

## **Prohibiting Contact with Enemy Aliens: The Case of the Palestinians in Israel**

**By Haneen Naamnih<sup>1</sup>**

Recently, the State of Israel has made frequent use of prohibitions in law banning social and cultural contacts between its citizens and a large part of the Arab world. Israel claims that these relations constitute contact with “enemy aliens”. What is the effect of these prohibitions on Palestinian Arab citizens of Israel? Are these prohibitions legitimate and consistent with the principle of equality and international law?

“Kol Bo Books,” owned by Mr. Saleh Abbasi, is one of the largest book importers in the Arab community in Israel. For 30 years, Mr. Abbasi, a Palestinian citizen of Israel, has imported books from Egypt and Jordan that are published in Lebanon and Syria. The imported books come from various literary genres, including children’s literature, classical and modern Arab literature, world literature in translation, professional works, dictionaries, encyclopedias and more. About 80% of the books required by the Palestinians in Israel are published exclusively in Lebanon and Syria.

In August 2008, Mr. Abbasi received a letter from the Israeli Ministry of Industry, Trade and Labor stating that the Kol Bo Books’ licenses to import books from Lebanon and Syria would be terminated because this import constitutes “trading with the enemy” under the Trade with the Enemy Ordinance - 1939. Adalah petitioned the Supreme Court of Israel<sup>2</sup> on behalf of Mr. Abbasi to renew the Kol Bo Books’ import licenses and to declare that the Trade with the Enemy Ordinance is inapplicable the import of these types of books. The state argued before the court that in its view, the import of books published in Lebanon and Syria via Jordan and Egypt constitutes trade with the enemy. Nonetheless, the state also announced that it had decided that an exception would be made and that the Kol Bo Books importer (and this company only) would be granted an import license, to be renewed each year, in light of the nature of the “goods”

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<sup>2</sup> For more information and the petition in Hebrew, see: <http://www.adalah.org/newsletter/eng/jan09/8.php>

(textbooks and educational books) and its importance to “the residents of Israel.” The petitioners argued in response that the application of the ordinance constitutes an extreme, sweeping and severe measure, and that it is a slippery slope that places a large segment of the state’s Arab citizenry in danger of criminal sanction for using or importing or conducting commerce in basic items such as books that are exclusively produced in Arab states. The Supreme Court ruled on 1 October 2009 that the state’s granting of an import license to Kol Bo Books mooted the petition.<sup>3</sup> The court wrote that it did not see any reason to address the fundamental questions raised by the petition concerning the application of the ordinance and stated that the petitioners could again turn to the court with a request for legal remedy if the need arises.

This case constitutes another link in the chain of de-legitimization measures that Israel is imposing on the natural and legitimate interests of the Arab minority in the state to develop ties with members of its people in Arab states. Most of the Palestinian people maintain or seek to maintain family ties and to create a connection with family members who are refugees in Lebanon and Syria; Palestinian writers seek to compete in prestigious literary competitions in the cultural capitals of Beirut and Damascus; religious and political officials visit these states; and many citizens seek to import a range of goods that are exclusively produced in these states. Countless examples exist of these kinds of connections. Israel, for its part, imposes prohibitions on these ties via various policies and legislation. The most well-known and harsh example of this kind of legislation is the Citizenship and Entry to Israel Law (Emergency Order) – 2003, which prohibits citizens of the state from marrying and living together with their spouse in Israel if the spouse is a resident or citizen of an enemy state.<sup>4</sup> This ban also applies to the case of Kol Bo Books, based on the state's resurrection of the old Trade with the Enemy Ordinance from the relics of the British Mandate. The common denominator of this range of legislation is the sweeping use of the doctrine of “enemy states.”

Israel adopted the doctrine of “enemy states” from other countries that made frequent use of it during the First and Second World Wars as a means of defense against security threats posed by

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<sup>3</sup> See: H.C. 894/09, *Kol Bo Books vs. The Minister of Finance* (decision delivered 1 October 2009), available in Hebrew at: <http://elyon2.court.gov.il/files/09/940/008/R03/09008940.R03.htm>

<sup>4</sup> See H.C. 830/07, *Adalah v. The Minister of the Interior, et al.* (case pending). For more information, see: <http://www.adalah.org/newsletter/eng/mar09/4.php>

the enemy state. This prohibition was imposed primarily on contacts that were clearly related to security, such as commerce in various types of weaponry. The doctrine of "enemy states" was broadly applied in the United Kingdom against German citizens during World War II. Various forms of boycotts were imposed upon them as aliens from an enemy state. These prohibitions also included Jews who were themselves victims of the Nazi regime in Germany.

