HUMAN RIGHTS IN A PERIOD OF TRANSITION

The Case Of The Occupied Territories, Jericho, And The Gaza Strip

Joint Mission To Israel, The Occupied Territories
And The New Palestinian Autonomous Areas
On Behalf Of The
Law Society Of England And Wales
And The Human Rights Committee
Of The Bar Of England And Wales

26-30 JULY 1994

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INTRODUCTION

The aims of the Mission were to investigate and report on the new situation brought about by the Oslo Declaration of Principles of 13 September 1993 and the Cairo Agreement of 4 May 1994 (analysis of these can be found in Section III below), in particular the prospects for the rule of law and protection of human rights in the Palestinian self-rule areas of Jericho and the Gaza Strip, as well as the expectation of "early empowerment" and legislative elections in the remainder of the West Bank.

Our programme, which utilised every moment of each day, included meeting the following:

Tuesday 26 July	(a) *Usama Halabi*, Director of the Legal Department, Quaker Legal Aid Centre, in East Jerusalem (b) *Judge Haim Cohen*, former President of the Israeli Supreme Court, at home in West Jerusalem (c) *Ali Shkeirat*, leader of the Jordanian Bar (lawyers who are on strike), in Ramallah, West Bank (d) *Fateh Azzam*, Director of Al-Haq, West Bank Affiliate of the International Commission of Jurists, in Ramallah, West Bank (e) *Alaa Al-Bakri*, leader of the Palestinian Bar (lawyers who are not on strike), and lecturer at the new College of Law at Ram, in Ramallah, West Bank (f) *Professor Kamil Mansour*, Director of the Legal Centre of Bir Zeit University, on secondment from Université de Paris I (Sorbonne), and *Professor Ghassan Faramond*, also of the Legal Centre, in East Jerusalem. (g) *Dr Lynn Welchman*, Centre for International Human Rights Enforcement, and *Charles Shammas* of CIHRE, in East Jerusalem
Wednesday 27 July	(a) *Raji Sourani*, Advocate, Gaza Center for Rights and Law (ICJ affiliate), in Gaza (b) *Freih Abu-Meidan*, Responsible (Minister) for Justice, Palestinian National Authority, in Gaza (c) *Ziad Eref*, Chief of the Palestinian Police, in Gaza (d) Members of the Gaza Bar, in Gaza (e) *Professor David Kretzmer*, of the Department of Law, Hebrew University, in East Jerusalem
Thursday 28 July	(a) *Judge Meir Shamgar*, President of the Israeli Supreme Court, in Jerusalem (b) *Hanan Ashrawi*, Commissioner-General, Palestinian Independent Commission for Citizens Rights, in East Jerusalem (c) *Professor Said Zedani*, Bir Zeit University, in East Jerusalem (d) *Dr Eyal Benvenisti*, Department of Law, Hebrew University, in East Jerusalem
Friday 29 July	(a) *Colonel Ahaz Ben-Ari*, Head of the International Law Section, Military Advocate-General's Corps, Israel Defence Forces, in Tel Aviv

	(b) *Eliahu Abram*, Advocate, Association for Civil Rights in Israel, and *Yuval Ginbar*, Advocate, B'Tselem, in West Jerusalem (c) *Raja Shehadeh*, Advocate, in Ramallah, West Bank (d) *Professor Stan Cohen*, Department of Sociology, Hebrew University, in East Jerusalem
Saturday 30 July	(a) *Judge Khalil al-Silwani*, President of the High Court, in Ramallah, West Bank (b) *Brigadier Hajj Ismail*, Commander of the Palestinian Forces, Jericho, and *Brigadier Sa'adi Najj*, in Jericho (c) *Judge Mohammed Abu-Ghosh*, First Instance Judge, in Jericho (d) *Farid Jalladt*, Advocate, Chairman of the Palestinian (working) Bar Association, in Nablus, West Bank (e) *Dr Jan Abu Shakrah*, Director of the Palestine Human Rights Information Center, in East Jerusalem

Following the Mission, Bill Bowring was able to return to East Jerusalem on 16 to 19 September 1994 to take part in a Conference on *Human Rights Enforcement in the Transition Period*, organised by Pax Christi International and the Centre for International Human Rights Enforcement. During the Conference he was able to check and up-date a number of points in this Report.

SECTION II

THE BACKGROUND TO THE MISSION - HUMAN RIGHTS VIOLATIONS IN ISRAEL AND THE OCCUPIED TERRITORIES

The changes brought about and in prospect as a result of the Oslo accords must be assessed against the background of Israeli military occupation of the West Bank and Gaza Strip since 1967, as well as the history of the region since the British Mandate. The status of Israeli occupation has been the subject of debate ever since, but there is overwhelming acceptance by impartial observers that the occupation has been accompanied by a range of human rights abuses. We believe that it is an essential preliminary to our evaluation of the current situation to review the history and legacy of the occupation, as well as its legal structure, from a human rights perspective. Our reasons are first, and obviously, that many features of the present transition are inexplicable without reference to the past; and second, that it is arguable that Israeli occupation continues. We explore such arguments in Section IV below.

On the establishment of the State of Israel in 1948 the *Defence (Emergency) Regulations* introduced during the British Mandate in 1945 were, controversially, applied to the Occupied Territories by the Israeli authorities, and were treated as remaining in force alongside the legislative framework thereafter enacted by the Knesset[1]. The *Regulations* constitute the basis of a framework of military law concerning very diverse matters which has been applied throughout all the territories occupied by the State of Israel, including those added by conquest during the war of 1948-49, and those occupied in 1967[2]. Furthermore, the Knesset gave delegated authority in 1967 to the Government to extend the application of Israeli civilian law to the territories when and to the extent that it thought fit.[3] In practice, the use of military law to control the conduct of civilians has been confined to the West Bank and Gaza Strip, and in those territories has been confined to Palestinians. Israeli settlers in the occupied territories have generally been free of military control and are subject to Israeli civilian law, as are Israeli citizens within the original boundaries of the State.

The use of military law to control the civilian Palestinian population has had many tragic consequences, despite gestures towards the incorporation of proper judicial standards into the conduct of the military tribunals. It has seriously undermined the standing and restricted the jurisdiction and effectiveness of the ordinary courts within the occupied territories - a substantial proportion of the Palestinian lawyers on the West Bank went on strike in 1967 in protest at the occupation and even now have not fully returned to professional practice. This is dealt with further in Section V below. The wide powers

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[1] See, for a full analysis of the *Regulations*, Martha Roadsbrum Moffett *Perpetual Emergency: A Legal Analysis of the British Defence (Emergency) Regulations 1945, in the Occupied Territories* (*Al-Haq*, Ramallah, 1989)

[2] This is despite the fact that, so far as the British government is concerned, the *Regulations* ceased to have effect upon cessation of the Mandate, in 1948.

[3] Law and Administrative Ordinance (Amendment No.11) Law 5727 - 1967. See Uri Davis *Israel - The Apartheid State* (London, Zed Books, 1987)

granted to the military have facilitated the perpetration of widespread abuses of the civilian population.

Those abuses have been thoroughly documented by a number of human rights organisations working in Israel and the occupied territories. Among these are *Al-Haq*, *B'Tselem*, the *Palestinian Human Rights Information Center (PHRIC)*, the *Gaza Center for Rights and Law*, and the *Association for Civil Rights in Israel (ACRI)*. International non-governmental organisations of high repute, such as *Amnesty International* and the *International Commission of Jurists* (of which *Al-Haq* and the *Gaza Center* are affiliates) have confirmed and supplemented their reports. We refer throughout this Report to their invaluable reports and other publications.

The abuses and illegalities of the occupation fall under a number of headings. It is notable that several of them constitute grave breaches of the 1949 *Fourth Geneva Convention*, amounting to war crimes. We propose to examine them separately in order to assess to what extent the Oslo accords and consequent developments will end them. Where possible the most recent examples are cited.

(a) torture

Article 2 of the 1984 *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[4], ratified by Israel in 1991, says: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

The prevalence of torture carried out by the Israeli General Security Service (GSS or *Shabak*) during interrogation of Palestinians has been repeatedly confirmed[5]. At the end of 1989 the *Public Committee Against Torture in Israel* was established by leading academics and lawyers to examine the many allegations which had been made, especially in the attempt by Israeli forces to suppress the intifada which had begun in 1987. One particular notorious case led to the appointment of a *Commission of Inquiry into the Methods of Investigation of the General Security Service* headed by the former President of the Supreme Court, Moshe Landau. Its report did not inspire confidence. While purporting to declare that torture was illegal and must not be tolerated, it simultaneously declared that 'moderate physical pressure' and psychological pressure inflicted on those under interrogation was lawful and proper. This mixed message fell far short of the categorical condemnation of physical abuse which might have brought the practice to an end. Long after the Landau report, torture was still going on, including

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[4] See Brownlie *Basic Documents on Human Rights* (Oxford, 3rd Edn, 1992) p.38. The Convention was ratified by Israel in October 1991, and it submitted its first Report in January 1994. The Report was considered in open session in Geneva on 25 April 1994. The Committee Against Torture recommended, *inter alia*, that Israel incorporate all provisions of the Convention into its domestic law; publish interrogation procedures; educate the security forces as to their Convention obligations; put an end to current interrogation practices which are in breach; and make provision for compensation.

[5] See the B'Tselem Report *The Interrogation of Palestinians during the Intifada: Ill-treatment, "Moderate Physical Pressure", or Torture?* March 1991; and the Amnesty International Report *Israel and the Occupied Territories: The Military Justice System in the Occupied Territories: Detention, Interrogation and Trial Procedures*, July 1991.

well-documented cases of torture of women by the GSS.[6] When the Rabin government took office, a review of the Landau guidelines took place. Following a petition to the Supreme Court by the *Public Committee Against Torture in Israel*, changes in the procedure for interrogating detainees were announced. However, there is evidence that even under the new procedure Israeli interrogators make systematic and routine use of psychological and physical violence.[7]

(b) summary executions

The very large number of Palestinians shot and killed by Israeli security forces[8] during the period of the occupation reflects a policy and a practice in the use of lethal firearms which violates international human rights law, for example Article 6 of the 1966 *International Covenant on Civil and Political Rights*[9], which protects the right to life. The professed policy of the Israeli Defence Force is that the use of live bullets is prohibited except in situations in which the lives of soldiers are endangered. Even then, the force which may be used must be the minimum necessary to deal with the particular danger. However, in at least two recent cases in the occupied territories Palestinians have been shot dead by the security forces in circumstances suggesting summary execution[10]. During the six days following the massacre at the Tomb of the Patriarchs in Hebron on 25 February 1994, 21 Palestinians were killed by gunfire from the security forces. In this period security forces were present in large numbers in the Palestinian population centres as a result of which they became involved in confrontations with demonstrators. The security forces, it is alleged, frequently fired live ammunition when there was no threat to their lives from the demonstrators.[11]

On March 28 1994 it was reported that members of an Israeli undercover unit shot and killed 6 Palestinians who were distributing leaflets in Jabalya Refugee Camp in the Gaza strip. Eye witnesses said the soldiers opened fire without calling out a warning or first firing shots in the air. All were shot in the head. Although some of the Palestinians were carrying arms, the eyewitnesses said they were not threatening to use them at the time they were shot.[12] In other cases Palestinians, including small children, have been killed by indiscriminate shooting, often by soldiers shooting at cars at check points. For example, the monthly reports of the *Gaza Center for Rights and Law* for the first five months of 1994 provide a horrifying catalogue of killings and woundings of Palestinians.

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[6] See *Making Women Talk - The Interrogation of Palestinian Women Detainees* by Teresa Thornhill (London, Lawyers for Palestinian Human Rights, 1992)

[7] The B'Tselem Human Rights Report, vol.2 issue 1, Spring 1994, p.7. See also *Al Haq's* June 1994 *Israel's First Report to the Committee Against Torture: Al-Haq's Response*, and *Torture and Ill-Treatment: Israel's Interrogation of Palestinians from the Occupied Territories* (Washington, Human Rights Watch, June 1994)

[8] On 'special units' and summary executions, see *A License to Kill: Israeli Undercover Operations against "Wanted" and Masked Palestinians* (Washington, Human Rights Watch, July 1993)

[9] See Brownlie *Basic Documents on Human Rights* (Oxford, 3rd Edn 1992) p.125

[10] See *Al-Haq* Press Release no.71, 2 June 1994: "Al-Haq calls for the disbanding of Israeli 'Special Units' carrying out summary executions in the Israeli-Occupied Territories"

[11] B'Tselem case study *Lethal Gunfire and Collective Punishment in the Wake of the Massacre at the Tomb of the Patriarchs.* (March 1994). The study contains a statement by the IDF spokesman promising that the instances of death reported in the study would be investigated but asserting that the soldiers were indeed in situations in which their lives were endangered.

[12] Case Study 5: Joint Report issued by *B'Tselem* and *Palestinian Lawyers for Human Rights* (April 1994).

