

TAXATION

IN THE OCCUPIED WEST BANK

1967-1989

by
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ERRATA

Page 70: Line 23 should read: in 1988 [3]; (the

Page 71: Line 16 should read: 3000 45 6660 (JD 2220) 49.5

Line 27 should read: The above table illustrates the 1967 and 1988 levels of

Line 31 should read: his income topped JD 9000 per year. In 1988, as a result of

Page 72: Line 15 should read: cant - so long as it is the same for both 1967 and 1988 -

Page 81: Lines 16-20 should read: 1967. This is due to a ten percent increase in tax rates, compounded by a failure to make sufficient allowances for the effects of inflation.

Line 23 should read: prices, to JD 1.5. In 1967, this sum was JD 9000. Adjustment

Page 86: Lines 24-26 should read: No. 25, 1964, Article 24; the tax rates used here are annual rates prepared by the Civil Administration at the end of 1988. These rates cannot be converted to monthly rates (for example to assess income tax paid by the employed) arithmetically. Exchange rates

Page 87: Line 27 should read: [12]. Todaro, op. cit., p. 510. Agricultural workers are exempt from income tax.

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INTRODUCTION

The question of taxation in the the Israeli-occupied West Bank and Gaza Strip, always the subject of intense debate in the past, has assumed a greatly magnified importance during the current uprising. Since shortly after the uprising began in December 1987, the residents of the Occupied Territories have engaged in a boycott of taxes. Fundamental questions have been raised concerning the legality of tax collection under an occupation, the ultimate destination of tax revenues as well as the legitimacy of the tax boycott itself.

Two matters in particular are addressed in this report. The first is the legality, under international law, of the Israeli military government's fiscal policies. The Israeli authorities have consistently maintained that procedures employed to raise revenue are strictly legal. Thus, in response to an intervention by Al-Haq concerning tax raids in Beit Sahour in 1988, the Legal Advisor replied, "Only legitimate measures [of collection] have been adopted against ... taxpayers." Again, the Income Tax Commissioner of Israel was reported in the Jerusalem Post (15 September 1989) as saying, "Tax collection in the territories conforms to international treaties and the tax laws in force in Jordan and Egypt in 1967, and all monies raised there are used to finance the activities of the Civil Administration, to support schools, hospitals, and municipal services." These claims are here taken seriously and examined in the light of fact.

The second issue which this report attempts to tackle concerns the fundamental rights and duties of local inhabitants of the West Bank, in matters of taxation, vis-a-vis the military government. [1]. The latter includes the question of whether or not the current tax boycott is legal under international law. This last question cannot, however, be answered before official claims that the authorities are acting in

accordance with the law have been fully dealt with. Accordingly, having set out the international legal framework, the report discusses the creation of new taxes (such as value-added tax) by the Israeli authorities, changes in the methods of assessing taxes, rates of tax, enforcement mechanisms and penalties, and the extent to which tax revenues are accounted for by the authorities.

Certain technical difficulties arise in discussing the issue of taxation. These relate both to the nature of the legal and economic aspects of the matter, as well as the availability of evidence. The principal applicable international law is the humanitarian law codified in the Regulations annexed to the Hague Convention of 1907. This law was drafted at a time when basic concepts of macroeconomics were still largely unknown. Certainly the economic effects of a prolonged occupation, such as exists in the West Bank and Gaza Strip, were not explicitly contemplated. Analysis of the legality of aspects of taxation under occupation must therefore rely to a substantial extent on simple common sense: there is simply no room for overly technical, textual interpretations of the law.

In contrast to the relatively simple terms of humanitarian law, as it relates to taxation, is the often complex nature of the economic evidence. Calculation of tax burdens over time, and assessment of the effect of taxes on businesses and trade require sophisticated economic techniques. Such operations are largely beyond the scope of this report.

So far as military legislation is concerned the problems encountered are more basic. Military orders amending the local, Jordanian law of taxation are numerous, constituting a large proportion of all military legislation issued since 1967. Some military orders are not published. Most are issued in Hebrew and then translated into often extremely poor Arabic. Most problematic of all, the military government does not issue complete, amended versions of the various tax laws. Rather, the lawyer, accountant or researcher is obliged to piece together the law by examining dozens of military orders, written in broken Arabic and fitting them into the local Jordanian law.

Perhaps most significant, there is the problem of the lack of official records. In particular, there is no published budget for the Occupied Territories showing a detailed breakdown of revenue and expenditure. This renders full consideration of official positions concerning budget surpluses and deficits, level of services and separate accounting for Israeli settlers and the Palestinian inhabitants of the Occupied Territories, difficult. In addition, there is a dearth of evidence regarding the existence of official economic plans for the Territories, fiscal policy, development prospects and so on.

Finally, although many of the principles discussed apply in both the West Bank and the Gaza Strip, the focus of this report is on the system of taxation in the West Bank: the report does not attempt to discuss the question of taxation in the Gaza Strip. Nor does it attempt to be comprehensive even as far as the West Bank is concerned: the report does not deal with annexed East Jerusalem, and several areas, such as the taxation of companies and the economic consequences of this, are only cursorily treated. Having said this, it is hoped that the report will play a significant role in clarifying the legal issues relating to taxation in the West Bank, particularly in the context of the current uprising.

Appended to the report are outlines of the law of assessment and collection of income tax and value-added tax. The scope of the law presented in the appendices has proved sufficient to cover most cases with which Al-Haq has had to deal in its legal aid program. The object of the appendices does not, therefore, extend beyond providing an introduction for the non-specialist working in local legal aid programs as well as others without specialist knowledge of taxation.

NOTES TO INTRODUCTION

[1]. In a report published by the United Nations General Assembly in 1985, following a seminar on living conditions in the Israeli-occupied territories, the working group concerned with taxation proposed the following as part of an effort to confront the issues they had discussed:

(a) Changes in the tax structure and in the rates imposed after the occupation should be examined to determine whether they were in conformity with the provisions of international law as they are applied to the occupied Palestinian territories ...

(b) Under the cardinal principle of "no taxation without representation," a system should be established to ensure that the proceeds of the taxes imposed on the Palestinians would be used solely for the benefit of the people in the occupied Palestinian territories and disbursed, as far as possible, through their own representative bodies. (Report on the Seminar held at Vienna from 25 to 29 March 1985 in Pursuance of General Assembly Resolution 39/169 (United Nations, Reference Number A/40/373, 14 June 1985), pp. 18-19.)

CHAPTER ONE
INTERNATIONAL LAW APPLICABLE IN A
BELLIGERENT OCCUPATION

**A. INTRODUCTION: GENERAL LEGISLATIVE POWERS
OF AN OCCUPANT**

The law of belligerent occupation concerning taxation is contained in the Regulations annexed to the Hague Convention IV of 1907 (hereafter the 'Hague Regulations'). [1]. The other main instrument of the laws of war governing occupied territories, namely the IV Geneva Convention Relative to the Protection of Civilians in Time of War of 1949, has virtually nothing to say on taxation. International human rights law (which applies in situations of peace and arguably of war) is silent on the subject of taxation as such; however, certain human rights such as the rights to education and health, can provide useful yardsticks for assessing the adequacy of investment in certain areas of government responsibility. [2].

The legislative power of the occupant is regulated by Article 43 of the Hague Regulations:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

There are three elements to Article 43. Firstly, the

occupant is under a positive duty to take measures to restore and ensure public order and safety. [3]. This obligation is absolute. Secondly, the occupant must respect the laws in force in the country, i.e., those in force on the eve of the occupation. Thirdly, the occupant has the right not "to respect the laws in force" (i.e., to amend, ignore, replace or add to them) where "absolutely prevented" from doing so by reasons of "l'ordre et la vie publics."

In the case of Abu Ita et al. v Military Government of Judea and Samaria et al.; Kandil et al. v Customs Commissioner, Gaza Strip Command et al. (1983) 37 P.D. 197, Meir Shamgar, the President of the Israeli Supreme Court, stated:

Within the framework of municipal law, the rules of customary international law are regarded as incorporated therein but only insofar as they are not inconsistent with rules enacted by statute or finally declared by national courts or tribunals. In cases of conflict of law in military government areas, the order of preference is different: such regions are governed according to the norms of international law which provide inter alia that the local law there in force continues as a rule to be valid; alterations of the existing law, its suspension or repeal or the promulgation of new laws are examined according to the restrictions prescribed in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention and are permitted when the exigencies of war, the maintenance of public order and the safety or the welfare of the population so require. Legislative changes have been examined by the Israeli courts according to these criteria. [4].

B. APPLICABLE LAW OF TAXATION: LIMITATIONS ON THE RIGHT TO COLLECT TAXES [5]

As regards taxation in particular, the three elements in Article 43 discussed above, together with Article 48, define the limits of an occupant's licence to collect taxes. Article 48 states as follows:

If in the territory occupied, the occupant collects taxes, dues and tolls imposed for the benefit of the state, he shall do so, as far as possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate government was so bound.

An occupant is thus entitled to collect taxes from the inhabitants of an occupied territory by virtue of the duty to take measures to restore and ensure public order and safety as specified in Article 43 of the Hague Regulations. [6]. This licence is subject to two stringent conditions, however: firstly, taxes should be assessed, collected and created in accordance with the terms of the Hague Regulations; secondly, revenue collected should be returned to the occupied territory to "defray the costs of the administration" of that territory.

1. Respecting the Laws in Force

The Hague Regulations specify the manner in which taxes are to be assessed, collected and, if required, created. The licence to raise revenue is a licence only in so far as these specifications are observed. The basic rule is that expressed in the second element of Article 43 discussed above, namely, that revenue should be raised "in accordance with the laws in force in the country." Only in exceptional circumstances can the occupant deviate from this manner of raising revenue and actually change the tax system as it existed when the occupation began.

(a) Changes in the Law of Taxation Excluding Assessment and Incidence

Most jurists have approached the problem of changing the local law of taxation by examining only whether new taxes may be introduced by an occupant. However, there does not appear to be any reason why alterations regarding

collection procedures, enforcement mechanisms and so on should be excluded from the discussion. [7]. The international legal consensus was broadly reflected in the judgement of the Israeli High Court in the case of Abu Ita et al. [8]. The case concerned the issue of the legality (or otherwise) of new taxes and included a wide-ranging survey of the pertinent legal literature and state practice. In the view of the Court, new taxes could be enacted where required by considerations of "public order and safety." The Court developed its argument as follows:

(1) article 48 of the Hague Regulations is phrased in conditional terms, namely "if" the occupant chooses to levy the taxes that were formerly collected by the ousted State for its own benefit, then the occupant should follow certain rules, i.e., a) follow the pre-existing rules of incidence and assessment so far as is possible and b) defray the expenses of the Administration.

(2) the conditional clause at the start of Article 48 (the "if") presumes circumstances in which the Occupant does not levy the taxes that were formerly levied by the ousted state. This presumption anticipates situations where either no taxes are collected at all, or other, new taxes are levied. [9].

