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EXDIS

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FROM : AmConsulate General JERUSALEM DATE: October 24, 1978

SUBJECT: Arrest and Conviction of Two Amcits - Allegations of Physical Abuse

REF : Jerusalem 2696

COPY NO. 1 SERIES A

SUMMARY

This airgram deals with the trial in Ramallah, West Bank, of two American and two Palestinian boys. The case involved allegations of mistreatment and physical coercion by the Israeli military authorities. The Consulate General, through the American Embassy in Tel Aviv, had formally requested the Israeli Government to investigate these allegations of mistreatment of U.S. citizens and the Israelis had replied that an investigation would be conducted. This trial, and more specifically, the "mini-trial" which was its major component, constituted the investigation. As the trial judge indicated, we expect the Israeli Government's report to us will be based on the findings of this trial.

The trial was covered by two consular officers, Wayne Griffith and Stephen Kish. One of the two was present at every session of the trial. It is the opinion of both of these consular officers that the Israeli military authorities made no real effort to investigate the charges of mistreatment. Indeed, both the military judge and the prosecutor made it clear throughout the trial that they considered the questions of mistreatment and coercion to be irrelevant and trivial. They also made it clear from the start that the trial's result was preordained. In the end, the Israeli authorities denied that any physical coercion took place despite the fact that no serious investigation took place in response to the Embassy's formal request.

The trial was the result of events which occurred on March 22, 1978 soon after the Israeli incursion into Southern Lebanon.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: SECTION E AHMAD

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Contents and Classification Approved by
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At that time, two American citizens, [redacted]

[redacted] were arrested following an incident in which rocks were thrown at an Israeli military bus. These boys were taken to the Ramallah police station. According to statements made at the Consulate General by the [redacted] and to statements made by all four boys at the trial, they were beaten and threatened by the police until they signed statements written in Hebrew, a language none of the boys understands. In these statements, the boys confessed to throwing rocks at the bus. They were then released on bail.

[redacted] came into the Consulate General with their father on March 24. They made oral and written statements in which they gave details on the alleged beatings. Copies of these statements were sent to SCS and to the American Embassy in Tel Aviv in a memorandum dated April 6, 1978. The boys and their father requested the Consulate General to protest the claimed mistreatment.

On April 6, the American Embassy in Tel Aviv forwarded a note to the Israeli Ministry of Foreign Affairs which requested that an investigation be made into the claimed mistreatment of the boys by the Israeli authorities.

On August 10, the trial of the four boys commenced. This session was attended by both consular officers. The military judge stopped the proceedings early in the session and asked the officers to identify themselves and to state their business at the trial. One of the consular officers then made a statement which explained that two of the accused were American citizens and that the consular officers were at the trial merely to observe the proceedings. He also stated that the Consulate General had received complaints of mistreatment from the [redacted] and had asked the Ministry of Foreign Affairs for an investigation of this matter. The military judge replied that he was aware of this request by the Consulate General; the Foreign Ministry had forwarded the request to the military authorities. He stated that an investigation into the allegations of mistreatment would take place as a part of the trial; a "mini-trial" would be held which would look into the claims of physical coercion. Based on this "mini-trial", a reply would be given to the Consulate General.

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The trial was presided over by a single military judge, who was also responsible for deciding on a verdict and imposing sentence. It was conducted in Hebrew with a simultaneous translation into Arabic. The judge and prosecutor, who were Israeli, and the defense attorneys, who were Arab, frequently lapsed into English, as this was the only language they had in common. In addition, the military judge made several rather long statements in English on the quality of Israeli military justice apparently for the benefit of the attending consular officers.

After some preliminaries, the prosecutor attempted to introduce the boys' confessions into evidence. The defense attorneys objected at this point on the grounds that the confessions were the result of physical coercion, that they had been made under duress, and that they were thus inadmissible. The military judge then made a rather long speech in English in which he took the defense to task for introducing the question of coercion into the trial as a surprise tactic. The judge stated that if the defense lawyers had information which cast doubt on the validity of the confessions, they should have gone to the prosecutor before the start of the trial instead of pulling a claim of coercion "out of a hat" in the middle of the proceedings. The military judge then went on to state that the prosecutor was charged not only with presenting the state's case against the defendants, but with protecting the rights of all involved. This statement did not square with the judge's earlier statements that he was aware that coercion was an issue in this case and that he intended to conduct a "mini-trial" to look into this issue. After making this speech, the judge adjourned the trial.

Hearings resumed on the 18th of September. A different judge and a different prosecutor had taken over the case. (Both judges and prosecutors in the military court are civilian lawyers serving on reserve duty, and there is generally a one month tour of duty in such positions.) The first prosecution witness was a policeman who testified that he had seen one of the boys, [redacted] throw a rock at the bus. As soon as this testimony was given, the military judge stated that as far as he was concerned,

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the question of whether or not the boys had been beaten into making their confessions had no bearing on the case. He said that even if they had been beaten, this did not change the facts that rocks had been thrown at a bus and that one of the boys had been identified. He then suggested to the defense attorneys that the case was settled. When they disagreed, he asked them in a somewhat exasperated manner why they insisted on persisting in this manner.