In May 1994, although the re-deployment of the occupying forces began to confine them largely to the 40% of the land area of the Gaza Strip assigned to Israeli settlers (see below for further details of this), 3 killings, including that of a 14 year old boy, were reported, and 107 injuries, comprising 79 by live bullets and 28 by tear gas.[13] On 17 July 1994 2 Palestinians were shot dead and 90 injured by gunfire at Erez checkpoint at the entrance to the Gaza Strip. A protest was being mounted by Palestinian workers attempting to enter Israel to work.[14]

(c) house demolitions

The practice of demolishing houses as a deterrent and a punishment for offences against the occupying authorities dates from the British Mandate. The power to do it is to be found in the British 1945 *Defence (Emergency) Regulations*, which, despite the end of the Mandate, continue to form the basis of the law of the Israeli occupation. Of course, the fact that the British employed such methods - and did so for the first time in South Africa during the Boer War - is no sort of justification for the Israelis. Demolition inflicts punishment indiscriminately on anyone living in the house - and many Palestinian houses are inhabited by more than one family. In this respect it violates the international humanitarian law prohibition of collective punishment.[15] Regrettably, the Supreme Court has consistently upheld the legality of demolition orders though recently it invalidated, on the ground of unreasonableness, a demolition order which would have inflicted harm on the older brother of a man found guilty of murder as well as the man himself and his family.[16] Nevertheless, a four-to-one decision handed down on 17th November 1994, upholding the demolition order against the house in Qalqilya of the family of Salah Abdul-Rahim Hassan Nazzal, the suicide bomber responsible for the Tel Aviv bus bombing of 19th October 1994 demonstrates, in the view of *Al-Haq*[17], the discriminatory nature of the Supreme Court, in sanctioning violations of Palestinian human rights, while remaining solicitous of Israeli rights. The Court sought to distinguish between the Hebron massacre and the Tel Aviv bombing. Thus, demolitions have continued, though more frequently in recent months the explanation by the Israeli authorities has been defects in licences or building permits. In July 1994 demolitions were reported in the villages of Kufr Dan and Beit Qad.[18]

House demolition, and even the milder penalty of house sealing[19], are barbarous and anachronistic measures which have no place in a civilised legal system.

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[13] *Gaza Center for Rights and Law* Monthly Report - May 1994 p.7

[14] *News from Within* vol X No.8 p.27, reporting an *Al-Haq* Press Release

[15] Article 50 of the 1907 *Hague Regulations* and Article 33 of the 1949 *Fourth Geneva Convention*

[16] *Turkeman v. Minister of Defence* (HCJ 5510/92 (1993)). For a compelling legal analysis of the whole subject see Dan Simon, *The Demolition of Homes in the Israeli Occupied Territories* Yale Journal of International Law, Vol.19, number 1, pp.1 -79 (Winter 1994)

[17] *Al-Haq* Press Release No.81, 19 November 1994: *Supreme Court decision in Qalqilya house demolition case again highlights two-tier justice system*

[18] Palestine Report vol.17 No.31, 24 July 1994, p.14

[19] See *Al-Haq* Press Release No.72, 16 June 1994: *Al-Haq calls for the re-opening of sealed houses and for just compensation*

(d) deportation

Deportations are also carried out on the basis of the British 1945 *Defence (Emergency) Regulations*. Article 108 authorises the Area Military Commander to issue a deportation order if he "is of opinion that it is necessary or expedient to make the order for securing the public safety, the defence of Palestine, the maintenance of public order or the suppression of mutiny, rebellion, or riot." However, Article 49 of the 1949 *Fourth Geneva Convention* states unequivocally: "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 their motive." A policy of deportation has long been carried out by the Israeli authorities notwithstanding condemnation by the United Nations Security Council, the International Committee of the Red Cross and many governments.[20]

The most notable recent example was the deportation[21] of over 400 alleged Islamic extremists from the occupied territories to Lebanon in December 1992. Although the law provides for a prior opportunity for a person subjected to a deportation order to appeal to a military advisory board and thereafter to the Supreme Court, the Israeli authorities sought to avoid this process by relying on a new military order allowing "temporary removal" for up to 2 years without prior appeal. A challenge to the Supreme Court at 1 a.m. after news of the action had leaked out led to a temporary stay but shortly afterwards a special panel of 7 judges voted 5 to 2 to lift the restraining order. It also issued an order that the Government should explain within 30 days why it should not return the deportees to Israel for a hearing. Understandably, however, the deportees declined to co-operate in a charade.[22] Several months later, most of the deportees were allowed to return unconditionally.

(e) Israeli settlement in the occupied territories

The settlement of Israeli citizens in the occupied territories is also flatly inconsistent with Article 49 of the 1949 *Fourth Geneva Convention*, which states: "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory which it occupies." Furthermore, Article 43 of the 1907 *Hague Regulations* requires the occupying power "to ensure public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." Not only has Israel allowed - and indeed encouraged - settlement of its citizens in the occupied territories in violation of international law; it has effectively removed the jurisdiction of the local courts over the settlers. As *Al-Haq* points out:

> "The courts in Israel have jurisdiction to adjudicate according to Israeli law a person who is present in Israel, with regard to that person's act or omission that has occurred in ...(the occupied territories)... and that would have constituted an

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[20] See *A Nation Under Siege* (Al-Haq Annual Report on Human Rights in the Occupied Territories, 1989) p.315

[21] See Angela Gaff *An Illusion of Legality: A Legal Analysis of Israel's Mass Deportations of 400 Palestinians* (Al-Haq, Ramallah, 1993); also, on the role of the UN Security Council, see Lynn Welchman *International Protection and International Diplomacy: Policy Choices for Third Party States in the Occupied Palestinian Territories*, working paper for the Pax Christi International Conference, CIHRE, Ramallah, 1994

[22] Association for Civil Rights in Israel, Litigation Docket 1993, p.20

offence had it occurred within the area under the jurisdiction of the Israeli courts."[23]

Although settlers are theoretically also subject to the local civil law (for example, planning law) in the West Bank and Gaza[24] they have little reason to make use of it. They would naturally expect their prospects to be better in the Israeli courts, especially if they are in dispute with a Palestinian. In the field of criminal law, there is considerable evidence that the prosecuting authorities in the occupied territories have routinely discriminated in favour of settlers as against Palestinians. Acts of violence by settlers against Palestinians have been numerous and are well-documented.[25] Equally well-documented is the habitual failure to bring settlers to justice for offences against Palestinians, and the harsh treatment of Palestinians accused of committing offences against settlers.[26]

In 1982 a commission headed by the Deputy Attorney-General of Israel, Yehudit Karp, found "substantial deficiencies" in the way the police handled offences imputed to Jewish residents in the territories. 12 years later, in March 1994, *B'Tselem* reported as follows: "not only is the work of the police still characterised by the same omissions, but the conduct of the army, State Attorney's Office, and the courts also reflect an ongoing policy of biased and partial law enforcement with regards to settlers in the occupied territories."[27] Numerous cases are recorded in which police and soldiers failed to intervene to prevent shootings and other violent acts by settlers against Palestinians. During and after the Hebron massacre on 25 February 1994 soldiers took no proper action to stop settlers firing at Palestinian residents. A border guard officer gave evidence to the official inquiry that border guards (who are under the jurisdiction of the Israeli police in the Occupied Territories) were forbidden to fire at settlers even though they were authorised to fire at Palestinians.[28] However, a possible change of policy is indicated by the fact that in early September 1994 Israeli settlers at Kiryat Arba were arrested by the Israeli *Shabak* (GSS) and accused of planning to kill Arabs.

(f) administrative detention

During the Intifada in particular the Israeli authorities resorted to administrative detention, without charge or trial and without the intervention of any legal process, on a massive scale. Administrative detention is still being imposed by them. We stress that there is no trial before administrative penalties are imposed. This practice violates the 1966 *International Covenant on Civil and Political Rights*, which Israel ratified in 1991[29], as well as the requirement of the 1949 *Fourth Geneva Convention* that internment should be used only for imperative reasons.

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[23] Israeli Emergency Regulations (Judea, Samaria, and Gaza - Adjudication of Offences and Legal Aid, 5727 - 1967) (as amended) Para. 2(a), cited in *A Nation Under Siege*, p.126

[24] see Section III (b)

[25] See, for example, *A Nation Under Siege* Chapter 3; and, on recent settler violence, Al-Haq Human Rights Focus *Settler Attacks and Violence against the Residents of the Hebron District during 1993* (January 1994)

[26] See *A Nation Under Siege* p.127

[27] B'Tselem Human Rights Report Vol 2 issue 1, p.1

[28] Ibid. p.10

[29] Article 9

For example, between 9 December 1987 and the end of 1989, 10,000 Palestinians were detained in this way, whereas in the preceding two years the number was said to be only 316.[30] The Ketsiot prison inside the Israeli border (known to Palestinians as Ansar III) was opened in March 1988, four months after the beginning of the Intifada. It accommodates some 6000 prisoners including administrative detainees. Prisoners are held there in violation of Article 76 of the 1949 *Fourth Geneva Convention* which requires residents of an occupied territory accused of offences (*a fortiori* those held without charge) to be detained in the occupied territory. The conditions and lack of facilities at this prison have been widely condemned, by the International Committee of the Red Cross among others.[31] In December 1993 it was estimated that 7000 Palestinians were detained in Israel in breach of Article 76 of the 1949 *Fourth Geneva Convention*.[32]

(g) curfews and other restrictions on freedom of movement

Curfews in the occupied territories have been imposed very frequently by the Israeli authorities, particularly since the late 1970s.[33] During a curfew, residents are not permitted to leave their houses, even to use outdoor toilet facilities. Violators can be shot on sight and many Palestinians have been shot during curfews, including small children, as has been thoroughly documented by *PHRIC*. Prolonged curfews are life threatening as they restrict access to food, water, and medical care. The Israeli authorities have repeatedly described curfews as an efficient method of collective punishment, which of course is a violation of the 1949 *Fourth Geneva Convention*.[34] For 5 years from 1988 Palestinian residents of the Gaza Strip were required to remain in their houses from 9 p.m. until 4 a.m. every night.[35] After the Hebron massacre of 29 Palestinians by an Israeli settler on 25 February 1994, the whole Palestinian population of the occupied territories (but not the settlers) was put under strict curfew for periods of up to a week. Those in Hebron itself were kept under 24 hour curfew for 4 weeks after the massacre.[36]

(h) evictions and acquisition of land

Since the settlement of Israeli citizens in the occupied territories itself violates the 1949 *Fourth Geneva Convention*[37], it follows that the acquisition of land there by or for the benefit of Israeli settlers is itself unlawful. Yet acquisition of land and extension of the settlements has proceeded continuously since 1967 both in the West Bank and Gaza, and, even more contentiously, in East Jerusalem. From the Israeli perspective - though without the assent of the international community - the whole of Jerusalem is part of the sovereign state of Israel by virtue of its formal annexation of East Jerusalem in 1967; it does not claim to exercise sovereignty over the West Bank and Gaza. Nevertheless, the Israeli Government asserts effective ownership of the land which was regarded as state

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[30] *A Nation Under Siege* p.285
[31] *A Nation Under Siege* p.288
[32] Human Rights Update (PHRIC, December 1993) p.23
[33] *A Nation Under Siege* p.366
[34] For a series of official pronouncements, see Al-Haq, *Punishing a Nation* (Ramallah, 1988) p.193
[35] Human Rights Update, p.24 (Palestine Human Rights Information Center, December 1993)
[36] B'Tselem Human Rights Report Vol.2, issue 1, Spring 1994, p.3
[37] See Weston, Falk and D'Amato *Basic Documents in International Law and World Order* (West Publishing, 1990, 3rd Ed) p.170

land by the previous Jordanian government. In addition, it claims land to which no one else has been able to prove title, and land which has been 'abandoned' by Palestinians who have gone into exile. A number of Palestinians have appealed to the Supreme Court against expropriation of their land but generally without success[38]. Evidently, the establishment of civilian settlements throughout the West Bank was a means ensuring long-term control of the region. By 1990, approximately 70,000 Jewish settlers resided in the West Bank and a further 70,000 lived in the new suburbs developed around Jerusalem. A 1993 "Peace Now" Report showed that there were 120,000 settlers around Jerusalem.

Extension of the settlements has continued to this day.[39] Land confiscation in East Jerusalem has taken place since the Oslo Accords were signed.[40]As recently as 25 July 1994, according to the *Society of St.Ives* (Catholic Legal Resource Centre for Human Rights), members of the Jahalin Bedouin tribe, encamped for some 40 years - after their eviction from the Gaza Strip - on a site adjacent to the Jewish settlement of Ma'aleh Adumim, received eviction notices from the Israeli "Guardian of Absentee and Governmental Property" requiring them to vacate their homes within 14 days and move to a new site next to the Jerusalem garbage dump. Their eviction was intended to permit expansion of the settlement, work on which had already begun. In another attempted eviction, relating to the village of Bet-Ijza in the Ramallah district, a challenge is being mounted in the Supreme Court by the well-known civil rights lawyer Avigdor Feldman on the basis that use of so-called "public land" for the benefit of Jewish settlements is unlawful in the light of the Oslo accords, under which the "public" in the West Bank are Palestinians and not Israelis. It remains to be seen whether the Supreme Court will revise its former attitude to Israeli expropriation of land in the occupied territories in the new situation.

This is by no means a complete picture of the treatment of the Palestinians under Israeli occupation; it is intended to convey an impression of the impact of military control on their civil rights, and consequently on their daily lives. The extent to which the new arrangements will reduce the appalling toll of human rights abuses will be one measure of their success.