(3) the occupant therefore has the right to levy new taxes subject of course to any other relevant provisions in the Regulations.

(4) the relevant provisions are to be found in Article 43 of the Regulations. This article places a positive duty to take measures to restore and ensure public order and safety in so far as is possible. In doing so the occupant is to respect, unless absolutely prevented, the laws in force in the country.

(5) where the occupant is absolutely prevented from fulfilling his duty without adjusting the laws in force in the country new laws may be enacted.

In stark contrast to the international legal consensus, the Court went on to interpret the phrase "absolutely prevented" as meaning "need" where "need" refers to both that

of the local inhabitants and the military forces. [10].

Even if it is the case that "absolutely prevented" should be interpreted as "need," two important qualifications should be made. Firstly, it seems common sense that before a situation of "need," in the sense of a lack of revenue, can be said to have arisen, the alternative sources of revenue should first have been exhausted. If this were not the case the phrase "unless absolutely prevented" (even if interpreted as "need") would be deprived of any meaning at all. Potential, alternative sources of revenue comprise:

- (1) excess revenue from existing taxes (where a surplus of revenue exists there is clearly no need for new, revenue-raising taxes);
- (2) raising rates of existing taxes (the prohibition on raising rates of taxes is not as strict as that concerning other changes: see discussion below of Article 48);
- (3) collecting "money contributions" (see discussion of Article 49 below).

Secondly, the use to which revenues are put cannot include funding the military forces of the occupant, as the High Court concluded in Abu Ita et al. [11]. The purposes for which taxes may be collected are clear from the provision in Article 48 that as a result of collecting taxes, the occupant "shall in consequence be bound to defray the expenses of the administration of the occupied territory ..." By contrast, Article 49 - which concerns the separate issue of money contributions - speaks of "the needs of the army or of the administration of the territory in question." It would be most inconsistent if in Article 48 "administration" were to include the army while in Article 49 a careful distinction is drawn between the two. It follows, therefore, that any changes as are made in the rules of taxation should be necessitated by the administrative requirements of the occupied territory. These may themselves arise out of the interests of the local inhabitants or the security needs of the occupant, but under no circumstances would the financial needs of the army alone justify changes in the law of taxation.

(b) Rules Concerning the Incidence and Assessment of Tax

Concerning adjustments in the rules of assessment and incidence, Article 48 does not impose the same restrictions as Article 43. Rather, it states that the occupant should "as far as possible" collect taxes in accordance with the rules of incidence and assessment in existence.

A consensus exists among international lawyers that a plain reading of Article 48 allows the occupant to adapt to the economic environment so far as assessment and incidence of tax is concerned. In the words of Feilchenfeld, Article 48

would not seem to exclude ... taxation increases, particularly such changes as have been made desirable through war conditions or, in the case of an extended occupation, general changes in economic conditions. [12].

So far as the incidence of tax is concerned, the focus of international lawyers on economic conditions as one of two main circumstances justifying tax rate adjustments is clearly sensible. It would seem harmonious with this approach to include the effects of inflation. Indeed in Abu Ita et al. the President of the Court, Chief Justice Meir Shamgar, referring to the question of changing the rules of incidence, said:

such is the law, for example, concerning great changes in the level of average incomes, in the exchange rates of currency or in its buying power, and in factors which are derived from them. [13].

Thus it is necessary to include in the meaning of Article 48 omission to alter nominal tax rates ("nominal" because the effects of inflation on the value of money have not been taken into account) as well as unwarranted hikes in the real rate of tax. This is so because even if a government does nothing to change the rates of taxation, the effects of inflation can lead to an increase in the tax burden by whittling away the value of money taxed at old rates. [14].

(c) Rules Concerning Municipal Taxes

The law on the collection of municipal taxes (i.e., those taxes collected locally prior to occupation) is relatively clear. It is to be derived from the wording of Article 48 and the broad consensus of academic opinion which exists on the topic. Only such 'local' taxes as were collected for the benefit of the ousted state - as opposed to the local governmental bodies - may be collected by the occupant. This is the case even

if 'local' authorities in an occupied territory had sent tax revenues collected by them to the ousted government before the onset of the occupation with a view toward eventual redistribution at the regional, district or community levels. Such revenues cannot be regarded as "national taxes" by the belligerent occupant. In addition the occupant may, and has done so in virtually all instances known to this writer, supervise such "local" expenditures and may forbid any that are deemed hostile to the forces or interests of the occupant. [15].

Most importantly, given the firm principle that local taxes cannot be collected by an occupying power, it seems logical that the collection of local taxes by local bodies appointed by the occupant is equally illegal since bodies that are appointed by a central government rather than elected locally are more accurately described as branches of central government rather than municipal entities. [16].

2. Revenue Collected Must Be Returned to the Occupied Territory

The second condition governing an occupant's right to collect taxes is that the revenue collected must be returned to the occupied territory for the purpose of administering it, i.e., providing services for the benefit of the local population.

1. The Licence to Tax

International law grants an occupant a licence to raise revenue provided two conditions are met:

(a) First Condition

Taxes should be assessed, collected and created in accordance with the terms of the Hague Regulations; i.e., taxes should be collected in accordance with the laws in force with a view to ensuring public order and safety.

The laws in force may only be changed in certain circumstances:

(1) As regards changes other than in the incidence and assessment of tax, e.g., changes in the procedure of collecting taxes and/or introducing new taxes, the occupant should respect the laws in force "unless absolutely prevented from doing so" by the duty to restore and ensure public order and safety. Even if this is interpreted, as the Israeli High Court has done, as meaning "need" (caused by security or the interests of the local inhabitants), where the cause of changing the local law is prompted by a fall-off in revenue, the occupant should first use alternative sources of revenue, i.e.:

- * excess revenue from existing taxes
- * raising rates of existing taxes
- * collecting money contributions

(2) As regards the assessment and incidence of tax an occupant is bound to carry on "as far as possible" in accordance with the rules in force (i.e., local law prior to occupation). Any changes should be in the interests of the security of the occupant or in the interests of the local inhabitants.

(3) As regards municipal taxes the occupant may not collect these unless they were formerly collected by the ousted power for the benefit of the state rather than for redistribution at a local level. Where 'local bodies' under occupation

are in fact appointed by the occupant, they effectively cease to be local anymore and relinquish the right to levy municipal taxes.

(b) Second Condition

Revenue collected should be returned to the occupied territory to "defray the costs of the administration" of those territories.

Although some commentators argue that an occupant is entitled to keep excess revenue, this seems implausible. However, even if such a right exists, it is subject to the condition that administration of the occupied territory should first adequately be provided for.

2. Ultra Vires

Failure to comply with the two conditions above may render the imposition of some or all taxes by an occupant ultra vires. This, in turn, may mean that such fiscal measures are without effect, i.e., null and void.

NOTES TO CHAPTER 1

[1]. United Kingdom Treaty Series 9 (1910), Cd. 5030; reprinted in Adam Roberts and Richard Guelff (eds.), Documents on the Laws of War (Oxford: Clarendon Press, 1982), pp. 44-57. Israel has not contested the applicability of the Hague Regulations to the Occupied Territories. Article 42 of the Hague Regulations states that:

Territory is considered occupied when it is actually placed under the authority of the hostile army ...

No mention is made here of the sovereign status of the previous occupant of the territory: the definition of occupation in the Hague Regulations refers only to a de facto state of occupation. Consequently the Israeli High Court has found no difficulty in accepting its applicability to the area.

In addition, the Hague Regulations are recognised by Israel and the international community as a whole as declaratory of customary law, i.e., they are binding on areas under occupation whether or not the occupying power is a signatory to, and has ratified, the Hague Convention. This view was stated by the Israeli High Court as early as 1948 in Attorney-General of Israel v. Sylvester, 15 Annual Digest (1948), 573. See discussion in Esther R. Cohen, Human Rights in the Israeli-occupied territories 1967-1982 (Manchester: Manchester University Press, 1985), pp. 43 et seq.). Thus even though Israel has not acceded to the Regulations, it considers itself bound by them. In HC 302/72 Sheikh Suleiman Abu Hilu et al. v State of Israel et al., Justice Landau said, with reference to the Occupied Territories, that the High Court

will examine the propriety of an administrative act in the areas of Military Government in the light of customary law when there is no written Israeli law which applies and, in any case, a clash between the law of nations and the internal law of Israel is not possible ... (27:2 P.D. 177. English summary at 5 Israel Yearbook on Human Rights (1975), pp. 384-8).

[2]. See basic texts on human rights law, e.g. Ian Brownlie (ed.), Basic Documents on Human Rights (Oxford: Clarendon Press, 2nd ed., reprinted in 1981). However, in a set of proposals prepared by the economist Jose Figueras and adopted by the UN as an official paper at the 1968 International Conference on Human Rights held in Tehran, the taxation system of developing countries was identified as one of the internal obstacles to development via its effect on savings and availability of capital: ibid, p. 472.

[3]. The phrase "public order and safety" is the English translation of the authoritative French version "l'ordre et la vie publics", meaning law and order on the one hand, and civil life on the other. Most commentators agree that a degree of balance must be maintained between the interests of the occupant and those of the local inhabitants although opinion differs as to whether the balance should favour one side or the other.

[4]. See Meir Shamgar, "Legal Concepts and Problems of the Israeli Military Government," Military Government in the Territories Administered by Israel 1967-1980 (Jerusalem: Hebrew University, 1982), pp. 47-48.

Article 64 of the Fourth Geneva Convention states:

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the

present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of justice of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

[5]. See several publications by Gerhard von Glahn: The Occupation of Enemy Territory (Minneapolis: University of Minnesota Press, 1957), pp. 150-160; Law Among Nations (New York: MacMillan Publishing Co., Inc., 1981), pp. 685-6; "Taxation Under Belligerent Occupation" (a paper originally presented at a conference in Jerusalem, organized by Al-Haq, on the "Administration of Occupied Territory" in January 1988), in Emma Playfair (ed.), International Law and the Administration of Occupied Territory: the West Bank and Gaza, 1967-1987 (forthcoming); see also Ernst H. Feilchenfeld, The International Economic Law of Belligerent Occupation (Washington: Johnson Reprint Corporation, 1971), pp. 48-50.

[6]. See Abu Ita et al., English translation, p. 118. The humanitarian law of taxation includes customs duties.

[7]. Matters relating to "incidence" and "assessment" of taxes would not be included in this category as they are dealt with under Article 48 of the Hague Regulations. The "incidence" of a tax is the burden of tax after allowing for the effects of inflation and including all direct and indirect effects. See David Begg, Stanley Fischer and Rudiger Dornbusch, Economics (London: McGraw Hill, 1987),

p. 346. The "assessment" of tax concerns all those procedures required for calculating how much tax is owed by a tax payer, including appeal procedures.

[8]. See Abu Ita et al., English translation, p. 118 for a summary of other views.