Another example can be found in the United States, which declared an economic embargo on Cuba in 1962 following Fidel Castro's rise to power. The economic embargo on Cuba was also backed by the US Trading with the Enemy Act. Until 1988, this economic embargo encompassed all types of goods imported from Cuba, including books, movies, music and more. In 1988, following many complaints about the prohibition on the import of books and journals from states subjected to the American economic embargo, exceptions were established to allow for the import of these materials, despite the application of the Trading with the Enemy Act in the case of Cuba. Most of these countries which implemented the doctrine of "enemy states" now refrain from making wide use of this doctrine, and cautiously limit its application to obvious security contexts. Further the right of national minorities to maintain contact with their own people who live in other countries is anchored in the international law, and most importantly in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992.<sup>5</sup> Article 2(5) of the Declaration provides that persons belonging to minorities have the right to maintain, without any discrimination, contacts with members of their group in other countries.

*So what is unique about the use of this doctrine in Israel?*

According to Israeli law, enemy states are defined as Arab states. Until 1948 these states constituted an integral part of the national, social, political, cultural, religious, historical and linguistic experience of the Palestinians who later became a minority within the State of Israel. They also comprised a territorial whole that was fragmented by the establishment of the State of Israel. In recent years, there has also been a trend to also extend this doctrine to the Palestinian

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<sup>5</sup> See <http://www.un.org/documents/ga/res/47/a47r135.htm>

territories occupied since 1967. The main people (if not the only people) to suffer from the application of this doctrine are members of the Arab minority in Israel, who demand the right to maintain legitimate relations with members of their Palestinian and Arab people.

Israel exploits the doctrine of “enemy states” as an additional measure of oppression and discrimination against the Arab minority. It does so under the veil of ostensibly “neutral” Mandatory-era and Israeli legislation. In regard to the Citizenship Law, the state determined, with the backing of many scholars from Israeli academia, that the prohibition imposed on family unification is legitimate because every state in the world is entitled to define its immigration policies in accordance with its needs and rules. This trend is also reflected in the state’s response to the petition submitted by Adalah and Kol Bo Books in the case of the prohibition imposed on Kol Bo Books from importing books originally published in Lebanon and Syria: The State noted that the Trade with the Enemy Ordinance has great importance in light of its aim “*to prevent direct or indirect economic assistance to the enemy by an enemy state.*” Israel does not see any injustice in setting such a policy, despite its very severe repercussions for the Arab minority.

The Arab minority in Israel is a national minority within the state, but it is also part of a large Arab national collective and constitutes an inseparable part of it. There is no legal or ethical basis for the cutoff Israel imposes on the Arab citizens from members of their people in Arab states. Former Israeli Supreme Court Justice Cheshin stated in the ruling on family unification in 2006 that the war between Israel and the Palestinians is a war of “a collective against a collective”<sup>6</sup> and, therefore, the Palestinians in the occupied territories are aliens of an enemy state. While Justice Cheshin’s approach was not accepted by most of the Supreme Court justices, it illustrates the trend of ignoring the collective characteristics of the Arab minority as an indigenous national minority and excluding it from the Arab collective against its wishes. This exclusion constitutes collective punishment of the Arab citizens under the guise of neutral legislation and seeks to advance the demographic and security interests of the Jewish collective.

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<sup>6</sup> See paragraph 3 in Justice Cheshin's ruling in H.C. 7052/03, *Adalah v. The Minister of the Interior* (decision delivered 14 May 2006) available in Hebrew at: <http://elyon2.court.gov.il/files/03/520/070/A47/03070520.A47.htm> and in English at: [http://www.icrc.org/ihl-nat.nsf/39a82e2ca42b52974125673e00508144/a574e3dabdf5db90c12575bc002d9dea/\\$FILE/HCI%207052.03%20doc.doc](http://www.icrc.org/ihl-nat.nsf/39a82e2ca42b52974125673e00508144/a574e3dabdf5db90c12575bc002d9dea/$FILE/HCI%207052.03%20doc.doc)

Disregarding the legitimate interests of Arab citizens of Israel to the point of threatening them with criminal charges is a discriminatory policy. It violates the very essence of the Arab minority's constitutional rights and, just as importantly, violates their collective rights. The prohibition imposed on the import of Arabic books published in Lebanon and Syria constitutes a dangerous component of this policy. This danger intensifies in light of the Supreme Court's decision to refrain from engaging in a fundamental discussion of the implications of applying the Trade with the Enemy Ordinance on legitimate commercial relations between Arab citizens and members of their people in Arab countries. Resolving the problem in just one of many cases is not at all sufficient for addressing this severe and ongoing discrimination against the Palestinian citizens of Israel.