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[38] See generally *Population Settlement and Conflict: Israel and the West Bank* by David Newman (Cambridge 1991)

[39] For an account of new settlement between August 1992 and September 1993 see *Clever Concealment* (Palestine Human Rights Information Center, February 1994)

[40] *From the Field* (PHRIC, January 1994); also, see Raja Shehadeh *The Law of the Land: Settlements and Land Issues Under Israeli Military Occupation*, (PASSIA, Jerusalem, July 1993)

SECTION III
THE NEW SELF-RULE AREAS

(a) THE DECLARATION OF PRINCIPLES AND THE CAIRO AGREEMENT

The Declaration of Principles ("DOP")

The *Declaration of Principles on Interim Self-Government Arrangements*[41] signed in pursuance of the Oslo Accords by the Israeli Government and the PLO ("representing the Palestinian people"[42]) on 13 September 1993 laid down the following procedure:-

1) Within two months of the DOP, a further agreement[43] was to be concluded, covering the withdrawal of Israeli military forces from the Gaza Strip and Jericho; the establishing of the Palestinian Interim Self-Government Authority, as the elected Council for the Palestinian people in the West Bank and Gaza Strip; and the preparatory transfer of powers to "the authorised Palestinians for this task", who are now known as the Palestinian National Authority (PNA - there are further details below), until the inauguration of the Council, in the spheres of education and culture, health, social welfare, and taxation. The redeployment of Israeli forces outside of populated areas in the West Bank was to take place not later than the eve of the elections, and is dealt with in below. Questions of the composition and legitimacy of the Palestinian authority pending elections for the Council are left extremely vague in the DOP[44].

2) The Council is to be elected to govern the West Bank and Gaza for a period not exceeding five years. The elections are to be conducted according to democratic principles, and as specified in a third agreement (which has yet to be entered into). The electorate is not expressly defined in the DOP but the implication is that residents of the West Bank, the Gaza Strip and "Palestinians of Jerusalem who live there"[45] will be able to exercise the right to vote. However, Israel has continued to insist that Palestinians living in East Jerusalem should not be candidates. The elections were due to have taken place by 13 July 1994, but were postponed initially to October, and it now seems unlikely that they will take place in 1994. Although a number of third-party bodies, particularly the European Union, are assisting the Palestinian authorities in technical preparations for elections, the cumulative delays in holding the elections, and doubts even as to who will be permitted to vote, further undermine the credibility of the agreements.

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[41] The text of the DOP may be found at (1993) 4 European Journal of International Law, pp.572-581, together with three very useful articles: Eyal Benvenisti *The Israeli-Palestinian Declaration of Principles; A Framework for Future Settlement*, pp.542-554; Raja Shehadeh *Can the Declaration of Principles Bring About a 'Just and Lasting Peace'?*, pp.555-563; and Antonio Cassese *The Israel-PLO Agreement and Self-Determination*. pp.564-571

[42] Preamble to the DOP

[43] The Cairo Agreement is discussed below..

[44] For an official Israeli view on the DOP, see Joel Singer (Legal Adviser of the Israeli Ministry of Foreign Affairs) *The Declaration of Principles on Interim Self-Government Arrangements: Some Legal Aspects* ("Justice", February 1994)

[45] Annex I *Protocol on the Mode and Conditions of Elections* to the DOP

During the five-year transitional period following the withdrawal, the DOP requires the following:-

a) Permanent status negotiations are to be conducted, starting as soon as possible but, in any event, before the expiry of 3 years from the withdrawal. Such negotiations are to cover issues such as Jerusalem, refugees, settlements, security arrangements, borders, relations and co-operation with neighbours.
b) There are to be negotiation for the transfer of additional[46] areas of authority in the remaining areas of the West Bank, and in the Gaza Strip.
c) Both sides are to negotiate a number of regional, economic and development programmes relating to water, electricity, energy, finance, transport and communications, trade and industry, labour relations and social welfare, training, the environment, communication and media, and other areas of mutual interest. During this period, Israel will continue to be responsible for defence against external threats, and, for Israelis settlers, their overall security and public order.

The Cairo Agreement
The further Agreement on the Gaza Strip and the Jericho Area ("the Cairo Agreement") was signed by the Israeli Government and the PLO on 4 May 1994 in Cairo. It provides for the establishment of the PNA, for Israeli withdrawal[47], and for other interim measures as follows:

1) It provides for the composition and jurisdiction of the PNA, to consist of one body of 24 members responsible for legislative, executive and judicial functions which have been transferred to the Palestinians under the agreement[48]. The PNA is free to determine any subordinate entities and its own internal procedures. The jurisdiction of the PNA, as specified in Article V, is *territorial* (the Autonomous Areas, excluding the settlements and the MIA), *functional* (all powers transferred under the agreement, specifically excluding foreign relations, internal security and order of the settlements, the MIA and Israelis, natural resources[49], and external security) and *personal* (ie, excluding persons with Israeli citizenship).

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[46] i.e., in addition to those cited at Section III above.
[47] See infra, The DOP
[48] The PNA has the following interim (ie, pending elections of the Council) members:
Yasser Arafat, President of the PNA and Minister of the Interior; Tayyeb Abd al-Rahim, Secretary General of the PNA, responsible for presidential affairs; Ahmed Qurei' (Abu Ala), Minister of Economy and Trade; Mohammed Zuhdi Nashashibi, Minister of Finance; Nabil Sha'ath, Minister of Planning and International Co-operation (who is involved in the negotiations with Israel); Yasser Amr, Minister of Education; Yasser Abd-Rabbo, Minister of Culture and Arts; Samir Ghosheh, Minister of Labour; Intisar al-Wazir, Minister of Social Affairs; Sa'eb Arekat, Minister of Local Governor and Municipal Affairs; Azmi Shueibi, Minister of Youth and Sports; Riyad Za'noun, Minister of Health; Zackaria al-Agha, Minister of Housing; Abd al-Hafiz al-Ashhab, Minister of Posts and Telecommunications; Freih Abu Medein, Minister of Justice; Munib Masri, Minister without Portfolio; Jamil Tarifi, Minister responsible for liaison with Israel; Alias Freij, Minister of Tourism and Antiquities; Abud al-Aziz Haj Ahmed, Minister of Transportation; Faisal al-Husseini, Minister without Portfolio (responsible for Jerusalem).
[49] For an excellent legal analysis concerning legal jurisdiction and jurisdiction over land and water under the Cairo Agreement, see Raja Shehadeh *Questions of Jurisdiction: A Legal Analysis of the Gaza-Jericho Agreement* (1994) XXIII Journal of Palestine Studies, pp.18-25

2) Within 3 weeks of the agreement, Israel, as agreed, withdrew its military forces from part of the Gaza Strip and Jericho[50]. The troops were withdrawn from all areas save for settlements and the military installation area in Gaza (the "MIA"). Israelis may continue to use certain defined roads, along the border with Egypt, principally passage roads from the settlements and the MIA to Israel in the case of Gaza, and between the West Bank and settlements near Jericho. Such roads are patrolled by joint Palestinian-Israeli forces. A "strong" Palestinian police force was set up. Detailed provisions for the organisation of the police and the powers of security personnel, on both sides, are contained in Annex I to the Agreement. The powers are to be exercised "with due regard to internationally accepted norms of human rights and the rule of law and [the personnel] shall be guided by the need to protect the public, respect human dignity and avoid harassment"[51]. The Israeli side were obliged by the Agreement to ensure a safe passage between the Gaza Strip and the Jericho area.

3) International borders, ports (land, sea and air) are to have two terminals, one for the Palestinians (and visitors to the Territories), and one for Israelis "and others".

4) Preparations for the transfer of powers from the Israeli Civil Administration (and military government) to the PNA were to be completed within 3 weeks. Annex II to the agreement contains detailed provisions regarding the transfer of powers in civil matters. The administration of the Palestinian judicial system in the Autonomous Areas and the licensing of lawyers are to be transferred to the PNA. Annex III to the agreement concerns legal matters, and provides that in criminal matters, the PNA shall have jurisdiction over all offences committed in its territorial jurisdiction, while the Israeli authorities retain sole jurisdiction of offences committed by Israelis there.

5) In civil matters, the Palestinian courts cannot hear cases in which an Israeli is a party unless:

- the subject matter is an on-going Israeli business or real property in the territorial jurisdiction of the PNA
- the Israeli party has consented.

In both criminal and civil matters, the agreement sets out legal co-operation the parties are to give to each other in connection with the proceedings.

6) Upon the transfer of authority to the PNA, the Israeli Civil Administration in the relevant areas is dissolved. However, Israeli military government continues as set out in detail in the agreement.

7) Joint supervisory bodies are created under the agreement in order to supervise and assist the implementation of the accords. In particular, a legal sub-committee of the Joint Civil Affairs Co-Ordination and Corporation Committee is introduced by article V (6).

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[50] For further particulars, see infra, Section III(b) and (c).
[51] Article VIII(1) of the Cairo Agreement.

8) The legislative powers of the PNA are subject to the limitation that Israel may, within 30 days of a proposed piece of legislation being notified to it, request that the legislation sub-committee decide whether the legislation conforms to the agreement. A joint "appeals" procedure is set out should the (joint) sub-committee fail to reach agreement. Proposed legislation can be declared invalid if it is seen to threaten a "significant Israeli interest". Even so, it could take up to 90 days for a *successful* Palestinian legislative proposal to come into force.

The Cairo Agreement contains various co-ordination and "confidence building" measures (including the release of some 5,000 Palestinian prisoners[52]), aimed at achieving a smooth implementation of the first stages of the peace accords. We wish to place particular emphasis on Article XIV, which states that the powers of *both* sides are to be exercised "with due regard to internationally accepted norms and principles of human rights and the rule of law".

A Palestinian summary

The distinguished Palestinian commentator Raja Shehadeh has provided the following eight-point overview of the DOP and Cairo Agreement, which we find compelling.

(1) It is only an *interim* regime, and is entirely provisional.

(2) It calls for the first time for the establishment of a Palestinian national authority.

(3) It calls for the first time for *national* elections.

(4) It brings about a certain kind of withdrawal by Israel.

(5) It recognises the dual system, as between Israelis and Palestinians, which has existed since 1978.

(6) It confirms the changes in the law made by Israel, and their implementation by a legitimate Palestinian authority.

(7) It confirms Israeli gains in control over natural resources. It is notable that there was, during the negotiations, *no* legally based challenge to this.

(8) It affects the way in which it is possible for Palestinians to challenge human rights violations, since it is no longer clear whether Israel retains overall responsibility pursuant to the 1949 *Fourth Geneva Convention*. (This is a question we explore in Section IV.)

(b) GAZA AND JERICHO: THE LEGAL FRAMEWORK

The legal framework for the Gaza and Jericho self-rule areas is to be found in the DOP and in the Cairo Agreement.

Annex 2 to the DOP contains the *Protocol on Withdrawal of Israeli Forces from the Gaza Strip and Jericho Area*, which provides that the agreement would include a smooth and peaceful transfer of authority from the Israeli military government and its Civil Administration to the Palestinian representatives. It also provides (by paragraph 3(b)) for Palestinian responsibility for all matters except external security, settlements, Israelis,

[52] Ibid., article X.

foreign relations, and other mutually agreed matters; and (by paragraph 3(g)) for arrangements for a safe passage for persons and transportation between the Gaza strip and Jericho area. The DOP made no attempt to define the "Jericho area".

The areas were delineated on the map attached to the Cairo Agreement. Article VIII (3) of the Agreement provided for a joint Co-Ordination and Cooperation Committee for mutual security purposes (the JSC) as well as three joint District Co-Ordination and Cooperation Offices for Gaza, Khan Yunis, and Jericho (DCOs). Article II of Annex I makes detailed provision for the JSC and DCOs. The DCOs are made up of a team of up to six officers from each side, comprising one commander and five duty officers; by paragraph 2(e), and with a view to preventing friction and enabling both sides to deal with possible incidents, both sides are to ensure that the DCO is informed of: (1) routine, scheduled or irregular activity by the Israeli military or the Palestinian Police that directly affects the other side, including activity or deployment in the proximity of Settlements or Palestinian villages; (2) events that pose a threat to public order; (3) incidents involving both Israelis and Palestinians, including any incident in which a weapon is used. The DCO is also in charge of the Joint Patrols.

Article III deals with the Palestinian Police, which, by paragraph 3 is to consist of four branches: Civil Police; Public Security; Intelligence; and Emergency Services and Rescue. The Police are intended to number up to 9,000 officers, up to 7,000 of whom may be recruited abroad, subject to agreement by both sides.

Article V makes provision for joint patrols on certain roads. Of particular interest, in view of matters brought to our attention during our visit (see below), is the provision of Article VIII (Rules of Conduct in Security Matters), paragraph 4:

> "Israelis shall under no circumstances be apprehended, arrested or placed in custody or prison by Palestinian authorities."

However, where an Israeli is suspected of having committed and offence, he or she may be detained in place by the Palestinian Police while ensuring his or her protection, until the arrival of a Joint Patrol or Joint Mobile Unit, called immediately by the Palestinian Police, or of other Israeli representatives despatched by the relevant DCO." Judge Eugene Cotran has commented on this provision:

> "Another sign of Israeli intentions is the express condition that 'the Palestinian police will not have powers to detain any Israeli citizen'. Even the police of a South African Bantustan have the power to detain white South Africans. As Benziman [chief political correspondent of Ha'aretz] puts it: 'Israel intends that the Palestinian entity will have much less power and dignity than a Bantustan'."[53]

Article IX provided for the establishment of a 'strong' Palestinian Police Force. We refer below to the relatively large size of this force. Justifiable concerns have been voiced that the new Police Force may prove, in relation to the Palestinian internal opposition, particularly *Hamas*, to be the "long arm" of the Israeli authorities.

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[53] Eugene Cotran *Why there is now a State of Palestine* (1993) Middle East International, 22 October 1993, p.17

The main reference to human rights is that already referred to above, set out in Article XIV, "Human Rights and the Rule of Law":

> "Israel and the Palestinian authority shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law."