In the past, Professor von Glahn, an expert in international law, has argued that Article 48 (being a specific article dealing with taxation) takes precedence over Article 43. Thus, although changes in the rules of incidence and assessment are permitted - where it is not possible to do otherwise - other changes in the local laws of taxation are not allowed. Had they been permitted under the law, then this would surely have been mentioned in Article 48. This argument was used by Professor von Glahn to defend the view that new taxes are always, and in all circumstances illegal. (See, for example, Gerhard von Glahn, The Occupation of Enemy Territory, p. 150. See also his opinion in Abu Ita et al.) Professor Von Glahn has since changed his views as regards new taxes and now believes that new taxes may be introduced provided that they are in the interests of the occupying army or of the civil life of the population. (See Gerhard von Glahn, "Obiter Dictum, An Unofficial Expression of Opinion on the VAT Case Judgement" in The Palestine Yearbook of International Law, Volume IV, 1987/88 (Cyprus: Al-Shaybani Society of International Law Ltd., 1988), pp. 210-221.)

[9]. See Abu Ita et al., English translation, pp. 62 and 118.

[10]. Ibid, p. 120. A further argument derived from Article 49 of the Regulations (which permits the levying of money contributions) that was discussed by the court in Abu Ita et al. was that since the relatively harsh measure of imposing military contributions was permitted by the Regulations, surely the less harsh measure of introducing new taxes must equally be encompassed within them. However, in response to this one might query the thesis that a new tax is any less harsh than a military

contribution since the levying of contributions is hedged about by the restrictions contained in Article 51. (See below.)

[11]. See Abu Ita et al., English translation, p. 72, where in discussing Article 49 of the Hague Regulations the "needs of the army" are described as "participation in the war effort or the administrative needs of the territory and no more."

[12]. Feilchenfeld, op. cit., p. 49.

[13]. Abu Ita et al., English translation, p. 69.

[14]. While legal commentary seems relatively clear that the rates of tax may be altered, state practice offers very little guidance. In Taxation Under Belligerent Occupation, (unpublished version), Von Glahn reviews a number of previous occupations during the First and Second World Wars. While some (for example, Germany in Belgium in the First World War and Japan in Indonesia during the Second World War) resulted in adjustments to existing taxes, others did not.

The British Manual of Military Law adds little to the wording of Article 48 in this respect.

As regards academic commentators on taxation under occupation, Von Glahn has stated his opinion several times with respect to changes in the rates of tax. In his work The Occupation of Enemy Territory: Commentary on the Law and Practice of Belligerent Occupation (1957), p. 151, Von Glahn stated that such adjustments might be made "in the interests of public order and safety." Again, in Taxation under Belligerent Occupation, (unpublished version), p. 18, Von Glahn takes the view that if revenue is insufficient, an occupant may raise tax rates. In his expert opinion on behalf of the appellants in Abu Ita et al., p. 107, Von Glahn stated:

if unstable conditions in the occupied area required expenditure for order and safety above

revenues received from existing taxation, such funds could be raised either by increasing tax rates or by levying money contributions ...

[15]. Von Glahn, Taxation Under Belligerent Occupation, (unpublished version), pp. 19-20.

[16]. The distinguishing characteristics of a local body as opposed to a branch of central government are not necessarily clear-cut. Other factors such as services provided, accountability and control of the budget may all affect the picture. See further in Chapter 3 below.

[17]. Von Glahn, Taxation Under Belligerent Occupation, (unpublished version), p. 21.

[18]. British Manual of Military Law, (1958), Para. 527.

[19]. Abu Ita et al., English translation, p. 83.

[20]. Ibid, p. 82.

[21]. See, for example, Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988 (Ramallah: Al-Haq, 1988), chapters 2 and 8.

[22]. Von Glahn, Law Among Nations, p. 673.

[23]. Ian Brownlie, Principles of Public International Law (Oxford: Clarendon Press, 3rd ed., reprinted in 1982), p. 179.

[24]. Stanley de Smith, Constitutional and Administrative Law (Middlesex: Penguin Books, Fifth Edition, (eds.) Harry Street and Rodney Brazier), 1985, p. 16. The use of principles of law more commonly encountered in national systems of law is justified by Article 38.1 of the Statute of the International Court of Justice which states that in assessing international law, the court shall apply a) international conventions, b) international custom, c) the general principles of law recognised by

civilised nations (including both municipal - (i.e., national) - law and international law), and d) judicial decisions and the teachings of highly qualified publicists. See Ian Brownlie, op. cit., p. 3.

[25]. De Smith, op. cit., p. 575.

[26]. For example, when Germany invaded Belgium in 1914 the German administration amended the local law to allow special German tribunals to assess damages against Belgian nationals who had participated in anti-German riots; a Mixed Tribunal declared the awards null and void. See discussion in Georg Schwartzenger, International Law as Applied by International Courts and Tribunals (London: Stevens and Sons Limited, 1968), Volume II ("The Law of Armed Conflict"), pp. 192-3.

Again, in 1920, a court of appeal in Brussels refused to uphold an order issued by the German administration because it had been issued with the purpose of starving the population, had gone beyond the powers of Article 43 and had never therefore had the force of law. See D. Graber, The Development of the Law of Belligerent Occupation 1863-1914 (New York: AMS Press, 1968), p. 148.

In the Bluntschli Code of 1866, prepared for the use of the German army, it was stated that

if the occupant wants to pass general laws and to exercise the police and taxation powers his actions are valid only if they are in accord with the needs of the war and the needs of the occupied region and its people. (D. Graber, op. cit., p. 115. See K. Bluntschli, Das Moderne Kriegerrecht der Civilisierten Staaten (1866), p. 8.)

CHAPTER TWO

CHANGES IN THE LOCAL LAW OF TAXATION: NEW TAXES, ENFORCEMENT PROCEDURES AND PENALTIES

A. INTRODUCTION

The object of this chapter is to pinpoint the key ways in which the laws of taxation in the West Bank have been changed by Israeli military legislation in so far as they relate to new taxes, enforcement procedures and penalties. [1].

Local law in the West Bank consists of Jordanian law as it existed in 1967. [2]. Israeli military legislation consists of a series of military orders, regulations and announcements amending, adding to, abolishing and replacing these Jordanian laws. [3]. As we have seen, the Israeli High Court takes the view that the validity of this military legislation depends on its conformity with international law [4]; in so far as they meet international standards, Israeli military orders take precedence over the Jordanian law which they amend. Decisions of the military Objections Committee relating to taxation do not create law in the form of precedents since they are merely recommendations to the Military Commander. (See Appendix V.) Decisions of the Israeli High Court do not affect the substantive law of taxation as the High Court's powers vis-a-vis military legislation consist exclusively of judicial review.

New taxes introduced into the West Bank by the Israeli military government include value-added tax (VAT) (1976), new customs duties, the Special Payment on Vehicles (1988), and other fees. Enforcement procedures affected by military legislation include changes in the main Jordanian law concern-

ing collection of debts as well as a series of measures bypassing the law altogether; new penalties include higher fines and the introduction of administrative fines.

The legal analysis applicable to these measures differs according to the pretext on which they were introduced. In the case of VAT the stated intent of the authorities was to fiscally manipulate the economy in such a way as would benefit the inhabitants of the Occupied Territories. In order to assess the legality of VAT, therefore, it is necessary to examine the extent to which the tax was in fact beneficial in the light of the available economic evidence.

Other measures, such as the Special Payment on Vehicles, tighter enforcement rules, increased penalties and so on, were introduced expressly or implicitly for the purpose of raising more revenue. Consequently, the legality of these measures is assessed in the light of whether alternative sources of revenue have been used or not.

B. MEASURES INTRODUCED 'FOR THE BENEFIT OF THE LOCAL ECONOMY'

1. Value-Added Tax

VAT was introduced in the Occupied Territories by Military Order (M.O.) No. 658 Concerning the Law of Excise on Local Products Law on 1 July 1976. [5]. The tax was to be imposed on the following:

- * sale of all goods (except fresh fruit and vegetables)
- * the rendering of services
- * imported goods [6]

The tax was introduced through an amendment to the Jordanian Law of Excise on Local Products, 1963, No. 16. However, according to the appellants (West Bank merchants) in Abu Ita et al., in which the issue of VAT in the Occupied Territories was litigated in the Israeli High Court, the tax

represented a new fiscal measure: under the original Law of Excise on Local Products, the excise duty on a product was calculated as a percentage of the wholesale price or of a fixed sum or both. [7]. Payment of the duty was to be made by the producer and would be paid when the product left the site at which it was manufactured. Under the law as amended by M.O. 658, excise tax on businesses is to be enforced. [8]. The person liable to pay the tax is, in the case of a sale, the salesperson, and, in the case of a service, the provider of the service.

Thus, whereas prior to 1976 excise tax was a tax on the wholesale value of a product, paid once at the stage of production, in 1976 tax became payable on value added at every stage of a product's life in which "value" was added. Consequently the difference in value between the wholesale and retail prices of a good (whether for the first, second, third, or nth time) became taxable. In addition, the imposition of tax on the value of services provided was entirely new.

In order to facilitate and enforce these fiscal innovations new accounting and book keeping rules were introduced. These also formed part of the appellants' claim in Abu Ita et al.

(a) Abu Ita et al.

Given that VAT was introduced as a new addition to the previous corpus of Jordanian law, it is neither useful nor indeed possible to make further comparisons between the original law and the amended version. The following discussion, therefore, centres on the extent to which the introduction of VAT as a new tax complies with international law as regards changing the local law of taxation.

The legal justification for new taxes given by the High Court in Abu Ita et al. have already been discussed in Chapter 1. With respect to VAT in particular the court held the following:

- (1) that VAT was required for the economic good of the

Occupied Territories;

(2) that failure to impose VAT would create a security threat through the degeneration of standards of living. [9].

It is beyond the scope of this report to analyse in any depth the economic evidence presented by both sides in the case. However, it is possible to outline the economic principles involved and to assess these in light of international law.

The appellants in the case argued that:

- (1) the new tax was not for the benefit of the local population but rather designed to enhance the economy of Israel.
- (2) the local population was incapable of fulfilling the new accounting requirements of the law.
- (3) the respondents were not acting in good faith; rather, the motivation for the new tax stemmed from a desire to further integrate the economies of Israel and the Occupied Territories for political reasons. [10].

The respondents (the Civil Administration) argued that if VAT was not imposed in the Occupied Territories, there would be negative repercussions for the latter's economy:

- (1) The imposition of VAT in Israel led to a reduction in duties of other sorts levied on goods produced in Israel. This meant that if similar reductions were not made in the Occupied Territories, goods produced in the latter would be more expensive than those produced in Israel. To prevent the inevitable flooding of the market in the Occupied Territories with cheaper Israeli goods, free flow of the latter to the Territories would have to be restricted using price or quantity mechanisms, thus damaging trade.
- (2) Exporters from the Territories to Israel would not benefit from a tax return on goods purchased in Israel which is granted to Israeli exporters.

