



UNSCO-OCHA¹ Discussion Paper – “Seam Zone” Military Order**3 November 2003****Facts:**

On 2 October, the IDF issued a military declaration and three directives under Order 378 (“the Orders”) which provide that “no person will enter the seam zone and no one will remain there. A person found in the seam zone will be required to evacuate immediately”. The seam zone is the area between the Wall and the Green Line. See www.ochaopt.org for a map of the seam zone.

Legally, these Orders mean that all Palestinians should have evacuated their homes on 2 October 2003, the date the Orders took effect. Although this has not occurred, Palestinians living in the area between the Green Line and the Wall who wish to remain in the area must apply for a permit to reside in their homes or to farm their land. However, Israeli citizens, Israeli permanent residents and those eligible to immigrate to Israel in accordance with the Law of Return can move freely to, from and within the seam zone.

The Orders affect 18,000 acres of Palestinian land. More than 7,000 Palestinians reside in the seam zone.²

Impact Analysis:

- These Orders violate or have the potential to violate fundamental principles of international humanitarian and human rights law, i.e. arbitrary interference with family home and unit, prohibition on transfers, forced evictions, denial of right to health, education, adequate standard of living, prohibition against discrimination and collective punishment.
- Even if some Palestinians are granted permits, without access to their land and with restricted access to health, education, employment, friends and family, there is concern that many Palestinians may leave the area.
- Once Palestinians leave the area or are denied permanent resident or visitor permits, their land can be expropriated under other military orders or through selective enforcement of domestic legislation in the West Bank that was inherited from the Ottoman and Jordanian regimes. Israeli authorities have used the Ottoman law already to declare roughly forty percent of West Bank land as state land on the grounds that it has not been adequately cultivated.³ Military orders have been used to requisition property for by-pass roads serving Israeli settlement. In light of such Israeli expropriation measures throughout the years of occupation, these new Orders raise serious concerns that the next step may be expropriation and/or annexation of this land into Israel or use of the land to accommodate Israeli settlement.

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² OCHA update, 1 September – 15 October 2003.

³ B’Tselem “Land Grab: Israel’s Settlement Policy in the West Bank”, 2 May 2002, p. 35.

- Because every employee of an international organization is now required to obtain a permit from the IDF to enter these areas, these Orders will increase the already severe humanitarian crises created by the closures and the Wall.

Principles of international humanitarian law (“IHL”) and human rights law violated by the Orders:

1. While not legally binding, the General Assembly last week called for the Government of Israel to halt construction of and dismantle the Wall. Under Geneva IV, the IDF may and has, issued military orders closing areas of the occupied territories for temporary periods. However, in this case, the Orders have been issued in the context of the Wall and the geographic area to which they pertain is defined by the Wall.
2. Under international human rights and humanitarian law, Israel does have the right to take certain measures out of military necessity⁴. However, the exercise of that right must be proportionate to its obligations under humanitarian law and to protect human rights. In this case, the Orders are too sweeping and without procedural protections to be proportionate and therefore constitute an arbitrary interference with the home and family.⁵
3. These Orders have the potential to eliminate the right to live in one’s home. In addition, because these Orders make it extremely difficult, if not impossible, to sustain a living in this area, the Orders may constitute de facto forced eviction⁶ which could be defined as forcible transfer under Article 49 of Geneva IV – a measure absolutely prohibited by the Convention.⁷
4. The Orders also violate Israel’s obligation under IHL as an occupying power to provide or allow for the provision⁸ of food, and medical care⁹, and the maintenance of hygiene and health¹⁰ to the protected persons living the Occupied Territories. In effect, the Orders will turn the right to receive humanitarian services - employment, schooling, etc. into a privilege to be decided by the IDF.
5. Because the Orders exempt Israelis and internationals of Jewish descent from the permit requirement, it only affects Palestinians with respect to permanent residency. Such a practice is discriminatory and creates a system of residency based on racial/ethnic discrimination.
6. Although the intention may not be punitive, the effect of the Orders is. Therefore, it is arguable that the Orders constitute collective punishment – which is prohibited by IHL.¹¹
7. High Contracting Parties to Geneva IV have an obligation not only to abide by, but to enforce the Convention in the Occupied Territories and stop the violations as they occur.¹¹

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⁴ For example, Hague Regulation 23 allows an occupying power to seize private property for military needs in time of war.⁴

⁵ Article 17 of the ICCPR.