The agreement between the PLO and the Israeli Government for autonomous rule by a Palestinian National Authority in Gaza and Jericho began to be implemented in May 1994.

(c) GAZA

On 18th May the Israeli occupying forces completed their withdrawal from the centres of Palestinian population in the Gaza Strip to new locations within that part of it (constituting approximately 40% of the land area) designated for the occupation of some 4,000 Israeli settlers, comprising about .05% of the Arab population, living in some 16 settlements in the Gaza Strip, and for Israeli military installations. The remaining 60%, occupied by nearly one million Palestinians, was placed in the hands of the newly-formed PNA, under whose jurisdiction a Palestinian police force was established, formed largely from PLO soldiers transferred from their encampments in Lebanon, Tunisia, Libya, and elsewhere.

The continuing relationship between the PNA in Gaza and the Israelis is not yet fully defined but it is plain that, in spite of the notional independence of the former, the Israeli Government, acting through the IDF, has retained considerable power in Gaza, and not only in the area allocated to the settlers. Israeli control of the borders is a major restriction on the freedom of Palestinian residents, many of whom earn their living by working over the border in Israel. The checkpoint at Erez has been the scene of regrettable conflict, and on 17 July delays in allowing Palestinian workers to pass through led to a surge into the corridors leading to the crossing point. Israeli soldiers opened fire. Two Palestinians were killed and 90 injured[54].

The Israeli authorities have also prevented students travelling from Gaza to the West Bank and to Lebanon to take their final university examinations by refusing them travel permits. Some 1300 students have recently been affected. When they petitioned the Supreme Court of Israel, they were told to go to the Palestinian courts which, however, have no power to order the Israeli authorities to issue permits.[55] The responsibility of the Israeli military for security in Gaza gives them in effect *carte blanche* to enter and travel throughout the territory.

We visited Gaza on Wednesday 27th July 1994. Palestinian officials in Gaza stressed the severe shortage of resources, drastically curtailing the ability of the Palestinian Authority to carry out normal governmental responsibilities. For example, the Chief of Police in

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[54] See "Urgent Communiqué" of Gaza Center for Rights and Law published at 11 a.m. on 17 July 1994

[55] Interview with Raja Sourani, Director, Gaza Center for Rights and Law, 27 July 1994

Gaza, Ziad Eref[56], said the police had no handcuffs. They had no laboratory and so could not identify confiscated substances which might be dangerous drugs. They were trying to arrange for them to be analysed in Cairo - a laborious procedure. Police officers were living in very poor accommodation, away from their families, and had no change of uniform. A senior Norwegian police officer, Major-General Arnstein Overkil, had prepared a report on the shortages of equipment and it appeared that the Norwegian Government might be able to offer help. Meanwhile the police could not function effectively. However, General Overkil reported that the basic training which the 800 recruits to the civilian police had received from officers trained in Jordan and Egypt was professionally conducted. More advanced training programmes were offered by several countries co-ordinated by the United Nations. These would help to establish the force as a civilian institution. General Overkil suggested that the para-military image now presented would be removed by the adoption of a blue civilian uniform and by the replacement of Kalashnikov rifles by pistols.[57]

The reality is that PLO is forced to beg donor states for salaries for the police, who lack housing and even the most basic equipment. For example, there are 7,200 Palestinian police in Gaza as well as 500 intelligence officers, one for every 100 Gazans (there are currently 6,700 teachers). The cost of their salaries is $7m a month, while PNA tax revenue is about $3m. There has been a cash shortfall in the police budget of £12m, so that most officers have received only partial pay. Only now is agreement being reached for distribution of foreign aid. It seems likely that money collected from taxes will be entirely inadequate for the running of civil affairs in the West Bank.

The atmosphere of Gaza City has evidently been changed by the transition to autonomy. Beforehand the regular curfews and the sense of oppression made it a very drab and dismal place. Although the physical condition of the buildings remains desperately poor and the streets are full almost to overflowing with debris and garbage, there are colourful clothing and food stalls in some main streets - even in Jabalya refugee camp. Evidently there is a new spirit of optimism among some at least of the overcrowded and deprived residents. There are many new construction sites. Nevertheless, the contrast as one leaves the modern and well-maintained highways of Israel and enters the pitted and pock-marked tracks of Gaza is a stark reminder of the neglect and abject impoverishment of this small territory throughout the long years of the occupation. The task of creating a viable economy there is daunting.

The Minister appointed by Chairman Arafat to take responsibility for the machinery of justice within the Palestinian Authority, Freih Abu-Meidan, is a former chairman of the Gaza Bar and a local lawyer of long experience. He claimed, unsurprisingly, that the maintenance of security and the development of the economy were the priority issues. The first, however, seemed manageable. The people were tired of the human rights violations of the occupying soldiers and they gladly supported the new Palestinian police. The new administration was firmly committed to human rights and the rule of law. Its credibility would come from the creation of a well organised civil society, which had not

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[56] Interview 27 July 1994

[57] Report to COPP on the Palestinian Police Forces by Arnstein Overkil, 4 July 1994

existed for a generation. His policy was, as far as possible, to ignore the military regulations, even though theoretically they remained in force until replaced. However those which related to public safety would be retained. The economy was the major problem. Virtually all manufacture took place in Israel. Gaza had been no more than a pool of labourers available for the dirtiest jobs. Settlements were built for Israelis using cheap labour. Palestinians felt they were paying for the consequences of the Second World War, which was essentially a European problem. If the economic problem could not be solved in Gaza then the whole Palestinian project would fail.

The legal system in Gaza has continued during the occupation though starved of resources. Unlike the West Bank, the lawyers in Gaza did not go on strike. They continued to operate a system based on the old Mandate law but evidently updated by Military Regulations. Gaza also has what is described as a Constitution, adopted under Egyptian rule in 1962. We have not been able to obtain a copy in English.

(d) JERICHO

The visit of the delegation

We visited Jericho on Saturday 30 July 1994. The road from Ramallah to Jericho passes through extremely arid and mountainous terrain, populated only by Bedouin, a very few Arab villages, and an ostentatiously red-tiled Israeli settlement, incongruously suburban in appearance. Jericho itself is a very small oasis town, with a population of only some tens of thousands - increased by 1,000 by the arrival of the Palestinian police (all from outside the occupied territories - they had replaced 200 local Palestinian police). The town contains a dusty square, with money-changers and some small shops; and a short distance away, a row of garden restaurants, catering for tourists. Jericho, which is always warm, uncomfortably so when we visited, is a popular place of resort for people from Jerusalem during the winter, when Jerusalem weather is often cold and damp. The Jordanian border, at the Allenby bridge, is nearby; that is, perhaps, one explanation for the selection of Jericho as the only autonomous area in the West Bank.

The Israeli military presence at the border of the self-rule area was of normal size for an international border, and limited in our case to a request to see our passports, and questions as to whether we were going to Jericho or to the Allenby Bridge (the border crossing into Jordan). Our first sight of Palestinian police was of three officers in blue berets sitting in the shade of a tree at the entrance to the town. Later in the day they had been replaced by three officers in baseball caps with Palestinian insignia - not enough berets to go round? We were driven directly to the Palestinian military headquarters, based in a compound previously used by the Israeli military. We were greeted by Brigadier Haj Ismail, a veteran of the Lebanese combat, who is a tall man with penetrating eyes and a brusque, perhaps overbearing, military manner, as well as by another, more rotund and affable Palestinian commander, Brigadier Sa'adi Najj.[58]

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[58] A soldier travelled back into Jericho with us after our interview, and told us that he had joined the Palestinian forces with enthusiasm, but, latterly, found he had less to do than he had hoped, and was applying for permission to spend some time teaching English in the local school.

Brigadier Ismail stressed that he was looking forward to building a genuinely free state, where human rights would be protected, and there would be full democracy, based on a free market. He told us that the security situation in Jericho was very good, with no troubles. The main problem, he said, was economic, because of all the money that had been promised, not a single dollar had arrived. On the political side, he considered the main problem to be that of Jerusalem, and the continuing human rights violations in the rest of the West Bank: people still being arrested, 8 houses had been destroyed in Jenin, and Hebron was still surrounded by soldiers. People from Gaza and Jericho were not allowed to visit Jerusalem. In the Brigadier's view, all these troubles were brought about by Israel, in order to try to destroy the peace process.

He told us that in Jericho itself, all the Palestinian ministries were now operational: education, health, police. The Jericho executive authorities and the courts were following Jordanian law, while in Gaza they were following Egyptian law. The two would, he insisted, soon be joined into a unified system.

In answer to our questions on this point, the Brigadier assured us that the controversial 1979 *Palestinian Revolutionary Military Code*, developed by the PLO for use in Lebanon, was in force only in the Army, internally. However, this conflicted with what we had been told by the Minister of Justice in Gaza, Freih Abu Madein, who had insisted that the Code was not in use at all. Any problems between soldiers or police, and civilians, the Brigadier said, would be transferred to the civilian courts. The Ministry of Justice, of course, was in Gaza. For this reason, and others, the Brigadier was spending a lot of time travelling between Jericho and Gaza; meanwhile, attempts were being made to settle problems in the negotiations in Cairo. If the Brigadier himself wants to travel to Gaza as a civilian, he must ask for permission from the DCO. If he wants to go as a military officer, then an Israeli patrol car is arranged for him. Joint patrols by Israeli and Palestinian patrol cars take place on Route 90. Palestinian soldiers back up the police, and guard ministries and VIP locations.

He told us that there is one Israeli settlement, to the north of Jericho, on the border of the self-rule area. However, on 13 August 1994, the borders of the self-rule area were due to be enlarged. There had been some problems with settlers, who used to come into Jericho with their guns, which they are, as settlers, entitled to carry. They were trying, according to the Brigadier, to provoke the Palestinians. Since the peace process, Israeli settlers can only come into Jericho with permits issued by the Israeli authorities, and armed only with personal revolvers. The Palestinian police must protect them while they pray at their holy places. If settlers cause trouble, then a Palestinian policeman may stop them and ask them for their permits; but have no right to arrest them. Instead, the Palestinian police may hold them where they are, and call the DCO office.

During the early days of self-rule, there had been 3 cases when Israeli settlers had been "held"; but there had been no trouble with settlers since. Interestingly, the Brigadier told us that the previous day there had been an incident when an Israeli Army Officer was at the bus station near the border, and was behaving provocatively, seeking to demonstrate that he had a right to enter Jericho. The Palestinian police held him and called the DCO, whose representatives took him away. The Brigadier was evidently delighted with this

outcome. We were told that there were only 7 prisoners, some of them in custody for questioning, held in cells in the compound. We were assured that conditions were satisfactory.

Later that day, we met Judge Mohammed Abu Ghosh, a Jordanian Palestinian lawyer who is judge in the Jericho first instance court. The District Court to which appeals lie is located in the Gaza Strip. The Judge was appointed two months earlier, and prior to that had practised as a lawyer in Amman since 1982. He had trained as a lawyer for two years. He found the difference between the laws of Gaza and the West Bank very difficult to cope with; he estimated that it would take him two to three years to learn the law of Gaza, based as it is on British Mandate law, with some Egyptian and Israeli overlay.

The Judge told us, with enthusiasm, about the *Maslem Ali* case, which the Judge has named the "*Case of the Water*". By way of introduction, he insisted that he carries out his work in the name of the Palestinian People, not President Arafat, and not the King of Jordan; and that, come what may, he must be and is fair. Maslem Ali had applied to the court for an Order to prevent the Jericho Municipality from altering the course of a water canal so that it no longer ran through his land. The Judge showed us the statute book, in Arabic, in which he found the appropriate law: Rule No.31 of 1953, the *Law of Running Water*. The Judge considered that according to this law, the Municipality had the legal power to take the action in question. He therefore dismissed Maslem Ali's application, and told him he could appeal to the District Court in Gaza. Although, he said, he had not taken such a factor into consideration, the Judge considered that changing the water course was in the interests of the population of Jericho as a whole.

However, after two or three days, the Judge had received a delegation of Jericho farmers, who wished to bring a criminal prosecution against Maslem Ali, claiming that he was a thief. The Judge once more consulted his law-books, and found that criminal proceedings superseded civil appeals, and therefore stayed the appeal. This was not acceptable to the Gaza court. There was now, therefore, a dead-lock between the Jericho and Gaza courts, which could only be resolved at a higher level.

The Judge's principle, he told us, is always to help the weak. In this context, he informed of another interesting case, this time against the Jericho municipality: the case of construction workers who were applying for prompt payment of their salaries, which had remained unpaid. The Judge had referred to the pre-1967 Jordanian Labour Code which was in force in Jericho, but could not find any provision expressly requiring that the workers be paid in time. He therefore "used an expression which is not in the law", that for the protection of the weak, the law must take into consideration that they should be paid in time. That is, he found that the contract of employment contained a kind of implied term. He was, he said, able to enforce his order "by the force of law", and without the assistance of a policeman.

The Judge does not hear criminal cases at first instance; these are heard by his colleague, Judge Yusuf Solideh (who had been appointed four years before), in the court next door. Serious cases should be dealt with in Bethlehem, before three judges.

The Judge deals with civil cases involving sums greater than 75 Jordanian Dinars. He will often use a relevant Israeli military order, if the pre-1967 Jordanian law is insufficient, as in workers' personal injury compensation claims. He also makes use of customary law. He deals with cases concerning: debts, landlord and tenant, mortgages, enforcement of decisions taken in Shari'a courts (i.e. divorce, inheritance). There are about 12 local advocates, 2 or 3 of whom are very good, know their law and are competent. The others, thought the Judge, appeared to have lost their interest in the law.