(3) Merchants and producers in the Territories who bought goods and services from Israel would pay Israeli VAT but would not be able to deduct this sum when they resold their goods in the Occupied Territories.

(4) The introduction of VAT in Israel was designed to be part of a wider reform of the taxation system particularly allowing for the recouping of part of VAT as an "input tax." Failure to impose VAT in the Territories would mean that a purchase tax would have to be paid by producers on goods bought for the purpose of manufacture which could not be returned as an "input tax" since the latter type of tax did not fall within the new taxation scheme devised for Israel itself. Consequently, Israeli businesses would be discouraged from buying their inputs from the Territories. [11].

The respondents' claims were based on the fundamental premise that the continuation of the economic relationship that existed between the Occupied Territories and Israel was in the former's interest. Any limitation on the movement of goods between the two markets:

is an impediment to the mainstream economics of the areas which are dependent, to a great extent, on the Israeli economy. In this matter one must take into consideration that a substantial part of the produce of the area is distributed in Israel, [and] that Israel is the main market for surplus produce manufactured or sold in the area which are not needed by the residents and are not distributed [across] the bridges over the Jordan (river). [12].

According to the High Court itself:

... Order no. 658 ... follows a definite pattern of security legislation established in 1967 whose basis was the abolition of obstacles and the establishment of a free-flowing economic relationship in both [emphasis in original] directions: all of these were meant to improve the economics of the area and to wipe out, among other things, the lack of work which existed in the areas prior to the entry of the IDF

and which existed in the initial period of IDF rule and to ensure [the] income and well-being of the population. [13].

(b) Comment

The claims of the Respondents appear flawed in the following ways:

(i) The External Economy

While in strict trade theory it is generally possible for two economic entities to engage in trade to the mutual advantage of each, based on specialization by each in the production of goods and services in which each enjoys a comparative advantage, it is well known that through manipulation of the terms of trade, for example through unfair tariff barriers and quotas, it is possible for a relatively stronger economic power to exploit the trading relationship to the relative and, sometimes, absolute disadvantage of the weaker economic power. [14].

Israel's forcible imposition of restrictive trade relationships on the West Bank and Gaza Strip, whose value to the latter is less than the best alternative trading options (the 'opportunity cost'), is clearly not in the Territories' interests.

While the sovereign right of the Israeli government to impose whatever taxes it likes within its own borders is clearly beyond dispute, it was illogical to argue that the imposition of VAT in Israel necessitated the same in the West Bank and Gaza Strip. Having introduced VAT in Israel and then raised trade barriers, the logical corollary would have been the abolition of restrictions on trade between the Occupied Territories and the rest of the world, not the introduction of VAT. This is particularly the case given that the existing trading relationship between Israel and the Territories is based on what is almost certainly an illegal customs net thrown around both Israel and the Territories. On the basis of

the principle ex iniuria non oritur ius ("right cannot emerge from the commission of a wrong") such an illegal state of affairs should never have been permitted to become the justification for taking further measures. [15].

(ii) The Internal Economy

In the last two decades there has been a growing awareness among economists and development specialists of the role and importance of certain economic policies in the context of Less Developed Country economies, in particular the need to encourage the rate of saving and investment. Such a policy has constituted conventional wisdom for many years now. It has been discussed and promoted in the United Nations and gives meaning to the phrase "restore and ensure public order and safety." In a report published by UNCTAD in 1987 on the financial sector of the Occupied Territories the authors stated:

Since the 1950's, preoccupation with growth and development objectives has prompted policy-makers and planners in an increasing number of developing countries to accord special attention to ways and means of promoting savings and investment in the economy. In addition to the increasing involvement of the public sector in this process, particular emphasis has been placed on the crucial role of the private sector. Various measures have been resorted to in order to induce private savings and investments, thus contributing to the rapid growth and development of the economy. The tax system has increasingly been considered as a promising instrument for determining the pace and direction of efforts to achieve such a goal. [16].

The introduction of VAT in the Occupied Territories, on the other hand, has had disastrous effects on the internal economy. The desire to maintain what was in fact an external economic relationship of great value to Israel, but retrogressive from the point of view of the Territories, had negative implications for the marginal propensity to save (MPS).

The MPS is the amount of each extra unit of income that households wish to save. [17]. With impossibly tough tax requirements facing businesses, it was inevitable that an economic behaviour pattern of high consumption and investment in low productivity, inflation-proof assets such as real estate would be encouraged. The effects on the productive economic sector of the Palestinian economy have been clearly negative. As the 1987 UNCTAD report concluded:

Generally speaking, VAT has evolved over the past few years to become one of the most serious fiscal constraints on the development of Palestinian industry and trade. [18].

It is not here argued that an occupant has a positive duty to improve the economic situation in occupied territories in line with its own economy. Yet the pursuance of a fiscal policy which perpetuates and consolidates such a retrogressive state of affairs breaches the conditions for enacting new laws set out in Article 43 of the Hague Regulations and is consequently illegal.

(iii) Accounting Procedures

The collection of taxes in the Occupied Territories has never been an exact science. Traditionally, and with the exception of Israeli companies and the larger Arab companies, final payment of taxes is the result of bargaining between the tax payer and the authorities in which the former underestimates and the latter overestimates the amount of tax payable. [19]. Failure to keep books is one of the widespread tax-related phenomena in the Occupied Territories. The reasons for this, according to local accountants, relate to the socio-economic history of the West Bank. Prior to 1967, very few people paid tax at all (see discussion below on incidence of income tax); industry, agriculture and commerce were and, indeed, remain largely based on the family unit where the need for formal accounting procedures is virtually non-existent. Thus the only reason to keep books is to provide evidence to the Israeli occupying power of the value of transactions in order to pay an unpopular, illegal and economically

crippling tax. In the final analysis, therefore, the reasons for the failure of the book-keeping system - and thus its illegality - are essentially the same reasons for the illegality of VAT itself: both are wholly inappropriate in the socio-economic environment of the West Bank, and cannot therefore be said to fall within the terms of Article 43 of the Hague Regulations.

2. Customs and Excise Duties

The new fiscal instruments introduced since 1967 include a range of duties and taxes imposed on both locally produced goods and goods imported from abroad (excluding Israel). Duties were imposed on locally produced goods by virtue of the Law of Excise on Local Products 1963, No. 16, as well as a range of laws relating to specific products. [20]. Duties payable on imports were imposed under the Customs and Taxation Law of 1962. [21].

Excise duties have become payable on an increasing range of goods since 1967 pursuant to Military Orders 31, 643, and 740. [22]. Currently, customs are also imposed on imported machinery and other goods which have to pass through Israel on their way to the Occupied Territories. These customs duties are fixed by the Israeli government with Israeli industries and businesses in mind. [23]. However, many of these businesses do not exist in the Occupied Territories and there is, therefore, no economic rationale, nor legal basis, from the latter's point of view, for such an imposition.

C. REVENUE-INCREASING MEASURES

1. Indirect Taxes and Fees

In addition to VAT and customs and excise duties, a number of other taxes and fees have been introduced with the express or implied purpose of raising revenue. These are outlined below. The legal analysis of these taxes, therefore, has much in common with the analysis of new enforcement procedures and penalties designed to maintain or increase

revenue. They are, therefore, discussed together from a legal point of view in the concluding section of this chapter.

(a) Special Payment on Vehicles

On 17 August 1988, a new tax was declared in M.O. 1249 Regarding Payment of a Special Fee (Vehicles)(Temporary Instructions). The tax was popularly dubbed the "intifada tax." The reasons stated in the preamble to the order for introducing the tax were, firstly, that "due to the present circumstances there is a shortage of finances to cover vital services to the public," and, secondly, the protection of public order. The order was temporary, effective for one year from 19 September 1988. The order was amended on 25 March 1989 by M.O. 1273, which made payment of the tax a condition for registering transfer of property in a vehicle, and extended the order to 31 March 1990.

Under Section 3 of the order:

The owner of a vehicle registered in the area [i.e. the West Bank] is obliged to pay a special fee for his vehicle, in accordance with its make and year of production as stated in Appendices 1 and 2 ...

Under Section 5:

The special fee must be paid not later than the date set for renewal of the licence for the first time, or any other date specified by the Head of the Civil Administration in the Area.

Under Section 6:

Vehicle owners who fail to pay the special fee on the date specified in Section 5 will have to pay interest as defined in Article 101 of the Regulations Concerning Excise on Local Products (Judea and Samaria), (1985), plus an additional fine of 0.7 percent of the special fee for every week or part of a week [of delay]. "Delay" is the period from the due date of

payment till the date when payment takes place. [24].

Under Section 8:

No vehicle licence shall be issued or renewed if the special fee is not paid, unless the owner proves that he is exempt.

Under Section 10:

(a) Any police officer or soldier authorised by the transportation officer has the right to seize a vehicle if he suspects that the owner has not paid the special fee. If the owner of the vehicle proves that he has paid the fee then the vehicle shall be released.

(b) If a vehicle is in violation of this order it shall be seized by the police or transportation officer until the special fee is paid.

Under Section 15:

A vehicle owner who refrains from paying the special fee shall face a sentence of two years in prison and shall be fined. [25].

M.O. 1249 specifies a range of different payments, fixed according to engine size and age of the car. In addition, payments are specified for tractors, buses, taxis, and motorcycles. Taking an average engine size for an average age car and likewise averaging out the payments required on other vehicles, it is possible to calculate the total annual revenue obtainable under this tax at roughly 4,468,000 New Israeli Shekels (NIS) or approximately \$US 23,037,738 million. [26].

(b) Fees and Excise Duties

In addition to the taxes and fees described above, revenue accrues to the authorities in an ever-increasing number of other ways. These include fees for notaries and

power of attorney, special taxes for pharmacies and private medical practitioners (introduced in 1981), as well as fines and penalties for offences (of all kinds). Also, fees charged for permits for crossing the Jordan River (either way), fees for land transactions (five percent of the value of the transaction), court fees, fees payable for granting power of attorney (the proceeds of which should be allocated to the professional bar association - were one permitted), car licences, stamp tax, etc., amount to substantial sums. [27].

2. Enforcement Measures

Prior to 1967, there was one law which provided for the collection of outstanding taxes and other debts. This was the Law Concerning the Collection of Government Monies No. 6 of 1952 (hereafter the "1952 Law"). Since then, this law has been amended several times and has been by-passed by creating new legal bases for enforcing the collection of taxes. (These include amendments to the main income tax law, the VAT law, military powers (of search, seizure etc.), and a new military order making the issue of permits dependent on payment of taxes.)

(a) Procedure for Attachment of Property Under the 1952 Law [28]

The 1952 Law gives powers to the tax authorities to seize and sell property in order to realize outstanding tax debts. [29]. With certain exceptions, all property is liable to seizure and sale under the 1952 Law. (See Appendix 1.) The act applies not only to income tax but to all payments which the Person Responsible decides are payments governed by the provisions of the law. [30].

