as the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1980), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1986), and the Convention on the Rights of the Child (1990). The first treaty was ratified in 1979 and five others in 1991.

<sup>35</sup> Available at the ICJ official website:

<http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>



show that no substantive changes have been made since Oslo and the establishment of the PA. Indeed, the PA enjoys only limited powers with regards to its borders, while Israel remains an occupying force, with supreme power over the land.

Israel demands the last word on issues related to international migration and the PA cannot and did not formulate a comprehensive system of laws and regulations to govern the issue of migration. The PA, however, did enact certain legislation that had an impact on migration. This legislation sometimes echoed the limited territorial, functional and personal jurisdiction of the PA; in other cases, it avoided crucial decisions to avoid being perceived as the tool of the Israeli occupation policies. This may explain why PA laws and policies did not link regular work in the AT with regular stay, since the latter depended on Israel and not on the PA. On the contrary, all efforts of the PA to attract investments from foreign nationals, including Arabs and Palestinians of the Diaspora, always failed given Israeli control over borders and visas.<sup>36</sup>

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<sup>36</sup> I limited my analysis to Israeli restrictions on the movement of persons, and to the regulation of the status of residents and foreigners in the oPt. For more details concerning PA legislation related to migration, see: Khalil 2006; Khalil 2007b; Khalil 2008.

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