The choice of Jericho as a first self-rule area is highly problematic for the Palestinians. First, it is a very small and insignificant town, not to be compared with Nablus, Ramallah or Hebron, all three of which are major centres of industry and commerce, and have, during the *intifada*, fiercely opposed the Israeli occupation. It is notable that Jericho was never a centre of the *intifada*. Second, its proximity to Jordan must feed the anxieties of those who fear that ultimately the fate of the bulk of the West Bank will be incorporation into Jordan.

It is immediately apparent that the 1,000 Palestinian soldiers and policemen have some difficulty fitting into such a small town, quite apart from finding useful work to do. There is the fact of the constant humiliation of having to deal with the Israeli forces on questions of travel and settlers. The lack of clarity of existing law, and the fact that there is no modern legislation of a kind which would take human rights considerations into account, means that the next months are fraught with the danger of violations. At the time of our visit the Palestinian police and security forces were on their best behaviour, and enjoying a "honeymoon" period with the local population; but there are already disquieting reports that human rights violations have occurred. However, both our main interlocutors in Jericho stressed their commitment to human rights, as the starting point of their work. We ourselves found that immediately before our visit to Jericho, Dr Ali Khashan, Dean of the new (private) *Palestinian School of Law* at Ram, had been at the military compound, delivering a lecture to the officers on the importance of human rights.

SECTION IV
THE LEGAL FRAMEWORK: INTERNATIONAL LAW

THE LAW OF BELLIGERENT OCCUPATION

Following the creation of the self-rule areas, does Israel retain responsibility for the human rights of their inhabitants? If Israel is no longer responsible, then what is the status of the new Palestinian Authority? What are its obligations in international law? These are questions of the greatest importance for each Palestinian. Linda Bevis, in a recent publication from *Al-Haq*[59], refers to the decision of the European Commission of Human Rights in *Hess v UK*[60], that the UK's exercise of authority in Berlin did not constitute the exercise of "jurisdiction" because the authority was jointly exercised with the US, France and the USSR, and points out:

> "This raises the question whether joint Israeli-Palestinian authority in some spheres under the new self-governing arrangements currently being worked out between Israel and PLO negotiators may undermine the international human rights accountability which Israel previously faced when it exercised sole de facto jurisdiction over the Occupied Palestinian Territories."

Controversies over the question of belligerent occupation are not new. The Israeli government has always maintained that its rule over Gaza and the West Bank is not one of belligerent occupation, on the ground that the law of belligerent occupation only applies when the territory in question was previously under the sovereignty of a state which was a "High Contracting Party" to the Geneva Conventions of 1949. The government has argued that since neither Jordan nor Egypt held or claimed title to the West Bank or Gaza, the Occupied Territories were not under the sovereignty of a "High Contracting Party". It has, nevertheless undertaken to abide by the "humanitarian provisions" of 1949 *Fourth Geneva Convention* (for the protection of civilians under military occupation) *de facto* if not *de jure*.[61] The United Nations, both at General Assembly and Security Council levels, has for a long period consistently maintained that the Convention applies de jure.

The Israeli Supreme Court has taken a somewhat different position from that of the Israeli government, at times seemingly amounting to an acceptance that it is bound by the *Fourth Geneva Convention.* These differences are highlighted by the fact that Itzhak Rabin has lobbied for Knesset legislation to prevent the Court from reviewing home demolition orders[62], while Ariel Sharon has urged legislation to "immunise" the Military

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[59] Linda Bevis *The Applicability of Human Rights Law to Occupied Territories: The Case of the Occupied Palestinian Territories* (Ramallah, Al-Haq, 1994), p.56

[60] Vol. 2 (1975) p.72, pp.73-74, decision on admissibility

[61] For an excellent brief outline of the issues, see Dan Simon *The Demolition of Homes in the Israeli Occupied Territories* (1994) 19 Yale Journal of International Law pp.1-79, Part III, "The Legal System in the Occupied Territories", pp.18-26.

[62] See Baruch Meiri *Justice Ministry Officials: Won't Agree to Increasing Severity of Punishment,* Ma'ariv, June 23 1989, at 2

Government from interference by the Court[63]. In the case of *Dweikat v Israel* [64], the Court affirmed its treatment of Israel's rule as belligerent occupation. It has treated the 1907 Hague Regulations as fully enforceable. Regrettably, the more important 1949 *Fourth Geneva Convention* (for the protection of civilians under occupation) has been regarded by the Court as formally non-justiciable, since Israel, like the UK, maintains a dualist legal system with regard to international law. The Geneva Conventions would only be justiciable if incorporated into domestic law by the Knesset. Nevertheless, the Court has frequently referred to and discussed the *Fourth Geneva Convention*, to the extent that matters concerning the Convention are effectively within the Court's jurisdiction, although in almost all cases Israeli domestic law has been allowed to prevail. Indeed, in certain cases it has maintained that even if the Convention were applicable, cases of demolition and deportation would in any case not be illegal in Convention terms.

Simon points out that since 1971 Israel decided on a new legal policy with regard to the Occupied Territories, according to Meir Shamgar extending to the civilian population greater protection than they could receive as a result of recognition of belligerent occupation: the "basic principles of natural justice as derived from the system of law existing in Israel" - "justice and fairness", "respect for law", and "prevention of discrimination". The key aspect of this policy was that it granted all Palestinians with access to Israeli courts, in particular the High Court of Justice, providing them with immediate and affordable access to judicial review of almost all actions of the Military Government. As Simon says, the Court deserves credit for its willingness to review cases from the Occupied Territories, especially in the light of its heavy workload. Moreover, even though the number of such cases which have succeeded is very small, it is a fact that the Israeli Military Government "displays deep concern about its image as a law-abiding branch of government - an image that relies heavily on the Court's rulings". Nevertheless, the Court has been far too ready to accommodate repressive government policies and military excesses.

The more important question, for the Palestinians, is whether Israeli rule will continue despite the Agreements. Simon himself, considering whether the practice of home demolitions will continue, even if the DOP is fully implemented, insists that Israeli rule over the West Bank and Gaza has not ended. According to the DOP, Israel will remain responsible for most of the region's overall security even after IDF withdrawal from Gaza and Jericho (Article VII), and the 1945 British *Defence (Emergency) Regulations* - Article 119 of which permits house demolitions - will remain in force (Article IX)[65]. Linda Bevis points out that according to the DOP, a final agreement is to be reached by the parties within five years; therefore, the declaration is an interim agreement that does not purport to end the occupation. During this period, Israel will continue to exercise some legislative, executive and judicial functions in the Occupied Territories: complete

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[63] Moshe Negbi *Justice Under Occupation - the Israeli Supreme Court Versus the Military Administration in the Occupied Territories* (1981), p.74

[64] (1979) 34(1) P.D. I, 13 - the Court invalidated confiscation of private land near Nablus intended for establishment of Jewish settlement

[65] Simon, op cit, p.5

jurisdiction over East Jerusalem, settlements, border areas, and substantial land and water resources.[66]

According to Article 6 of the 1949 *Fourth Geneva Convention*, to the extent that Israel "exercises the functions of government", it continues to be bound by the main provisions of the Convention[67] until the end of occupation. The PLO has also demonstrated its willingness to be bound. On 14 June 1989 the Ambassador of the State of Palestine filed instruments of accession to the Geneva Conventions and Protocols. The Swiss government refused to decide whether the communication should be considered an instrument of accession, due to the uncertainty as to the existence or non-existence of a State of Palestine, but noted that the "unilateral declaration of application" made by the PLO on 7 June 1982 remained valid. Nevertheless, Bevis points out that the only adequate protection of human rights within the new self-rule areas will be incorporation of the main provisions of international human rights instruments into Palestinian legislation. Where the Palestinian authorities have no jurisdiction to legislate, Israel will remain internationally responsible for human rights violations.

All our interlocutors were therefore rightly concerned to grasp the significance of the "Israeli veto". At the time of writing, no-one knows how the provisions of Article VII (Legislative Powers of the Palestinian Authority) of the Cairo Agreement will operate in practice. While it is true that the Authority has power "within its jurisdiction" to promulgate legislation, such legislation must be communicated to the Legislation Sub-Committee of the Joint Civil Affairs Co-Ordination and Co-operation Committee (CAC), which, according to Annex II, will have equal numbers of Palestinian and Israeli members. Within 30 days, Israel may request the Sub-Committee to consider whether such legislation "exceeds the jurisdiction of the Authority or is otherwise inconsistent" with the Agreement. The Sub-Committee can decide whether the legislation enters into force pending a decision on the merits. If the Sub-Committee cannot reach a decision within 15 days, the issue is to be referred to a board of review, consisting of two senior lawyers. Legislation referred to the board of review "shall enter into force only if the board of review decides that it does not deal with a security issue which falls under Israel's responsibility that it does not seriously threaten other significant Israeli interests protected by this Agreement, and that the entry into force of the legislation could not cause irreparable damage or harm."

If the Legislation Sub-Committee cannot reach a decision within 30 days, the matter is referred to the Joint Israeli-Palestinian Liaison Committee. We stress that proposed legislation is therefore subject to a delay of a maximum of 90 days, and a veto. Finally, Article VII paragraph 9 provides that laws and military orders in effect in the Gaza Strip or the Jericho Area prior to the signing of the Agreement remain in force unless amended or abrogated in accordance with the Agreement.

The grant of self rule to the Palestinians in certain areas, and of "early empowerment" in others, is therefore highly conditional on Israeli approval. There is no doubt that, in

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[66] Linda Bevis, op cit, p.93

[67] i.e. Articles 1-12, 27, 29-34, 47. 49, 51-53, 59, 61-77, and 143

reality, Israel could re-assert complete control on the ground. Former Supreme Court President Haim Cohen told us that in his own view "we will not tolerate an undemocratic [Palestinian] government" as a result of elections, or of failure to hold elections. The current President Meir Shamgar was, quite understandably, anxious to insist on the unique record of the Israeli Supreme Court in hearing cases brought by Palestinians in the occupied territories; and to stress the continual danger that the Israeli executive would seek to curb the powers of the Court. When, for example, we questioned him on the issue of Israeli settlements in the West Bank, he told us about recent litigation concerning unlicensed construction by Arabs in East Jerusalem. Nevertheless, he was firm in the view that Israel remained, in international law, in belligerent occupation of the whole of the West Bank and Gaza strip; that is, Israel retains ultimate responsibility for the human rights and well-being of their inhabitants.

That was also the view of Professor David Kretzmer, of the Hebrew University. He asked us to imagine the hypothetical case in which the Israeli authorities had reliable information of gross and persistent human rights violations, for example torture, in Palestinian jails. Would Israel have the right and duty to intervene to protect the individuals concerned, and to call the perpetrators to account? If, as he believed, Israel remains in belligerent occupation of the whole of the West Bank and Gaza, then victims of human rights violations would be entitled, by virtue of the provisions of the Fourth Geneva Convention of 1949, and by virtue of the provisions of general international law which, as Linda Bevis explains, continue to apply under conditions of occupation, to call upon Israel to act.

A dissenting voice is that of Dr Eyal Benvenisti, himself the author of a key work of reference[68]. He argued as follows in 1993, shortly after the signing of the DOP. Being an occupying power, Israel draws its powers in the West Bank and Gaza from the effective control it has there. In his view[69], effective control was a necessary element in defining a situation as occupation. He relied on article 42 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the Convention (IV) Respecting the Laws and Customs of War on Land, the "Hague Regulations" of 18 October 1907; it is generally accepted that these have the status of customary international law, binding on all states whether or not they have ratified any treaties or other instruments. Article 42 provides:

> "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

Benvenisti argued that after relinquishing its control, as envisaged in the DOP, in Gaza and Jericho, Israel would have no effective control, and therefore would have no right to re-occupy those areas. The Palestinian entity in these areas "has a life of its own, and does not draw its authority from the Israeli occupation or from the Declaration, but from the Palestinian people's right to self-determination". The DOP therefore constituted an "irreversible step" towards settlement of the conflict.

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[68] Eyal Benvenisti *The International Law of Occupation* (1993)

[69] See Eyal Benvenisti *The Israeli-Palestinian Declaration of Principles: A Framework for Future Settlement* (1993) 4 European Journal of International Law pp.542-554, at p.545

At our meeting with Dr Benvenisti, he seemed less sanguine about the irreversibility of the peace process. He told us that the Legal Adviser to the Ministry of Foreign Affairs, Joel Singer, believes that the whole of the West Bank and Gaza is still under occupation. Singer points to Article XXIII paragraph 7 of the Cairo Agreement, which states that:

> "The Gaza Strip and the Jericho Area shall continue to be an integral part of the West Bank and the Gaza Strip, and their status shall not be changed for the period of this Agreement. Nothing in this Agreement shall be considered to change this status."

While Benvenisti concedes that Singer is probably correct as to the position in law, it is, he felt, necessary to look at the facts; it is then clear that the Palestinians in the Gaza strip and the Jericho area are not under occupation. In his present view, Article 42 provides a very simple objective test as to who has objective control: the ability to govern and to regulate civilian life in the self-rule areas. If the test is effective control, then one has to see first, whether the Cairo Agreement gives Israel powers over the civilian population; and second, whether Israel in fact exercises such powers. The answer, according to Benvenisti, is that Israel has no such powers. The Israeli right to intervene is very limited - to hot pursuit. Furthermore, if one looks at the practice, Israel is not interested in what goes on in Gaza and Jericho, and is leaving the PA/PLO to regulate its own affairs. He recognises that the problem is how to reconcile the objective test with Article XXIII(7) of the Cairo Agreement.