Under the 1952 Law, the procedure for attaching and seizing the property of tax debtors was as follows. Firstly, the tax collector responsible for a particular area had a duty to prepare a list of the tax debtors in his area and the amounts of money they owe. A copy of the list was to be affixed in a public place where it could be viewed by the

public. Another copy was to be returned to the sub-accountant, i.e., the government official responsible for financial matters at the local level. The list contained a demand that the tax be paid within a period of 15 days from the date on which it was published. [31]. A copy of the names of those owing money had likewise to be published in the Official Gazette. [32].

If within 60 days the debts specified in the lists mentioned above had not been paid, then property belonging to the tax debtor could be attached, but only following a decision by the Person Responsible; movable property could be sold immediately (within a period specified by the Person Responsible), while immovable property could be sold one year after the date of attachment. [33].

This procedure has been amended by military orders in several ways. Only the principal changes are discussed here.

(i) Third Parties

Under Jordanian legislation only the property of the tax debtor himself could be seized in order to enforce payment of taxes. However, M.O. 1095 (Amendment No. 2) replaced Article 9 of the 1952 Law (which concerned seizure of government employees' salaries and pensions) and extended power of attachment to the property of debtors in the hands of third parties. [34]. Under this order, the Person Responsible has the right to attach the property of a debtor even where it is in the hands of a third party. A recent order, M.O. 1285, confirms the 'right' of the authorities to attach property in the hands of third parties. [35]. (See further below.)

(ii) Express Licence to Use Force

On 2 November 1988, new Instructions were issued by the Military Government. These Instructions introduce minor changes into the pre-existing 1952 Law and these are listed below. A summary of the law of collecting tax debts is included in Appendix 1.

6

Additions to the 1952 Law added by the Instructions mentioned above include:

- * giving authority to the Collection Officer to order the tax debtor to open any place or building containing equipment or which is thought to contain movable property. [36].
- * permitting the appointed Collection Officer to overcome all resistance and to break into buildings and property to obtain goods and equipment which belong to the tax debtor, by force. [37]. The decision to enter premises by force should be in writing. [38].
- * allowing the supervisor of the sale of attached property, with the exception of Civil Administration employees, to receive a percentage of the value of the property sold by auction. [39].
- * permitting property to be attached through the mediation of a bank. [40].

Under a recent military order, M.O. 1285, issued on 13 September 1989, the Collection Officer is entitled to wholly ignore the provisions of Articles 6-8 of the 1952 Law, and may "temporarily" attach property where the Collection Officer deems it necessary to prevent non-payment of taxes, thus effectively abolishing the last safeguards of warning and notification originally provided for under the 1952 Law. The tax debtor then has a period of ten days in which to pay outstanding debts, or to prove that he has already done so, before the property is deemed to be confiscated. (See note 35 to this chapter.) Amendments to methods of notification, where this is deemed appropriate by the Collection Officer, are discussed further, below, under "Administrative Coercion."

(b) Measures By-Passing the 1952 Law

(i) Income Tax

Income tax law, as applicable in the West Bank, is

contained in the Income Tax Law of the Hashemite Kingdom of Jordan, Law No. 25 of 1964 (hereafter "the 1964 Law"), and military orders promulgated by the Israeli Military Government of the West Bank, which amend it. [41]

The System Before 1967

Under Article 64 of the 1964 Law:

- (1) Where any tax has not been paid within the period prescribed under any section of this Law, the Assessing Officer shall serve the person from whom such tax is due with a demand note, and if payment is not made within the period specified in such demand note the Assessing Officer may proceed to enforce payment in accordance with the provisions of the Law of Collection of Government Monies in force ...

In addition, the 1964 Law contained certain provisions allowing the Assessing Officer to obtain an order to delay the departure of a debtor from the country. The procedure was as follows:

Under Article 65 of the 1964 Law:

- (1) If, in any particular case, the Assessing Officer has reason to believe that a person who has been assessed for tax may leave the kingdom before such tax becomes payable and without having paid such tax, he may, by notice in writing to such person, demand payment of the tax within a period to be specified in such notice ... and if payment is not made ... or guaranteed ... he may proceed to enforce payment in accordance with the provisions of the Law of Collection of Government Monies.
- (2) If ... the Assessing Officer has reason to believe that the tax due on chargeable income may not be collected eventually, he may at any time, and as the circumstances of the case may require, carry out the following:

- (a) require any person ... in writing to submit a return;
 - (b) assess the income of such person;
 - (c) require, in writing, that the assessee furnish security for the payment of the tax.
- (3) Notice of an assessment made ... shall be given to the assessee, and any tax assessed in the aforesaid manner shall become payable on a demand made in writing ... and if it is not paid, or ... not to the satisfaction of the Assessing Officer, he may proceed forthwith in accordance with the provisions of the Law of Collection of Government Monies.
- (4) In the cases provided for in subsections (1), (2) and (3) of this section, the Assessing Officer may request the competent authorities not to permit the assessee to leave the kingdom before the settlement of his case. [42].

Amendments to the Law

Under Israeli military legislation, if at any stage the Assessing Officer has reason to doubt that tax that is due will not be paid, whether because the taxpayer wishes to leave the West Bank or for other cause, he may do the following:

- (1) require, in writing, that a guarantee (satisfactory to the Assessing Officer) of payments in advance that are owing be given; [43];
- (2) require a guarantee (satisfactory to the Assessing Officer) that assessed tax will be paid; [44];
- (3) correct a report, or if no report has been submitted assess the chargeable income according to what he finds reasonable, and in either case give notice of the assessment to the taxpayer. If no report is yet due, require, in writing,

that one will be immediately forwarded; [45];

Where a taxpayer fails to pay tax or to give a guarantee of its payment, the Assessing Officer can give an order (even in the absence of the taxpayer) to:

- (1) delay his departure from the country, or
- (2) put a lien on his property.

The taxpayer may appeal this order to the Objections Committee in accordance with M.O. 172. [46].

Thus, originally, under the 1964 Law the Assessing Officer had to apply to the "competent authorities" to delay the departure of a tax debtor. Under M.O. 770 the Assessing Officer was empowered to obtain an order from a 'special court' to delay the departure of a person from the West Bank or to attach his property independent of any court order. [47]. Now, by virtue of M.O. 1241 (issued on 10 April 1988 during the current uprising) the Assessing Officer has the power to take these measures himself. The power to attach property was originally a measure that could only be taken under the 1952 Law for the Collection of Government Monies. However, the effect of subsequent military orders has been to provide means of circumventing this act and remove the safeguards it established to protect the taxpayer from an overly zealous executive.

It is now unclear to what extent the provisions of the 1952 Law are still applicable so far as income tax is concerned. However, no order has been published nullifying the procedures to be followed under the 1952 Law. Thus it seems that the Assessing Officer has the option to attach property in accordance with the 1952 Law, but is not obliged to do so.

(ii) VAT Collection

The Civil Administration of the West Bank has at least three ways of collecting VAT, two of which are entirely new additions to the local law: the 1952 Law for the Collection

of Government Monies (discussed above) [48]; Article 116 (A) of the 1985 Regulations; and M.O.s 31 and 309.
Article 116 (A) of the 1985 Regulations

Under Article 116(A)(a) of the 1985 VAT Regulations (as amended by Amendment no. 9, Article 22):

(a) If the Person Responsible believes that fees payable on commercial transactions have not been paid as a result of an intention by the person liable to pay tax to leave the area, or for any other reason, he has the right to:

(i) demand, in writing, an immediate guarantee of payment of the determined assessment (if the person liable to pay tax has made an estimate pursuant to Article 87), such as is satisfactory to the Person Responsible;

(ii) estimate the outstanding tax at his discretion, including cost-of-living differences, interest and penalties, where the person liable to pay tax has not made an estimate.

(b) The Person Responsible shall provide a statement, in writing, of the estimate in (A)(a)(ii) above, which will be payable on receipt.

(c) If no payment is made of the amount mentioned in 116 (A)(b) above, and no bail provided in its stead, the Person Responsible has the right to issue an order, even in the absence of the person liable to pay tax:

* to delay his departure from the area

* to attach his property

(d) If the outstanding tax has been paid as required, or bail given therefor, the person liable to pay tax has the right to present a contestation or objection in the manner prescribed for contestation or objection to

assessments under Article 87

(e) Without prejudice to paragraph (d), above any person has the right to object to the Objections Committee against any injustice arising out of the application of this article.

(B) The official's decision regarding the banning of business or transport of goods or rendering services becomes effective 15 days after the date of notification.

(C) An objection may be submitted on the official's decision. The objection postpones the carrying out of the decision unless the Objection's Committee decides otherwise.

Under VAT legislation, as under the Income Tax law amendment discussed above, the Assessing Officer was given the authority to attach the property of individuals for non-payment of VAT quite independently of the 1952 Law. There are no requirements concerning publication of names, notification of attachment and the like. Consequently, as with income tax, the safeguards protecting the person liable to pay tax from unjust practices have been whittled away.

Military Orders 31 and 309

M.O. 31 Concerning Appointments With Regard to the Laws of Customs Fees and Excises, 1967, defined these "Laws" as including various laws relating to customs and products such as salt, tobacco, alcohol, etc., as well as the Law of Excise on Local Products, No. 16, 1963. As we have seen, the latter law was "amended" in 1976 in order to introduce VAT.

Article 3 of M.O. 309 vests powers contained in Chapter D of M.O. 378 in customs and excise officers appointed by the Person Responsible (as defined in M.O. 31). The powers contained in Chapter D of M.O. 378 relate to arrest, search, seizure, and confiscation, and apply (under a

1984 amendment of the order) not only to offences specified in the order itself, but to "offences against a security law [and] offences against any other law valid in the area ..." as well.

Thus under M.O. 309 a person appointed by the head of the customs and excise department (which of course includes VAT) may exercise powers under Article 78 (a) of M.O. 378 (as amended), i.e., is authorised to arrest, without a warrant, any person who violates or whom there is reason to suspect has violated the laws specified in M.O. 31, including the 1985 VAT Regulations. Other powers specified in Chapter D of M.O. 378 include powers of seizure: officials may "seize and detain wares, objects, animals, documents, or any items pertaining to which he has reason to believe an offence [against the Laws of Customs and Excise] has been, or is about to be committed ... Property may also be seized, by order of a military court, in order to persuade a person to come out of hiding" [49]; any premises may be searched at any time if there is reason to suspect they have been used to commit an offence or to house property liable to be seized [50]; vehicles may be stopped, by force if necessary. [51].

Perhaps more than any other measure introduced by the Israeli authorities in the sphere of taxation, the vesting of full military powers in the hands of VAT, customs and excise officers represents a truly startling transformation of the local law of tax collection.