⁶ Article 11, ICESCR

⁷ “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory...are prohibited, regardless of their motive.”

⁸ Article 59 of the Fourth Geneva Convention requires the Occupying Power to “agree to relief schemes on behalf of the said population and shall facilitate them by all the means at its disposal.

⁹ Article 55 of the Fourth Geneva Convention

¹⁰ Article 56 of the Fourth Geneva Convention

¹¹ Article 33 of the Fourth Geneva Convention

¹¹ Article 1 of the Fourth Geneva Convention

ANNEX A

Description of Orders and Procedural Provisions¹²

- i) Declaration Concerning the Closure of Area Number S/2/03 (Seam Area)
- ii) Regulations Regarding a Permit for a Permanent Resident in the Seam Zone
- iii) General Permit for Entry to the Seam Zone and to Stay There
- iv) Regulations Regarding Entry and Stay Permits to the Seam Zone

I. Declaration Concerning the Closure of Area Number S/2/03 (Seam Area)

The declaration provides that “no person will enter the Seam Zone and no one will remain there. A person found in the Seam Zone will be required to evacuate it immediately”. An IDF map of the seam zone is attached and introduces 47 passages, few already constructed, through which movement will be regulated.

II. Regulation Regarding a Permit for a Permanent Resident in the Seam Zone:

Articles 1(a) and 5(a) – applicants must prove to the “satisfaction of the certified authority that s/he is a permanent resident in the seam zone.” There is no definition of “permanent resident” nor is there a standard of proof of permanent residence to be met by the applicant, leaving the entire application process arbitrary.

Article 4(c) obliges applicants to provide “every document necessary for examination of the request”, but there is no list of necessary documents contained in the article. Such a vague obligation will also allow for arbitrary implementation, as different certifying authorities may deem “necessary” different documents. These documents may be difficult or expensive to obtain.

Article 5(a) presents additional concerns, as permits already granted must be renewed at periodic intervals, which have not yet been defined. The arbitrary nature of the proceedings may allow for the rejection of applications for renewal of a permit in cases where the resident spends time outside of the Seam Zone. This might include individuals seeking education, employment or healthcare outside of the Seam Zone. Therefore residents remain under a continuous obligation to prove permanent residence, in the absence of a clear definition of “permanent residence”.

Article 1(b) – the duration of any permit granted is not defined although the article does indicate that procedures will be established for this purpose.

III. General Permit to Enter the Seam Zone and to Stay There:

A general permit has been issued for now, eliminating the need for the following persons to apply for a permit:

- 1. Tourists,
- 2. Palestinians with work permits for an Israeli settlement located in the seam zone,
- 3. Palestinians with a valid permit to enter Israel

Article 3: The military commander may at his own discretion decide that a permit may not apply to a person deemed eligible for the permit under this Orders.

IV. Regulations Regarding Entry and Stay Permits to the Seam Zone

According to this directive, each of the following must apply for a permit to enter the Seam Zone:

- 1. An owner of a business located in the seam zone
- 2. Merchants

¹² For a translation of the Orders, see www.ochaopt.org

3. A person employed in the seam zone
4. Farmers
5. Teachers
6. Students
7. An employee of the Palestinian Authority
8. A visitor [other than Israeli, Palestinian with work permits and tourist]
9. An employee of an international organization
10. An employee of the local authority/infrastructure companies- i.e. water, electricity
11. Members of medical teams
12. Other

Article 2(b) - the duration of any permit granted is not defined although the article does indicate that procedures will be established for this purpose.

Article 4 provides that any request can be denied in which case a "committee" can be requested to review the application. No review standards for this committee are indicated.