It is arguable that both parties to the Agreement were content to regard Gaza and Jericho as still being under occupation, since, if there is no occupation, it is necessary to decide who has sovereignty. For the Palestinians it is preferable to view Jericho and Gaza as still under occupation. But the fact that Israel and the PLO have agreed to regard the whole area as still under occupation does not mean that it is in fact occupied. If someone held in Gaza prison wants to complain to the Red Cross, will the Israeli Army and Foreign Ministry say they are not responsible? The real debate is whether the new entity constitutes a state, an autonomy, or what? The Palestinians have had to accept the Cairo Agreement because they are weak. There is, however, a view that this was a wrong move for the Palestinians. It had been hoped that the Israeli government would have been able to compensate by giving the Palestinians more powers, and more money, and assistance with international fund-raising. But there may now be a vicious circle, where the Palestinians complain that they are being forced into the position of agents for Israeli authority. Meanwhile, the PLO remains, in Israeli law, an illegal organisation.

Colonel Ahaz Ben-Ari, Chief Adviser on International Law to the IDF, suggested that Israel is still in belligerent occupation, but is trying to learn its new status - a status hitherto unknown to international law, a kind of autonomy under the auspices of the occupying power. Some have described it as an "armistice occupation". In the relations between us and the Palestinians, he said, we are still occupiers. Palestine is not a state yet; and the legal status is not yet changed. All these questions still have to be discussed in the permanent status negotiations. In fact, there is an arrangement which provides the Palestinians with the ability to run their own lives, and as long as every party knows what it should do under the Agreement, problems can be solved. But if there was a substantial

violation of the Agreement by the Palestinians, Israel would have to reconsider her position.

Finally, what is the view of the Red Cross, which is responsible for the vindication of the Geneva Conventions? We were unable to meet Yves Petermann, the ICRC lawyer, during our mission; but he told Bill Bowring, during the Conference referred to above, that the position of the ICRC vis-á-vis the question of belligerent occupation is that they will wait to see to what extent the Israeli government will exercise its veto. If Israel does exercise the veto, that will suggest that there is sufficient control to amount to occupation. However, the ICRC's view of "occupation" is multi-faceted, and Mr Petermann stresses that they do not strictly apply Eyal Benvenisti's "effective control" objective test.

While we cannot resolve this issue, we take the view that the ICRC's position is the only practical one. The crucial question is the protection of the human rights of individual Palestinians in the whole of the West Bank and Gaza Strip. Even if the PLO and PA continue to declare their acceptance of international human rights norms, human rights will only be protected effectively by means of domestic legislation, and an adequate system of legal enforcement, with qualified and honest judges, and competent lawyers. How, for example, will administrative decisions be challenged once "early empowerment" takes effect? And to what mechanism will the ordinary Palestinian turn, in order to seek a remedy for human rights violations?

SECTION V
LEGAL COMPLEXITIES

(a) THE HUMAN RIGHTS CONSEQUENCES OF THE DIFFERING LEGAL SYSTEMS OF THE WEST BANK AND GAZA

The DOP expressly provides that the West Bank and the Gaza Strip are to be considered as "a single territorial unit"[70]. In practice, the geographical distance between the two areas and their different historical legacies make for a problematic union between the two. This is poignantly manifested in the legal system. In spite of the Israeli presence in the Occupied Palestinian Territories, to the extent that the Israeli Civil Administration did not transfer jurisdiction away from the existing organs to its own Israeli ones, the legal systems of the West Bank and the Gaza Strip were, in essence, left intact and remained as they were prior to 1967. Ironically, it is perhaps in the domain of Israeli intervention that the two systems bear the most resemblance to each other. Although most Israeli military orders are no longer relevant as regards the Autonomous Areas there may be strong arguments for retaining the substance of the remaining orders, as will be seen later in this Report[71]

The differences between the two systems stem from the territorial division of the region which followed the withdrawal of the British Mandate in 1948. The Gaza Strip was then administered by Egypt whereas the West Bank was occupied by Jordan. This led to different policies being adopted with regard to each administered Territory: on the one hand, it was decided that the West Bank should be incorporated into, and form part of, the Hashemite Kingdom of Jordan (being the east and west bank of the Jordan River); the Gaza Strip, on the other hand, was never incorporated into Egypt but was kept as an autonomous unit[72]. Thus the legal system prevailing in the West Bank is the Jordanian one of 1967, whereas that in the Gaza Strip is a somewhat amended version of the Palestinian (British Mandatory) system. Both the nature of the judicial organs, and the laws applied, in each Territory differ from each other. In Gaza, there are magistrates courts, district courts and a high court. In the West Bank, there used to be three levels of judicial organs but, since 1967, the highest level, the Cour de Cassation, being situated in Amman, has been de facto beyond bounds.

Since the implementation of the relevant sections of the Cairo Agreement and the ceding of power by the Israeli Civil Administration to the Palestinian Authority, a further tier in the judicial structure in the West Bank has been removed and there is now only one level of court in existence in Jericho, that of first instance. The only Court of Appeal serving the West Bank is situated in Ramallah, which forms part of the Territories still administered by Israel. Therefore, if a decision of the Jericho Court is to be appealed, such appeal must but brought before the High Court in Gaza both in order to respect the

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[70] Article IV of the DOP

[71] Post, Section V(c), Israeli Military Law

[72] In both cases, there are exceptions. In Gaza, a number of laws were enacted under the auspices of Egypt, but the so-called Palestinian Legislative Council; in the West Bank, the laws applying to both banks did not manage to replace all legislation in existence in the West Bank prior to the unification.

letter of the Cairo Agreement ("single territorial unit") and in order to comply with the political reality which would make it almost impossible for a Palestinian first instance decision to be heard, on appeal, by a court situated in the Territories, which are perceived to be Israeli courts[73]. We heard of a case in which the first instance decision of a court in Jericho had been overturned by the Higher Court in Gaza sitting as an appeal court. The court in Jericho, however, refused to enforce the decision of the appeal court, claiming that the latter court had failed to decide the case in accordance with the laws which apply in the West Bank. A re-hearing of the case is due to take place.

The provision which had been ignored in that case was procedural, not substantive, and pertained to the number of judges required to hear the case. In Gaza, it was sufficient for the court to be constituted by a single judge, whereas the West Bank required a panel of two or three judges. This shows that the Gaza Appeal Court must not only acquaint itself with the substantive provisions of West Bank law but must also become familiar with the procedural requirements prevailing in the West Bank. However, we also heard an alternative reason to explain why the Jericho Court had refused to enforce the decision of the Court in Gaza. This was that the executive in Jericho had initiated the refusal on political grounds, the authorities in Jericho being reluctant to accept the superiority of a decision taken in Gaza[74].

As will later be seen[75] the debate concerning the applicability of Israeli Military Orders in the Autonomous Areas has compounded the confusion created by the existence of different legal systems in the West Bank and Gaza. This confusion is manifested within judicial circles, by advocates and by the general public.[76] A number of the advocates with whom we spoke recounted that a significant proportion of their work in Jericho and in the Gaza Strip involved advising as to which laws applied to given situations, it being generally perceived by clients that any law can now apply, if law applies at all. The advocates[77] themselves were unable to dispel the confusion concerning the status of the Israeli Military Orders.

If the Cairo Agreement is fully implemented, this confusion is likely to be resolved in time since the details of autonomy in the rest of the West Bank will be discussed in the context of the "permanent status negotiations". The Court of Appeal of Ramallah is likely to be able to hear appeals against the decisions of courts in the West Bank.

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[73] During the *Intifada*, the Palestinian uprising, people in the Territories were encouraged by their leaders not to have recourse to the courts but to resolve their problems extra-judicially.

[74] The notion of a dual court structure is not new to the region which had a similar experience in the Sinai Peninsula prior to the execution of the Camp David accords between Israel and Egypt. We were told that appeals from Sinai Courts to the Gaza Court of Appeal were decided by applying Jordanian law. This was given as an example of how the situation presently existing in the Autonomous Areas could adequately be resolved.

[75] Post Section V(c), Israeli Military Law.

[76] See the account above of the interview with Judge Mohammed Abu Ghosh in Jericho on 30 July 1994.

[77] In the context of commercial transactions, where a client was desirous of setting up in both the West Bank and the Gaza Strip, advocates expressed their uncertainty as to which legal system (if any) should prevail. Indeed, it was suggested to us that a wholly new system of arbitration might be preferable.

However, at least one advocate expressed doubts as to the speedy transfer of authority for the judicial system to the Palestinian Authority in the rest of the West Bank since the judicial system has, over the years, become subordinated to the Israeli Civil Administration. However, the President of the Court of Appeal in Ramallah, Khalil Silwani[78] told us that during the nine and a half years in his post, he found that the Israeli administration did not seek to interfere with the working of the Court and the only contact with it was on the administrative level (in relation to stationery and other such requirements).

(b) JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

An area which perhaps best exemplifies the problems which ensue from the co-existence of disparate legal regimes as a result of both the 1967 War and of the separation of Jericho and the Gaza Strip from the Territories, is that of the judicial review of administrative decisions.

Before 1967 the *Cour de Cassation* in Amman had jurisdiction to hear cases of judicial review. After the split between the West and East Bank this task fell to the Court of Appeal (in Ramallah) which reviewed decisions taken by the remaining Palestinian part of the administration in the Territories. However, as will be seen later, an increasingly large proportion of administration was undertaken by the Israeli Civil Administration, both as regards the West Bank and the Gaza Strip. Judicial review of Israeli administration (all decisions taken by Israeli officials) was undertaken, for its part, by the Israeli High Court of Justice sitting, in West Jerusalem of course, as a Supreme Court.

Since the implementation of the relevant provisions of the Cairo Agreement, however, it is inconceivable that the actions of the Palestinian Authority in Jericho could be reviewed by the Ramallah Court of Appeal whose judges are perceived to be Israeli appointees because Israel has a right of veto on any appointment. Whilst this is different from the situation which is present in the Gaza Strip, since the court structure there has not been sliced from top to bottom in this way, the two areas show a number of problems in common. First, as was seen above, the Israeli Civil Administration undertook most administrative tasks in the Territories. The review courts of the Autonomous Areas are not, therefore, in the habit of addressing questions relating to the exercise of powers by public authorities where these had previously been exercised by the Israeli Civil Administration.

Secondly, one advocate told us that public administration was generally perceived as a group of individuals exercising individual, not institutional, powers, thus constituting another barrier to effective judicial review of administrative acts and omissions. This second problem is perhaps more difficult to remedy than the first, especially since the advocate stated that this phenomenon was endemic to states in the Arab world, on which the Palestinian Authority is likely, at least in part, to model itself. Thirdly, since the transfer of power from the Israeli Civil Administration and other Israeli organs to the Palestinian Authority does not extend to cover all administrative powers exercised in

[78] In the course of a meeting in Ramallah on 30 July 1994.

relation to the Autonomous Areas, there will continue to be a dual system of judicial review. On the one hand, the exercise of powers by the Israeli military personnel in the Autonomous Areas will continue to be reviewable by the Supreme Court of Israel; the exercise of powers by the Palestinian Authority, on the other hand, will be reviewable by the Gaza Court of Appeal and, eventually, as regards the West Bank, by its own Courts of Appeal.

There remains a potential for overlap and, more worryingly, for gaps to appear, since it may prove difficult to determine who is entitled to exercise a certain power. There have already been instances in which the Israeli Civil Administration has claimed that it is no longer responsible for a particular service on the basis that it has been transferred to the Palestinian Authority. The latter, however, are not yet able to provide the service in question; so the service seeker is left unprovided for and potentially without any legal remedy.

Finally, the Cairo Agreement sets up a structure of co-operation between Israel and the Palestinian Authority in the form of joint committees. Under which jurisdiction are the acts and decisions of such committees to be reviewed? The Cairo Agreement does not specify the legal framework within which administrative institutions are to operate. The Agreement sets up an "appeals" structure exclusively to determine issues arising out of the implementation of the peace accords. This structure is extra-judicial. The third Annex to the Cairo Agreement, devoted to legal matters, focuses only on civil and criminal proceedings.

Representatives of Israeli Human Rights NGOs told us that in their opinion review of joint Palestinian-Israeli public acts could only be performed extra-judicially by negotiation under the structures of the DOP and the Cairo Agreement. This, they said, meant that human rights organisations are now reluctant to take test cases to the Israeli Supreme Court for fear of setting a bad precedent if the case is dismissed on the ground that the matter should be adjudicated by the executive in negotiations

(c) ISRAELI MILITARY LAW

Since 1967, the Israeli Civil Administration has introduced in excess of one thousand military orders ("the Orders") in the West Bank and the Gaza Strip. The Orders are not all incompatible with the administration of the Autonomous Areas. Some, it can be argued, are an improvement on earlier legislation (for instance, the Order abolishing the death penalty in Gaza[79]). Others can be categorized as instruments of "ordinary law reform", since the task of modernising legislation since 1967 has been in the hands of the Israel authorities in the Territories and not the Jordanian and Egyptian legislators who had undertaken the task prior to 1967. Amongst the Orders, therefore, are those which may in fact assist the smooth handover of authority between the Israeli Civil Administration and the Palestinian Authority, and facilitate the transitional period pending the election, and the swearing in, of the new legislative Palestinian organ.