(iii) Administrative Coercion: Permits and Taxes

Under Military Order 1262 Concerning the Collection of Monies (Enabling Authority) (Temporary Instructions) issued on 17 December 1988, the IDF Commander in the West Bank made the grant of licences specified in the second schedule to the order (see below) contingent on the payment of taxes specified in the first schedule. (See below also.) Thus under Article 2(a) of the order:

A person authorised to issue a licence or a service in accordance with the instructions of the law or the

security legislation listed in the second appendix of this order, is authorized to stipulate that the service or licence, or its renewal, be issued on condition that satisfactory evidence is presented to the effect that the applicant has done that which is required of him by all tax laws, and has paid the tax he owes as of that date (hereafter: "good evidence").

Under Article 2(c):

The tax authority shall issue the applicant with a certificate stating that the instruction of sub-clause (a) of this order applies to him, in order to fulfill the demand for presenting good evidence in accordance with sub-clause (a), within 10 days of the day on which the application for the presentation of such a permit was received.

Payments requiring proof from the tax authorities include income tax and property tax, VAT, the Special Payment on Vehicles (as imposed by M.O. 1249), payments arising out of the 1952 Law, and other fines.

The permits and licences which may be withheld pending payment of the above taxes and fines relate to the following matters: leaving the West Bank; press and advertising; labour, trade and industry; accountancy; surveying; insurance; mining and stonequarrying; urban, rural and buildings planning; antiquities; tourism; telephones; construction of factories; vehicle licences; drivers' licences and registration of vehicles; transfer of money into the area; registration of trade names; trade marks; transfer of goods; currency control; and vehicle licence plates.

The intention behind M.O. 1262 is clear, although it is impossible to make precise sense of the order due to poor drafting of the sections quoted above. The order represents a new development in the law of tax collection as well as licensing law. In a recent amendment to M.O. 1262, last warnings to tax debtors may simply be announced in one Arabic-language newspaper, two times, or, alternatively, two newspapers on the same, or different, days. After the an-

nouncement in the papers, the tax debtor has 15 days in which to report to the tax officer. [52]. The order was extended to 18 December 1989 by M.O. 1277 and has almost certainly been further extended in orders not yet available to the public.

(c) Penalties for Late or Non-Payment of Taxes

(i) Income Tax

Payment of tax on income other than that earned through employment is by way of monthly instalments payable in advance. (See further under Chapter 3.) Delay in such payments incurs a penalty of 1.5 percent of the delayed amount for every 15 days delay up until the day specified for the submission of the annual return. [53]. This does not affect the basic sum of tax for which the taxpayer is liable. This would appear somewhat harsher than the ten percent extra payable under the 1964 Law for a six-month delay, and considerably harsher for a period of a year's delay (roughly 35 percent added under Israeli military law as against 15 percent under the 1964 Law). In addition, interest on late tax payments is now payable at the rate of eight percent. [54].

(ii) Administrative Fines

Under M.O. 1263 (Order Concerning Administrative Offences) (Judea and Samaria) issued in 1988, the Head of the Civil Administration and the Legal Advisor are authorised to appoint "Inspectors" and "Registrars" with the power to impose fines for a range of offences under military orders and regulations, as well as the 1964 Income Tax Law. [55]. (See Appendix VII.) Inspectors require no specified qualifications while Registrars need have only "legal training." [56]. The power to impose administrative fines arises where "an Inspector or Registrar has reasonable grounds to suspect that a person has committed an offence" and where the offences carry, respectively, "fixed" or "unfixed" fines. Fixed fines (listed in the appendix to the order) relate to offences under various laws including income tax and VAT. [57].

According to M.O. 1263, the fines imposed may be up to twice as high as those provided for in M.O. 845 - which sets the level of fines in the West Bank for a range of matters - or as determined elsewhere for the same offence. Particularly noteworthy is that a court which imposes a fine may only reduce it in "special circumstances" and then only if the fine is the sole punishment imposed. [58]. The effect of this is to bolster the already substantial administrative powers of the Registrars and Inspectors to levels that are effectively beyond the jurisdiction of a court of law. [59].

D. SUMMARY OF NEW TAXES AND CHANGES IN ENFORCEMENT PROCEDURES

General changes in the law of taxation are restricted by Article 43 of the Hague Regulations. As discussed in Chapter 1, these rules state that an occupant must respect the laws in force "unless absolutely prevented" from doing so by the need to "restore and ensure public order and safety." The latter phrase comprises the security needs of the occupant (though not the financial requirements of the forces themselves) and the interests of the inhabitants of the occupied territory. In so far as measures are taken to increase revenue, there should be a genuine need for this; such a need does not arise while alternative sources of revenue are available. The following changes in the law of taxation have been identified in this chapter:

1. Measures Introduced "For the Benefit of the West Bank Economy"

(a) In 1976 VAT was introduced in the Occupied Territories for the first time. The official justification for the tax was that it was in the interests of the local inhabitants; however, it has been made clear that the introduction of VAT was not in the local inhabitants' interests. Rather, it seems clear that it was introduced as part of a wider policy encouraging economic dependency of the Territories on Israel.

(b) New customs and excise duties have been introduced

periodically. Designed with Israeli businesses in mind, they are often wholly inappropriate to the Occupied Territories. [60].

2. Measures Introduced to Increase Revenue

(a) In 1988 a new tax on vehicles was introduced. The reasons given for the introduction of the tax was the fall-off in revenue in the West Bank.

(b) Prior to 1967, collection of customs and excise duties was regarded as a civilian matter.

In 1969 extensive military powers were vested in the hands of customs and excise officials.

(c) Prior to 1967, there was no provision for the attachment of the property of third parties.

In 1983, property formerly belonging to the tax debtor which has passed into the hands of a third party became subject to attachment within three months of the transfer occurring. And in 1989, this period of three months disappeared altogether.

(d) Prior to 1967, no specific sanction existed in the law for the use of force in collecting taxes.

In 1988, the use of force to break into premises as well as quelling any resistance to the collection of taxes was made the prerogative of the Assessing Officer without any recourse to the courts to obtain powers of entry, etc.

(e) Prior to 1967, banks were not involved in the process of attaching property.

In 1988 they were empowered to do so. In addition, notice requirements were abolished in cases lying within the discretion of the Collection Officer, and in other cases, was reduced to publication in a newspaper twice, or in two different newspapers once.

(f) Prior to 1967, the Assessing Officer could ask the 'competent authorities' to delay the departure of a person from the country in certain circumstances.

In 1978 and then 1988, these powers were increased first to allow the Assessing Officer to obtain an order from a 'special court' to delay the person's departure and to attach his property, and then to allow the Assessing Officer to take these measures without obtaining prior authorisation. Thus the safeguards surrounding the attachment of property previously contained in the 1952 Law have effectively been circumvented.

(g) Article 116 A (as amended) of the 1985 VAT Regulations introduced a new basis for collecting VAT (which, of course, was technically simply an amendment of the local Jordanian law).

(h) Prior to 1967, no power existed to make payment of all taxes by an individual and/or group a precondition for the issue of a range of wholly unrelated permits.

In 1988, such powers were introduced.

(i) Prior to 1967, delay in payment of taxes for a period of a year would result in a penalty of approximately 15 percent of the unpaid sum.

In 1979, this amount was increased to approximately 35 percent.

(j) Prior to 1967 there was no authority to fine persons administratively for tax offences.

In 1988 such powers were introduced.

3. Conclusions

It is clear from the above list of amendments to the law of taxation that they are motivated by the desire to increase revenue: they relate either to making collection

procedures more efficient or to the creation of new, revenue-raising taxes. For these measures to be legal there must, in the words of the High Court, be a proven "need" for them. Is there evidence of such a need?

As regards expenditure, few statistics are included in the publications produced by the Israel Central Bureau of Statistics. Otherwise, no figures are publicly available although Meron Benvenisti has made available copies of the 1986 figures for capital and current expenditures in a document entitled "Israel Budget." [61].

As for revenue, there are no published official statistics whatsoever, although from time to time Israeli officials have given global estimates of revenue from the Territories. On 15 September 1989, for example, the Jerusalem Post reported that, according to the Israeli Income Tax Commissioner, Moshe Gavish: "About NIS \$ [sic] 140-150 million is collected in the West Bank and NIS [sic] 40 million is gathered in Gaza ... but the figure had dropped slightly since the uprising began in December 1987." [62]. The author was told in interviews with a senior official in the Income Tax Department at Beit El that the prospective figure for 1988 was between NIS 220 and 250 million for the West Bank, but that this would be revised down to NIS 180 million as a result of the uprising. [63].

The budget of the Occupied Territories has for many years been an official secret. On 24 November 1987, Advocate Raja Shehadeh, co-director of Al-Haq, sent letters to the Head of the Civil Administration and the Legal Advisor at Beit El requesting a copy of the budget for the West Bank or, failing this, information about where it might be obtained. [64]. No reply to the letters was received. Again, in September 1988, when the author requested to see a copy of the budget he was personally told by the public relations officer at Beit El that it was a "matter of security" and not publicly available.

Publication of a budget is a feature of all democratic systems. Under Jordanian law, binding on the military authorities in the West Bank, publication of the budget is a re-

quirement. Under Article 111 of the Jordanian Constitution, "Taxes shall not be imposed other than in a law ..." Under Article 112 (6) of the Constitution

All expected state revenue and expenditure, for every fiscal year, shall attain the status of law by virtue of the Public Budget Law ...

And under Article 115 of the Constitution

No amount of revenue accruing to the Treasury shall be spent for any purpose except by virtue of a law.

Under Article 93 (2) of the Constitution

[A] law shall become valid after promulgation by the king and the passage of 30 days after its publication in the Official Gazette unless otherwise expressly stipulated [that the period of 30 days should be greater or less]. [65].

All laws were thus published in the Official Gazette until 1967 when the Gazette was replaced by the alternatives listed in M.O. 161. (See note 32 to this chapter.) Further safeguards were built into the Constitution as well. Thus, under Article 112:

(1) The draft of the public budget will be presented to the Upper House one month before the start of the fiscal year for consideration according to the provisions of the public constitution.

(2) A vote will be taken on the budget section by section.

and

(3) No transfer of investment shall be made from one department to another except as provided for in a law.

Concerning the accumulation of budgetary surpluses, the

Constitution is quite specific. Under Article 111, the government

shall not exceed the need of the State for revenue ...

Despite the lack of published statistics, Israeli officials have for years maintained that all revenue that is collected by way of taxes in the Occupied Territories is returned to the Territories. Thus Lieutenant Colonel Dov Shefi, Military Advocate General (Israel) stated, in 1970, that:

the revenues which are collected in the Administered Territories are used exclusively for their own needs, and constitute only a small percentage of total administration expenditures in the Territories. [66].

More recently, in the 1985 Annual Report of the Civil Administration, it was stated that:

Israel's policy since 1967 has been to develop the existing infrastructure and services which were quite neglected before 1967. Therefore direct and indirect taxes are collected from the local population and returned, in the form of services and development projects, for the benefit of the local taxpayers. [67].