A second policeman named [redacted] who was one of the persons alleged to have beaten the boys, then testified. He was asked if he had used force to obtain their confessions. He denied that he had. After [redacted] testified, the military judge stated in English that it did not make sense to him that a policeman would use force and beat up a group of boys over a relatively minor offense like throwing rocks. He said that one must use one's reason in these matters and that it didn't appear reasonable to him that a policeman would use force in such a case. He stated that he therefore doubted the defense's claim of mistreatment.

Upon hearing this, the defense attorneys stated that they had witnesses to present who could substantiate the claims of mistreatment. The judge then repeated that he doubted that they would be able to prove their claims, but that they were free to present such witnesses as they wished. The trial was then adjourned.

Hearings resumed on the 13th of September. The second policeman who was alleged to have beaten the boys testified. Each of the four defendants then testified and was cross examined by the prosecutor. After this, the military judge asked the defense attorneys how many more witnesses they planned to present. When they replied four, the judge gave a quite audible sigh and said sternly: "We shall continue; we have the time. But I don't see what is the purpose in this."

Four other witnesses then testified: the [redacted] father, the mother of one of the other defendants, a boy of about nine years who had been arrested and who was in the police station at the time of the four boys' arrest, and a bystander who witnessed the arrests. All testified

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that the boys had been beaten. In all, the session lasted about five hours. The military judge then took the case under consideration and scheduled the next session for the 28th of September.

The final session on September 28 opened with the military judge announcing that he found the defense claims of coercion to be without merit and that the confessions would be accepted as valid. Testimony then was taken again from one of the policemen alleged to have beaten the boys and from [redacted]

In a last effort to prove the claims of mistreatment, the defense had [redacted] testify once again. He stated that the police had beaten him to force him to confess and to implicate the other three defendants. To support this testimony, the defense called another witness, a boy of about 12 years. He stated that he and [redacted] had been playing soccer after the rock throwing incident. When the police approached them, they tried to run away, but he had been caught. The police then beat him until he agreed to show them the place where [redacted] was hiding. The military judge by this time had become quite annoyed that the defense was continuing to argue the issue of mistreatment. He made several harsh statements to the boy as he was testifying, at times yelling at him loudly enough to cause the boy to cringe. He also made a statement in the middle of the testimony that the boy was not telling the truth, but merely telling stories. After this boy completed his testimony, the other two defendants, [redacted] testified once again. The defense lawyers and the prosecutor made their closing arguments and the judge then adjourned the trial for half an hour to make his decision.

During this adjournment, the attending consular officer overheard a conversation which exemplified the military authorities' attitude toward the issue of mistreatment which had been raised. This conversation also came extremely close to being an acknowledgement that physical mistreatment had in fact occurred. The conversation took place between the prosecutor and one of the defense attorneys. They spoke in English, as this was their only common language. Evidently, neither realized that they were speaking within earshot of the consular officer.

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The prosecutor started the conversation by telling the defense lawyer that the whole effort to have the confessions ruled inadmissible based on their having been obtained by force had been a waste of time. He asked the lawyer if he knew the percentage of cases in which confessions were thrown out because of a claim of coercion in their extraction. The lawyer answered that it happened about two or three per cent of the time. The prosecutor responded: "Less than that. Our interrogators know how to do this thing. Our interrogators know their job." The lawyer became quite excited at this statement, jumped up from his seat, waved his finger at the prosecutor, and said; "That's just our point." The prosecutor answered: "Well, maybe this one was a little too strong, but this whole thing was just political. These things take place everywhere."

The prosecutor then went on to say that [redacted] the boys' father, had tried to make this a political case, that he had brought in the American Consul merely for a political purpose.

The military judge then returned and found the boys guilty. He sentenced them to two months imprisonment (which he suspended over a period of two years) and imposed a fine on each of them of 5,000 Israeli Pounds (approximately \$275.00).

Conclusions -- It is evident that the question of whether the police used physical coercion to obtain the confessions should have been the central point of the trial. Only one other piece of evidence was presented and that was the statement by a policeman who stated that he saw [redacted] throw a rock at the bus. The confessions which were written in a language none of the defendants understood were the only evidence presented against the [redacted]

In addition, the Israeli Ministry of Foreign Affairs had assured the American Embassy in Tel Aviv that an investigation into the alleged mistreatment of [redacted] would be carried out and the "mini-trial" was supposed to be that investigation.

But before the "mini-trial" had even commenced, the military judge had stated that he believed the questions of

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coercion and mistreatment to be irrelevant. He had been ready to dismiss the claims of physical mistreatment before he heard a single witness offered by the defense. He tried to cut off the defense in its presentation of testimony on the alleged mistreatment, repeatedly asked the defense lawyers why they were dragging out the case with the issue of coercion, and made it clear that he considered pursuing the question to be a waste of time. He thus conducted the trial as a pro forma exercise in which he somewhat grudgingly allowed the defense to discuss the question of coercion while making it clear that such discussion would have no effect on the outcome of the trial.

Finally, the discussion between the prosecutor and the defense lawyer cited earlier makes it evident that the military authorities were aware that physical coercion and mistreatment probably had been used to extract the boys' confessions, but that they did not consider this a matter important enough to warrant any real consideration. As the prosecutor said, "...These things take place everywhere."

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