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[79] We discussed this problem in our meeting with Hanan Ashrawi.

The Cairo Agreement provides that all the Orders shall remain in force unless amended or abrogated in accordance with the Agreement (ie, new laws must be enacted in conformity with the somewhat cumbersome prescribed procedures)[80]. However, we were told that a decree from Chairman Yasser Arafat, published in *Al-Quds* newspaper in Jerusalem, had proclaimed that all Orders were cancelled in the Autonomous Areas. Lawyers were consequently in some doubt as to the present position, since the decree was apparently a clear breach of the Cairo Agreement.

This legal confusion is compounded by, and is perhaps the result of, the tension which exists on the ground, between the ideological, political difficulties of applying Israeli law in the Autonomous Areas, on the one hand, and the absence of law regulating certain aspects of everyday life in such Areas were the Orders to cease to be applicable.

Orders in the field of labour law, traffic, insurance, and landlord and tenant are, in particular, essential to everyday life in the Autonomous Areas. This has resulted in some farcical, but worrying, legal manoeuvring on the part of both the judiciary and the advocates when faced with a case which ought properly to be the decided on the basis of an Order. A judge[81] told us that he felt obliged to refer to general or customary laws, instead of acknowledging that in fact he was applying to the relevant Order. An advocate[82], told us similarly that he presented his cases on the basis of general laws without mentioning of the applicable Order.

Furthermore, through military orders, the Israeli civil administration reserved for its Military Courts certain functions which the courts in the Autonomous Areas will now have to fulfil. Examples include traffic offences, drug offences, armed robberies, land confiscation and house demolition[83]. The courts and law enforcement agencies in the Autonomous Areas are inexperienced and ill-equipped to handle these issues. The Autonomous Areas continue to be dependent on Israeli facilities but offers of co-operation and assistance from Israel are[84] not easy to accept.

(d) WHAT SYSTEMS ARE NEEDED TO PROTECT HUMAN RIGHTS? THE PALESTINIAN INDEPENDENT COMMISSION FOR CITIZENS' RIGHTS

We heard, from Hanan Ashrawi and others, grave concern at the propensity of elements in the new Palestinian authorities to ignore or pay only lip service to human rights imperatives. Nonetheless, all those Palestinians in positions of authority whom we interviewed assured us of their commitment to the protection of human rights.

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[80] Article VII(9) of the Cairo Agreement for further details see III(B).

[81] Judge Mohammed Abu-Ghosh (meeting of 30 July 1994).

[82] Ala Al-Bakri (meeting on 26 July 1994).

[83] Although one might have assumed that the last two listed would have ceased upon the transfer of jurisdiction to the Palestinian Authority, we heard reports that the new authorities are continuing [reference by Al-Haq].

[84] Freih abu-Medein, the member of the PNA responsible for justice, told we that Mr Levy, the Israeli Minister of Justice, had offered to help the PNA in forensic matters. Such an offer was, however, difficult for the PNA to accept since they did not want to be seen accede, voluntarily, to a state of dependence on Israel (meeting of 27 July 1994 in Gaza City).

Palestinian non-governmental organisations which have for many years exposed Israeli human rights violations have scrutinised the new Palestinian authorities with equal vigilance. On 31 July 1994, very shortly after our return, the authoritative Palestine Human Rights Information Center sent an open letter to Yasser Arafat, expressing deep concern over the confiscation of copies of an-Nahar newspaper on Thursday 27 July by members of the Palestinian preventive security force, and the subsequent ban on distribution in the Palestinian authority areas. As they pointed out, this action was clearly contrary to Article 66 of the Draft of the Palestinian Basic Law[85], guaranteeing freedom of the press, as well as article 19 of the Universal Declaration of Human Rights, and Article 19 of the International Covenant on Civil and Political Rights. PHRIC expressed its hope that the Palestinian authority would act in accordance with its public commitments to respect basic freedoms and human rights.

Evidence of further violations, of a disturbing nature, has continued to accumulate. By 28 August 1994 "The Observer" reports Palestinian human rights activists as saying that conditions are as bad as they were under the Israelis[86]. Specific instances cited by "The Observer" include, first, the case of Farid Hashem Ahmad Jarbou', 28 years old, arrested for espionage and tortured to death in a Gaza police cell; the Palestinian authorities initially claimed he had died of a heart attack, but the new Palestinian General Prosecutor has after pressure disclosed that four policemen will be tried for his murder[87]. Second, it is said that more than 120 Palestinians are being held in Palestinian jails, including an 85 year old man accused of illegal construction on state land. Third, the article claims that during the previous week, Arafat loyalists telephoned Maha Nassar, a Ramallah teacher and women's activist, and threatened to kill her and her children because she had refused to invite a representative of the Palestinian authority to participate in a non-governmental women's conference. The same men tried to break into her house the following day, but were scared away by her screams. The next morning she found a blood-soaked sheet tied to her door.

We have been unable to check the accuracy of these claims, although the last has been confirmed by Al-Haq. But there can be no doubt that four factors contribute to the present grave dangers for human rights. First, many member of the Palestinian authorities have acquired their organisational skills in the quasi-military conditions of exile or in the underground, rather than in democratic structures. It was suggested out to us that, sadly, some of those Palestinians who were tortured or ill-treated by the Israelis have used similar methods against their own prisoners. Second, the Palestinian security forces suffer from lack of training, from the fact that most were not recruited as policemen, and

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[85] A Draft Basic Law, containing a wide range of human rights provisions, is in circulation; it has been drafted by a variety of experts. We received conflicting accounts of its efficacy and importance. While Hanan Ashrawi referred to it with approval, others told us that it was quite irrelevant.

[86] See Shyam Bhatia *Dream Shatters for Palestinians* The Observer, Sunday 28 August 1994; and Khaled Abu Toameh *Early Disempowerment? In the towns and cities of the West Bank, many Palestinians await the advent of autonomy - and Yasser Arafat's regime - with something approaching dread* (The Jerusalem Report, 22 September 1994, p.26)

[87] See *Al-Haq* Press Release No.73, 9 July 1994, demanding an immediate investigation into his arrest, detention and death

most of all from acute lack of financial resources. For example, Hanan Ashrawi told us that she found it problematic to intervene in order to complain about prisoners' living conditions, when the living conditions of their gaolers were often worse. "The Observer" reports that in Jordan, a brigade of Palestinian police revolted at the prospect of being sent to unpaid jobs in Gaza and Jericho.[88] Third, it would be wholly unrealistic to expect the existing NGOs, such as PHRIC, Al-Haq, and the Gaza Center, to provide the Palestinian population with the protection which is needed. Fourth, the legacy of undoubted gross and systematic violations of human rights by the Israeli authorities, combined with the fact that Israel remains in overall control, is unlikely to promote the observance of human rights by the new authorities.

Hanan Ashrawi[89], who has been appointed the Commissioner General of the *Palestinian Independent Commission for Citizens' Rights*, set up by Decree of Chairman Yasser Arafat on 30 September 1993[90], has, therefore, a vitally important task to perform. The Commission's mission is to "follow up and ensure the existence of the requirements for the protection of human rights in the various Palestinian laws, legislation, and regulations as well as in the work of the various departments, organs and institutions in the state of Palestine and in the PLO." By 8 June 1994 it had received funding of $180,000 from international sources, with another $406,500 pledged. Its annual budget is estimated to be $559,000 (about £362,987), which means that it will have only a small number of staff, in four departments: Monitoring, Fieldwork, Administration, and Public Awareness.

Its sevenfold work programme is very wide-ranging. First, it is charged with reviewing the draft Basic Law and subsidiary legislation. Second, it is concerned with Palestinian-Israeli negotiations issues - Palestinian prisoners, the problems of Jerusalem, conflicts of interest. Third, it is concerned with the issues raised by the transition: the Palestinian police and security services, and pursuing individual and collective cases - deportees, prisoners, contractual issues. Fourth, it pursues issues related to the preparatory steps for establishing the Palestinian Authority. Fifth, it pursues Palestinian contractual and appointment issues to ensure openness, accountability, meritocracy and non-discrimination. Sixth, it pursues the preparatory stages for the general elections - free and democratic conduct and respect for their outcome. Seventh, it seeks to promote public awareness of law and rights. In the circumstances, it is hard to see how a relatively small office will be able to respond fully on all questions.

The Commission is intended to have "the authority to take the initiative in cases of injustice or wrong doing or to prevent such occurrences"[91]. It may also "propose the appropriate remedy" having identified a grievance, and has the right to resort to the courts as a legal person "where the public interest is involved". But these powers are

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[88] 28 August 1994

[89] Meeting with Hanan Ashrawi at her office in East Jerusalem, 28 July 1994

[90] Hanan Ashrawi provided us with a copy of the decree, expressed to be "Based on the requirement of the public interest And by virtue of the powers vested in him"

[91] "The Palestinian Independent Commission for Citizens Rights", a 5-page document received from Hanan Ashrawi.

indeterminate, and place no obligation on the authorities in any case to take action or to desist from violations. The enforcement of the Commission's rulings is entirely dependent on the proper working of the legal system. As has been pointed out above, the present court structures are highly unsatisfactory.

It appears to us that in the absence of an enforceable Basic Law, or of any new legislation incorporating human rights standards, together with the uncertain status of existing laws, whether deriving from the Mandate, from Egypt and Jordan, or from the Israeli military, and the deplorable state of the court system, the only means of protecting human rights would be a Human Rights Commission with a firm guarantee of independence, and the power to intervene and compel the authorities to act or desist.

SECTION VI
TOWARDS A UNIFIED LEGAL SYSTEM?

(a) THE LEGAL PROFESSION & HUMAN RIGHTS

The organisation and regulation of the legal profession in the Territories is in a state of disarray and this fact has, to some extent, been exacerbated by the peace agreements since the situation in the West Bank is different from that in the Gaza Strip. The problems of unification discussed above[92] are, therefore, equally applicable in the context of the legal professions.

The West Bank

From the time of the union between the East and West Bank up until 1967, lawyers practising in the West Bank were regulated by the Jordanian Bar Association based in Amman. However, as a result of Israeli pressure, the West Bank lawyers announced a strike which continued to be respected until 1971 by the entire body of lawyers. In that year, a proportion of lawyers opted to go back to work but the Jordanian Bar Association refused to condone this decision and actively discouraged others from following suit[93]. The working lawyers, therefore, were operating in an unregulated vacuum. The Israeli Civil Administration sought to fulfil the regulatory role and assumed the functions hitherto performed by the Jordanian Bar Association[94]. An attempt by the practising lawyers to create their own regulatory body, the Arab Lawyers Committee, was allegedly[95] impeded by the Israeli powers. Although the Committee has not been formally recognised, a number of people with whom we met, referred to the Committee's existence and work. There are 256 striking lawyers and approximately 350 non-striking lawyers in the West Bank[96].

We met leaders and representatives of both groups. In Ramallah, we interviewed Ali Shkeirat, the General Secretary of the Bar Association of Jordanian Lawyers, who is the West Bank representative of the striking lawyers registered with that association. He has been on strike for 25 years, although he does practise before the *Shari'a* (religious) Courts which are considered to be free of Israeli influence. Appearance before such courts is not prohibited by the strike. We were able to compare his views with those of Alaa al-Bakri, who is an active member of the non-striking group of lawyers in the West Bank. We also met Farid Jalladt[97], a Nablus advocate who was elected as the head of the

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[92] See Section V above.

[93] See *The Civilian Judicial System in the West Bank and Gaza: Present and Future*, International Commission of Jurists (1994) p.58 which reports that the Jordanian High Court declared it illegal for lawyers to practise, and that the Jordanian Bar Association has decreed that any acquired pension rights will be suspended in the event that a lawyer resumes practice.

[94] Military Order 528

[95] *The Civilian Judicial System in the West Bank and Gaza: Present and Future*, International Commission of Jurists (1994) p.59

[96] Numbers supplied by Ali Shkeirat in a meeting on 26 July 1994 in Ramallah, West Bank. These conflict with figures supplied by Farid Jeladt who stated that 747 lawyers had been registered with the Bar (including some 300 who are still training).

[97] The meeting took place at his offices in Nablus, in the West Bank on 30 July 1994.

Palestinian Working Bar Association, representing the non-striking lawyers, in January 1994. The current position of lawyers in the West Bank as regards the ability to practise in Jericho, and, eventually, in other autonomous areas of the West Bank, is unclear. Alaa al-Bakri informed us that the striking lawyers are lobbying the PNA member responsible (Minister) of Justice, Freih Abu-Madein, for the publication of a list of lawyers entitled to practise to be produced. According to Mr al-Bakri, both the Jordanian Bar Association and Chairman Arafat have agreed that the striking lawyers should be entitled to practise in the Jericho Courts, the reason for striking having become obsolete in the Autonomous Areas.

The Gaza Strip

We were informed that no lawyers in Gaza are on strike, and that the Bar was unified, all lawyers being registered with it. There are 490 registered lawyers of whom only 180 are actually practising[98]. The head of the Bar in Gaza spoke to us of a different problem, that of a serious shortage of funding. The staff working for the Bar has shrunk from 5 to 2.