And again on 15 September 1989, the Jerusalem Post quoted the Income Tax Commissioner of Israel as follows: "all taxes collected from the Arabs in the West Bank and Gaza Strip remain in the territories; not one agora is transferred to Israel." [68].

The claims of the authorities, so far as they go, are broadly consistent with each other in that all maintain that revenue returns to the Territories. There is however a certain degree of inconsistency in so far as official estimates of revenue are concerned. Presuming that the figure for revenue from the West Bank given by the Income Tax Commissioner quoted above is intended to be in \$US, the equivalent in shekels - at mid-September 1989 exchange rates - would approximate NIS 290-300 million. This figure is 25-36 percent higher than the NIS 220-250 million quoted by the senior tax

official mentioned above. Such inconsistencies by official tax experts simply underline the need for a published budget.

Despite the problems associated with such figures, they nevertheless present a sufficiently clear picture to compare with statements by other commentators who maintain that a juxtaposition of their revenue estimates with official figures for expenditure clearly reveal a surplus of revenue over expenditure. According to the Israeli expert on the economy of the Occupied Territories, Dr. Meron Benvenisti:

The occupied territories never constituted a fiscal burden on the Israeli treasury. On the contrary, the Palestinian population contributed large sums to the Israeli public consumption. In the past, part of those contributions ... were returned to the territories to cover the Civilian Government's deficit. In 1986 total Palestinian contributions have been retained by the Israeli treasury.

Palestinian contributions are composed of taxes and other deductions imposed upon Palestinians employed officially in Israel. They are also composed of indirect taxes, such as duties on Palestinian goods imported through Israeli ports and value-added tax on commodities and services purchased in Israel by Palestinian inhabitants residing in the territories. [69].

The United Nations Conference on Trade and Development (UNCTAD) also highlights official accounting procedures:

The national income accounts of the territories reveal two major sources of Israeli government revenues, namely "income tax and transfers to the Government" and "net indirect taxes on domestic production." No definition is given as to the composition of these categories. A major source of government revenues, i.e., taxes on international trade or transactions effected directly or through Israel, is omitted altogether from these categories. Similarly, they exclude social security contributions and a number of other tax and non-tax sources of government revenues. As a

result, total actual tax and non-tax revenues of the Israeli government from the territories are only partially reflected in the aforementioned categories. [70].

As a result of these markedly different accounting procedures it appears that large amounts of tax paid by Palestinian residents of the Territories are simply counted, officially, as revenue rightfully accruing to the State of Israel and do not feature in official estimates of revenue in the Territories. According to UNCTAD:

Revenues from taxes on the wages of Palestinians working in Israel, customs duties collected by Israeli authorities on the territories' imports through Israel and Jordan, the hidden value-added tax charged on all Israeli exports to the territories in lieu of customs duties chargeable by the territories, fees on permits for crossing the bridges into Jordan and a number of other levies can be roughly estimated at over \$US 150 million in 1984. Including this sum in the Israeli government budget for the territories will result in an overall surplus - a development which is contrary to the pressing need to improve the economic and social situation of the Palestinian people. [71].

Benvenisti concludes that for 1987:

The "occupation tax" that West Bankers and Gazans paid to the occupation authorities (excluding local taxes) during 20 years can be, therefore, estimated at a conservative figure of \$US 800 million. In 1987 alone, when the Civilian Government budget became "balanced," at least \$US 80 million of Palestinian contributions were directed to Israeli public expenditure ... The 1986-1987 "occupation tax" could have doubled the territories' development budget of that year. [72].

It should be noted also that the taxes paid by Israeli citizens who earn income in the West Bank, as well as by Israeli companies registered in Israel, but operating branches

in the West Bank, accrue not to the Civil Administration of the West Bank, but to the government of the State of Israel. By contrast, Israeli settlers in the Territories benefit from such items of expenditure as the road network funded by the Civil Administration connecting Israeli settlements. [73].

To what extent has the current uprising affected revenue of the Israeli authorities? According to Dr. 'Atef Alawna, a fall in the revenue collected through some taxes has been offset by increases in others. Dr. Alawna estimates that, in the first year of the uprising, revenue from income tax on wages of Palestinians in the Occupied Territories and on Palestinians from the Territories employed in Israel fell by 30 percent; VAT fell by \$US 76.5 million; customs on goods from Jordan fell by 60 percent; customs on goods from the rest of the world fell by 50 percent; bridge fee revenue fell by 70 percent (an 80 percent reduction in travellers was offset by ten percent through raising fees). An estimated reduction in spending, together with a transfer of spending from civilian items to military items led to a fall in the budget of 30 percent.

Against these losses Dr. Alawna sets the following: a 15 percent increase in the cost of health insurance; a 66 percent increase in the cost of treatment and accommodation in government hospitals; an 80 percent increase in the cost of car insurance; \$US 10-20 increase in the cost of renewing a driving licence; new fees for changing car licence plates of \$US 20; an increase in the fee for licensing a car from \$US 10 to \$US 18; a special tax on cars worth some \$US 24 million in the West Bank alone; a new fee payable when ID cards are changed pursuant to recent instructions, costing \$US 100 per person and amounting to roughly \$US 107 million when all ID cards have been changed. [74].

On the basis of these estimates, it seems most unlikely that any fall in revenue accruing to the Civil Administration since December 1987 has not been off-set by increases generated through new fees and taxes and raising the cost of a variety of essential services. Even on the basis of the authorities' own estimates for the fall-off in revenue in March 1988, i.e., before fees were raised and the new car tax was

introduced, revenue did not fall by more than 25 percent. [75].

The evidence tending to demonstrate the existence of a large annual budgetary surplus is convincing. Although revenue collected domestically within the Occupied Territories probably closely equates with expenditure, total revenue deriving from Palestinians living in the Occupied Territories, that is, revenue deriving from Israel's occupation of the West Bank and Gaza Strip, is clearly far in excess of expenditure. Official Israeli claims that investment in the Occupied Territories is limited by budgetary restrictions can only be based on a narrow, and indeed meaningless, estimation of revenue on the basis of income earned and transactions undertaken within the Occupied Territories alone. Until this surplus is used, there exists no justification under international law for the introduction of amendments to the existing tax laws with a view to increasing revenue, since such a need quite simply doesn't exist [76]. In addition, the total disregard for the provisions enshrined in the Jordanian Constitution regarding publication of the budget and prohibition of surpluses cannot in any way be justified.

NOTES TO CHAPTER 2

[1]. See also Nidal R. Sabri, "The Tax Situation in the Occupied Palestinian Territories," in Arab Certified Accountant (November 1982), pp. 60-65; United Nations Conference on Trade and Development, The Palestinian Financial Sector Under Israeli Occupation, UNCTAD/ST/SEU/3, 8 July 1987, pp. 106-118; Hisham Jabr, "Financial Administration in the Israeli-Occupied West Bank" in Emma Playfair (ed.), International Law and the Administration of Occupied Territories: the West Bank and Gaza, 1967-1987 (forthcoming), and S.J. Baxendale and Jamil Koussa, Taxation of Income in the West Bank: a Guidebook for West Bank Taxpayers (Jerusalem: Amideast, 1988).

[2]. Jordanian law is published in Encyclopedia of Jordanian Laws (Amman: Lawyers' Union of Amman, annual update). Amendments to the law in Jordan after 1967, do not apply in the Israeli-occupied territories.

[3]. Israeli military orders started being issued in 1967, following Israel's occupation of the West Bank. Military orders are issued in a numbered series. Currently about 1290 military orders have been issued in the West Bank alone. In addition, "Instructions," "Appointments" and "Regulations" are issued under pre-existing military orders or under provisions of the Jordanian law. Military orders are issued in Hebrew and translated into Arabic by the Civil Administration. The poor quality of the translation, the delay in publishing the orders and the often haphazard serialisation of orders seriously affect the ability of the public to know the state of the law at any particular time.

In 1981, M.O. 947 Concerning Establishment of the Civilian Administration was issued declaring the estab-

lishment of a "Civilian Administration." Section 2 of the order states that the Civilian Administration shall "administer the civilian affairs in the region in accordance with the directives of this order, for the well-being and good of the population and in order to supply and implement the public services and taking into consideration the need to maintain an orderly administration and public order in the region." However the Head of the Civil Administration is appointed by the Area Commander who is in turn responsible to the Israeli Minister of Defence; the Area Commander is also responsible for legislating in civil and military matters; all powers enjoyed by the Head of the Civil Administration are delegated by the Area Commander. See Jonathan Kuttub and Raja Shehadeh, Civilian Administration in the Occupied West Bank: Analysis of Israeli Military Government Order No. 947 (Ramallah: Law in the Service of Man, 1982).

[4]. See Chapter 1, Section A above.

[5]. Publications, Orders and Appointments, Judea and Samaria, Vol. 38, 1976, p. 182.

[6]. On 1 May 1985, the actual rent of properties became subject to VAT also. Strong opposition to the imposition of VAT on rents led to its suspension.

[7]. Article 2, Law of Excise on Local Products 1963.

[8]. Ibid, Article 2(a) as amended by M.O. 658.

[9]. Abu Ita et al., English translation, p. 134.

[10]. Ibid, pp. 2-7.

[11]. Ibid, pp. 8-10.

[12]. Ibid, p. 9. In 1983, despite the West Bank's net trading deficit (NIS 16,072,100) exports to Israel from the West Bank amounted to NIS 7,300 million at current prices (i.e., 1983 prices); GNP in 1983 - at current market prices - amounted to NIS 64,834,700. Thus the

exports to Israel from the West Bank in 1983 constituted 11.25 percent of GNP. By way of comparison, this proportion had fallen to 4.69 percent in 1986: GNP = NIS 2211 million, exports to Israel \$US 155.9 million or NIS 103.9 million at \$US 1 = 1.5003 NIS. See Statistical Abstract of Israel 1984, 1985, 1988.

[13]. Abu Ita et al, English translation, p. 25.

[14]. Michael P. Todaro, Economic Development in the Third World (New York and London: Longman, 3rd ed., reprinted in 1986), p. 393.

[15]. On 28 October 1986, the Council of Ministers of the European Community (EC) passed regulations providing for direct and preferential trade between Palestinians in the Occupied Territories and the EC. On 7 December 1987, Israel agreed to facilitate the regulations. Finally, on 10 October 1988, the Israeli Inter-Ministerial Committee signed an agreement, on behalf of the Israeli government, with the Agricultural Cooperative Union and the Benevolent Society of Gaza (who acted on behalf of Palestinian farmers) providing for direct export of goods to the EC. This agreement was signed just days before the European Parliament decided to ratify trade protocols with Israel, something it had previously refused to do. See Feilchenfeld, op. cit., p. 83, for the view that the abolition of customs barriers between the occupant and the occupied is a form of de facto annexation and therefore probably illegal.