The Future

A number of people expressed to us a desire to create a unified Bar association which would group together all three types of lawyers in the Autonomous Areas, namely the Gaza lawyers, and both the striking and non-striking West Bank lawyers. The problems involved in such a union seem particularly acute in the West Bank where two conflicting Bar associations have co-existed for so many years. Farid Jalladt spoke of the difficulties posed by the striking lawyers' membership of the Jordanian Bar, which has its own separate existence (in Jordan) together with its own independent rules and regulations. He proposed that such problems could be resolved through membership of more than one Bar, so that lawyers could keep their existing membership whilst registering with a new Palestinian Bar Association. The areas on which the new bar association is likely to focus will be the regulations of legal and professional training (both academic and practical)[99] and the setting of standards for the profession. We heard from a number of sources about the serious difficulties caused by the widespread lack of adequate training, aggravated by the 27 year strike in the West Bank and the perfunctory legal procedures followed in the military courts, which has resulted in almost 3 decades of inadequate professional experience.

(b) LEGAL PROFESSIONAL TRAINING AND CONTINUING EDUCATION

If the new Palestinian entity is to have a unified legal system, then clearly there will be a need both for new legal practitioners expert in the relevant law, and for re-training and continuing education for existing practitioners. The Palestinian lawyers now in practice have received their legal education in all parts of the world. Judge Khalil al-Silwani, who presides in Ramallah, has a London University LL.B, like many other Palestinian lawyers

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[98] Figures supplied by Raji Sourani during the course of a meeting with us which took place on 27 July 1994 in Gaza City. The figures are approximate. 120 lawyers were said to work before the military courts, whereas only 60 appeared before civilian courts. Lawyers we met in Gaza said that there were 460 lawyers in Gaza (meeting in Gaza City on 27 July 1994).

[99] See post Section VI(b), *Legal Professional Training and Continuing Education*.

of his generation; but the younger generations have obtained their law degrees in every Arab state from Kuwait to Morocco. The majority have been trained in Jordanian law (the striking lawyers of the West Bank are all members of the Jordanian Bar), but it must be remembered that the law which prevails in the West Bank is pre-1967 Jordanian law; there have been many modernising changes in Jordanian law, as practised in Jordan, since then.

There is presently no University Law Faculty carrying on undergraduate legal education either in the West Bank or in Gaza, with one exception. We met [100] Dr Ali Khashan, Dean of the new *Palestinian School of Law* . He told us that he is offering a BA in Law course offered at the PSL, consisting of 150 credit hours to be taken over 4 to 4½ years. The year comprises two semesters, with an optional third "semester" for those wishing to study on the "accelerated track". Each semester, students take between 15 and 21 credits (fewer in the summer). The following is an example of the courses which are offered: Civil Law and Procedure; Criminal Law and Procedure; Public and Private International Law; Public Law (Constitutional and Administrative); English and Legal Language (12 hours); Hebrew Language (6 hours); Human Rights; Palestinian Constitutional Law (History & Politics); Conflict of Law; Clinical Course (15 hours). The PSL also makes provision for a few students to do non-remunerated "stages" (pupillages) with law offices over the summer period. The following legal systems are drawn upon: Jordan, Egypt, France, England the US (as comparisons), Israeli (both in and outside the Occupied Territories). The PSL staff is composed of 11 teachers: 7 professors (with a PhD); 3 professors with an LLM/MA; and 2 with a BA. 6 more professors are to be recruited from Gaza, the US, France and Jordan. At least one teacher at the PSL also teaches at Bir Zeit University. The lecturers include the Ramallah practising lawyer Alaa al-Bakri, whom we met, who teaches civil law. Dr Khassan himself lectures on human rights for the Palestinian security forces. He had just delivered a lecture to the police in Jericho on the occasion of our visit on 30 July.

This is the first year that the PSL has been in operation. This year, it had 100 students although only 85 completed the year (15 failed to pass the exams - there was a 60% pass mark). The students were chosen on the basis of their final school exams, as well as their ability to pay. The students are all from the West Bank, it being too complicated for Gaza people to travel to the West Bank. If the PSL proves to be a success, a Gaza branch could be opened to enable Gaza students to sit for the BA.

The School is entirely funded through student fees. The fees are calculated on the basis of 30 Jordanian Dinars per credit hour. Other comparable institutions, such as Bir Zeit and al-Najah Universities, which receive funding from outside sources such as the Ramallah Higher Education Council, charge 15-30 JD per hour. The PSL has received approval from the Minister of Education but does not want to receiving funding, in order to maintain its independence.

The PSL is not concentrating on training people to practise, that is, to the professional exams of the Bar Association. Dr Khashan is, however, in regular contact with various people involved in the wider field of professional education. He said that he speaks regularly with

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[100] Meeting with Dr Ali Khashan, Dean of the Palestinian School of Law on 8 August 1994 in East Jerusalem

the Minister of Justice, Freih abu-Medein, and with professors Mansour and Faramond of the Law Centre at Bir Zeit University (see below).

The PSL badly needs books for the library, namely reference books, law books, law text books, statutes, and theses, as well as money to buy computers
degree.

So far as continuing legal education is concerned, Professor Ghassam Faramond[101] of Bir Zeit University, near Ramallah, has now set up a "Law Centre" - it is described as a Law Centre rather than a Department of Law, for particular reasons which will become plain. Bir Zeit already has Faculties of Engineering, Commerce, Arts, and Science. Professor Faramond told us that does not want to compete with the Dr Khassan's *Palestinian School of Law*.

The French Government has supported the secondment to the Centre of Professor Kamil Mansour of the Sorbonne (Université de Paris I), a distinguished specialist who is already well-known in Palestinian circles. He has become its Director. The purpose of the Centre is to ascertain the legal needs of the legal professions in the West Bank and Gaza, and only then, and after due consideration of those needs, to work to establish a Faculty of Law. The main problem is that most lawyers are not well-trained; some have not practised other than in Shari'a courts since 1967. Programmes of training and rehabilitation are essential. The Centre will work through seminars, workshops, and lecturers from abroad. Some courses will be offered to students at Bir Zeit, notably in Human Rights and Construction Law, in addition to the Labour Law and Business Law courses already taught. There is, we were told, a particular need for courses in Landlord and Tenant Law, Investment Law, and Arbitration Law, including International Arbitration.

Within a year or so it is hoped to establish a Masters Programme; a feasibility study is presently being carried out. The course will begin in February 1995, and will offer courses suitable for establishing a nucleus of future teachers of law, as well as training more highly qualified practitioners. For all these projects, an expanded legal library is essential. English language books are required in two areas. First, the Centre wants to assemble a complete collection of British Mandate laws and regulations (these occupy quite a few shelves in the Library of the Hebrew University). Second, the Centre would like to acquire an up-to-date set of English legal text-books. There is also a project to establish a legal data-base; a preliminary study has just been completed.

We are particularly anxious that the British legal professions should explore the means to send suitable books to Bir Zeit; and, perhaps, to establish links with institutions such as the Inns of Court School of Law, and the College of Law, which have considerable experience of professional training using advanced information technology.

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[101] Meeting with Professor Faramond and Professor Mansour on 26 July 1994.

CONCLUSION AND RECOMMENDATIONS

We are well aware of the fact that a visit of only five days is a wholly inadequate basis for an exhaustive or authoritative analysis of the complexities of the current situation in Israel and Palestine. Furthermore, that situation is constantly changing, and there have been a number of developments since our visit. Not only is there evidence that human rights violations by Israeli security forces are continuing in areas still under their control. Even more regrettably, there is evidence that the new Palestinian Authority has itself infringed international human rights standards, whether for reasons of political expediency, or lack of any effective mandate to protect human rights.

Furthermore, opposition from within the Palestinian population necessarily puts the new administration under enormous strain. We share the concern and sorrow expressed by most observers at the bloody events in Gaza City on 18 November 1994, when at least 14 people were killed and 200 injured. There must be grave concern at the tone of the statements made immediately afterwards by both *Hamas* and *Fatah*, each referring to conspiracies. We join *Al-Haq*[102] in calling for the prohibition of lethal and indiscriminate force against civilians.

The continuing serious violations of humanitarian law by the Israeli authorities in the Occupied Territories, referred to above, highlight the inadequacy of the human rights safeguards embodied in the Oslo and Cairo Agreements. We conclude that the failure of these agreements to commit Israel to fulfil its state obligations under international humanitarian or human rights law is a serious shortcoming, whatever may the political merits of the agreements in other respects.

Furthermore, on the Palestinian side, there are serious inadequacies in the extent of the legislative and administrative powers given to the Palestinian authorities. The coincidence of legislative and executive authority in one ruling body is unsatisfactory. There is a lack of clarity as to the applicable law because of the failure up to now to unify the laws and legal structures in Gaza and Jericho. Adequate structures for domestic human rights protection and remedies are also lacking. Nor are the Palestinian authorities empowered to provide protection and redress for its citizens against continuing violations by the Israeli authorities or by Israeli citizens within the autonomous areas.

A recent example of the violation of human rights by the PNA occurred as a result of the introduction on 9 September 1994 by the Director-General of Police in the Gaza Strip of a new requirement that the four main cultural centres in Gaza City must obtain permits before hosting political meetings. This new directive was used on the day it was introduced in order to prevent the Third National Conference of the Democratic Front for the Liberation of Palestine from taking place, despite the fact that the DFLP could have had no knowledge that a permit was required. Al-Haq has pointed out[103] that the directive violates Article 21 and 22 of the *International Covenant on Civil and Political Rights*, and that Article 14 of the Cairo Agreement requires the PNA to exercise its

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[102] *Al-Haq* Press Release No.80, 19 November 1994
[103] *Al-Haq* Communiqué, 29 September 1994

powers and responsibilities "with due regard to internationally-accepted norms and principles of human rights and the rule of law".

In short, throughout the West Bank - including East Jerusalem - and the Gaza Strip, there is no functioning system of domestic legal safeguards and political accountability capable of providing the necessary level of protection for human rights. The over-laps and gaps in the responsibilities of different institutions make it hard to attribute responsibility, and defeat accountability. We heard more than once a highly pertinent question posed by qualified Palestinians: what is the "address" to which Palestinian victims of abuse should now send their complaints?

Furthermore, the changes already made and envisaged in the Oslo and Cairo Agreements fall far short of promising the self-determination which is the clear right of the Palestinian people in international law[104]. We feel bound to acknowledge the force of a comparison drawn by a speaker at the recent CIHRE Conference in Jerusalem by a speaker from the Palestinian "Land and Water Institute for Studies and Legal Services" between the Palestinian autonomous areas and the so-called "Bantustans" which disfigured the South African Constitution under the former apartheid regime. The parallels identified by the speaker include the following:

(1) As in the autonomous areas, authority in the Bantustans was given to local citizens.

(2) In the Bantustans, as in the autonomous areas, elections were held not for a constitutive legislative assembly, but for a parliament and government with limited authority.

(3) Such limited authority excluded, in the Bantustans, security, external areas, natural resources, and curricula in educational institutions. The same is true for the autonomous areas. Jurisdiction over these excluded matters was retained by the South African government, just as it is now retained by the government of Israel.

(4) Finally, the black citizens of the Bantustans were denied the right to enter the remainder of South Africa. Similarly, citizens of the autonomous areas, and indeed of the rest of the West Bank, are denied the right to enter Israel, including Jerusalem.

The role of third parties, including supra-national and international organisations, states, and non-governmental organisations, has already been of enormous significance both to Palestinians and Israelis. It will become more important still with the deployment, in accordance with the Cairo Agreement, of the *Temporary International Presence* in the Gaza Strip and Jericho when elections are held. The Agreement does not specify the

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[104] The threadbare nature of the Agreements as a whole was highlighted by Edward Said in his article *Who is worse?* (London Review of Books, 20 October 1994, p.19). Reflecting on "a humiliating year", he said "What sort of leaders describe their failures as a triumph of politics and diplomacy even as they and their people are forced to endure continued enslavement and humiliation? Who is worse, the bloody-minded Israeli 'peacemaker' or the complicit Palestinian?". He quoted General Danny Rothschild as recently telling reporters: "We have retained power in the Occupied Territories, despite the transfer of authority..."

tasks or operational mandate of the international presence, which press reports have stated will be agreed between the Palestinians and the Israelis. EU members states including Britain have indicated their willingness to give assistance. However, the experience of deployment of the *Temporary International Presence in Hebron (TIPH)* after the massacre there has demonstrated that without an effective operational mandate, including the right and duty to challenge human rights and humanitarian law violations by Israeli forces, such a mission can be rendered futile[105]. Britain should seek to ensure that an effective mandate is negotiated.

As parties to international humanitarian and human rights treaties, and as donor countries involved in the process of reconstruction and development, all third parties, particularly states like Britain, have duties as well as opportunities to promote respect for human rights throughout the Occupied Territories during the transitional period. It is particularly important that concerned citizens should maintain pressure on their governments to carry out their responsibilities with the utmost diligence and resources.

Recommendations

Accordingly, we recommend the following:

1. That the Law Society and the Bar Council inform the relevant United Kingdom authorities of the conclusions of this Report, inviting them to make known what steps they are presently taking to promote human rights observance in the Occupied Territories and autonomous areas.

2. That formal and informal links should be established between the Law Society and the Bar Council and the legal profession in the West Bank, Jericho and the Gaza Strip with a view to assisting its future development, and promoting its vital role in promoting the rule of law and the enforcement of human rights.

3. That financial and technical assistance should be offered to the Palestinian legal profession including donating up-to-date legal textbooks and providing training.

4. That steps should be taken through the legal press to keep the legal professions in the United Kingdom fully informed of developments in the legal system in Palestine.

November 1994

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[105] See Dr Lynn Welchman *Consensual Intervention: A Case Study on the TIPH*, discussion paper presented to the Pax Christi International Conference, Jerusalem (CIHRE, Ramallah, September 1994)