[16]. UNCTAD, op. cit., p. 118.

[17]. Begg et al., Economics (London: McGraw Hill Book Co., 2nd ed., 1987), pp. 444-445.

[18]. UNCTAD, op. cit., p. 118.

[19]. As with all inefficient tax systems, the taxes which form the biggest part of government revenue are the indirect taxes such as VAT, customs and dues. Since income tax is easier to avoid (by non-declaration of

income), revenue derived from income tax is never as great as revenue from indirect taxes. The exception to this is income tax on company profits which are subject to more or less accurate stock-taking. According to local accountants, 60 percent of West Bank income tax is derived from company profits.

[20]. These included The Salt Tax, 1950, No. 16; Manufacture of Matches Law, 1951, No. 59; Income Tax Law, 1952, No. 27; Tobacco Law 1952, No. 32; Intoxicating Drinks Law, 1953, No. 15; Taxation of Petroleum Products Law, 1960, No. 63; Duties and Taxation Law 1962; Sticker's Law (a British Mandate Law), 1927.

[21]. See Encyclopedia of Jordanian Laws, *passim*, for the text of this law and the laws quoted in the preceding footnote.

[22]. UNCTAD, *op. cit.*, p. 114. In May 1985 the following rates were payable: 20 percent on white soap; 20-30 percent on cosmetics; 20 percent on detergents; 15 percent on paints; 10 percent on glass; IS 1-1.25 on each hide.

[23]. *Ibid.* In 1987 total imports to the Occupied Territories came to \$US 639.1 million: Statistical Abstract of Israel, 1988.

[24]. The definition of late payment is not clear in the Hebrew original. The translation included in the text here is therefore something of a "guesstimate."

[25]. Under Article 67(f) of the 1964 Income Tax Law there is a maximum prison term of six months for fraud; under Article 122 of the 1985 VAT Regulations there is a maximum sentence of three years for intentional evasion of the requirements of the law.

[26]. Exchange rate used: \$US 1 = NIS 1.8. Average payment per car: NIS 913; number of cars: 39,091. Average payment per tractor: NIS 350; number of tractors: 3972. Average payment per bus: NIS 451; number of buses: 614.

Average payment per taxi: NIS 124; number of taxis: 942. Average payment per motorcycle: 197; number of motorcycles: 716. Figures from 1988 Statistical Abstract of Israel.

[27]. See, for example, Hisham Jabr, "Financial Administration of the Israeli-occupied West Bank," in Emma Playfair (ed.), International Law and the Administration of Occupied Territories: the West Bank and Gaza, 1967-1987 (forthcoming).

[28]. Encyclopedia of Jordanian Laws, Vol. III. Six military orders amend the Law for the Collection of Government Monies, 1952, three of which are in a numbered series. The five orders are 113, 135, 195, 1095, 1193, and 1285. In addition several sets of regulations issued pursuant to military orders are relevant, including an important regulation issued on 2 November 1988 under Military Order 113.

Under M.O. 113 (amendment no. 1), ultimate power concerning collection of government monies is given to the Military Area Commander. (Order no. 113 Concerning Amendment of the Law of the Collection of Government Monies, Article 2(a).) M.O. 135 allows the Military Commander to delegate this power to others that he may designate. Order no. 135, Concerning Amendment of the Law for the Collection of Government Monies (Amendment no. 1), Article 1. An unnumbered military order of 10 April 1973 gives concurrent powers to the Head of the Finance Department for the West Bank, the Legal Advisor and the Advisor on Arab Affairs. (Publication Concerning the Structure of Authority and Command (No. 2) (1973).)

[29]. Law for the Collection of Government Monies, Article 5. See also Article 62 of the 1964 Income Tax Law as amended by M.O. 791 and Article 112 of the 1985 VAT Regulations.

[30]. 1952 Law, Article 5.

[31]. Article 6(a) of the 1952 Law.

[32]. Ibid, Article 6(b). M.O. 161 Concerning Interpretation and Additional Instructions (No. 2) (Judea and Samaria), 1967 abolished the use of the Official Gazette; instead adequate alternatives were listed as a) an announcement on the radio, b) publication in the (law) courts, c) publication in the offices of the Area Commander, and d) where an order specifically concerns the population of a particular town or village, publication in the offices of the municipality or "mukhtar."

[33]. Article 6(c) of the 1952 Law.

[34]. Order No. 1095 Concerning Amendment of the Law for the Collection of Government Monies (Amendment No. 2).

[35]. Effectively, M.O. 1095 applies only to movable property and to immovable property subject to income tax, since proof of payment of education and property taxes is required before title to land may pass. See, also, Order No. 1285 Concerning Amendment of the Law for the Collection of Government Monies (Amendment No. 4), issued 12 October 1989.

[36]. Instructions, 1988, Article 3.

[37]. Ibid, Article 4 (b).

[38]. Ibid, Article 4 (a).

[39]. Ibid, Article 11 (b).

[40]. Ibid, Article 18 (a).

[41]. Encyclopedia of Jordanian Laws, Part XIII. This was the last income tax law enacted by the Jordanian government before 1967. Section 3 of the 1964 Law set out the authority to administer income tax as follows:

(1) A Department of Income Tax shall be established, which shall be attached to the Minister of Finance, and for the administration of which a Director, Assistant Directors, Assessing Officers

and such other employees and persons shall be appointed as may be necessary ...

(2) The Director may exercise all the powers vested in the Assessing Officer under this law.

(3) The Director may authorize in writing any Grade 1 income tax official to exercise the powers vested in the Director under this law.

Powers to administer the income tax law were transferred early in the occupation. Under Military Orders 28, 84 and 120 all powers under the 1964 Income Tax Law were given by the West Bank IDF Commander to the 'Person Responsible' who thereby had the power to appoint other officials and cancel appointments of officials, including those appointed by the IDF Commander. The effect of this was to bypass the Jordanian Civil Service Code which regulated such matters in the West Bank prior to 1967. (See Jordanian Civil Service Code, No. 23, 1966, Official Gazette 569, p. 1911.)

Regulations issued between 1964 and 1967 also form part of the law as applicable in the West Bank today (subject to amendment by Israeli military orders) and give detailed guidance as to the application of the law in practical terms. In addition, various decisions of the Jordanian Special Committee for the Explanation of Laws interpret the Jordanian law and are applicable in so far as they were made between 1964 and 1967, subject to amendment by military orders issued by the Civil Administration. (The Jordanian Special Committee for the Explanation of Laws had the right to interpret the text of any law at the behest of the Prime Minister. The pronouncements of the Committee had the force of law. See Article 123 of the Jordanian Constitution.)

The military orders amending the Jordanian income tax law of 1964 are numerous. Of those orders published between 1967 and the time of writing, 45 deal specifically with income tax. Of these, 37 are in a numbered series of amendments to the 1964 Income Tax Law, although the

series appears to start with amendment no. 2. At least nine orders are not in the series of amendments although they do in fact amend the 1964 Law. At least five orders amend the 1964 Law and also make changes in the law of property tax. At least ten sets of regulations are issued under Military Orders and supplement the law of income tax. (See Appendix II.)

The 1964 Law consists of 18 chapters, only eight of which (9 and 11-17 inclusive) are relevant in this report. Chapters 1-8 broadly deal with administrative matters, taxable sources of income, sources exempt from taxation, and deduction of expenses from taxable income. Chapter 10 deals with the system of setting off certain tax payments against others for which the taxpayer is otherwise liable. Chapter 18 deals with the commencement of the act and its repeal.

Chapters 6 and 8 concern personal and family exemptions and rates of tax respectively.

The 1964 Income Tax Law covered income in the form of salaries, wages, profits, dividends, rent, and interest accruing from work, craft, business, profession, or vocation. It excluded agricultural income, interest on public loans, pensions, family and educational allowances, non-profit organisations and bodies benefiting from the Jordanian Investment Encouragement Law.

Of those military orders which amend the Income Tax Law of 1964 the relevant orders for the purpose of assessing the current state of the law concerning the collection of income tax are 770, 1241 and 1257. The key areas of the law in this respect are those concerned with the collection of income tax and penalties for non-compliance with the law.

[42]. See Income Tax Law of the Hashemite Kingdom of Jordan, Law No. 25 of 1964. Translated into English by Advocate George N. Kwar; copy available in Al-Haq files.

[43]. Article 63(a)(1) of the 1964 Law as amended by M.O.

770.

[44]. Ibid.

[45]. Ibid, Article 63(a)(3) and (b).

[46]. Article 63(c) of the 1964 Law.

[47]. No such thing as a "special court" has ever existed in Jordan or the West Bank. Under Article 57 of the 1964 Income Tax Law, appeal lay to "a special court," known as "The Income Tax Court of Appeal." This court ceased to exercise any powers in 1967, i.e., well before M.O. 770 was issued.

[48]. Article 112 of the 1985 Regulations. See Appendix III.

[49]. Article 82(a), as amended, of M.O. 378.

[50]. Ibid, Article 81.

[51]. Ibid, Article 83.

[52]. See opinion prepared by Al-Haq, 24 May 1989. See, also, Order Concerning Collection of Taxes (Enabling Authority)(Temporary Instructions)(Amendment No. 2), issued 13 September 1989.

[53]. There is a penalty of 1 percent per 15 days delay of any other type of payment: Article 61 (d) as amended by M.O. 791.

[54]. Article 61 (A) as amended by M.O. 791. See also Article 61 as amended by M.O. 1266 and 1286.

[55]. Articles 5 and 6, M.O. 1263.

[56]. Ibid.

[57]. See Appendices I and III for details.

[58]. Article 13, M.O. 1263.

[59]. See Appendix VII for a translation of M.O. 1263.

[60]. According to Feilchenfeld, the abolition of customs lines between the country of the occupant and the territory occupied "almost invariably would be an intrinsic measure of complete annexation which a mere occupant has no right to effect." Feilchenfeld, op. cit., p. 83.

[61]. Reproduced in Hisham Jabr, op. cit.

[62]. Jerusalem Post, 15 September 1989.

[63]. Interview with Shimon Mizrahy, Head of the Income Tax Department, Beit El, September 1988.

[64]. Document available at Al-Haq.

[65]. Official Gazette, (hereafter "O.G."), No. 1093, 1952; see also The Law for the Organisation of the Government Public Budget, No. 39, 1962 at O.G., No. 1645, 1962, p. 1214 and amendment in Law No. 53, 1966 at O.G., No. 1940, 1966, p. 1455. A number of "funds" have been created by the military authorities since 1967 including a fund for the development of the economy of the Territories M.O. 103 Concerning Customs Fees, which contains revenue from fees imposed on goods; a fund for the development of the area (M.O. 974 Concerning Fund for the Development of the Area), which contains money confiscated at the points of entry to the Territories as in excess of the legal limits; the "Deduction Fund" which contains money deducted from the wages of Palestinians working in Israel; and the Fund for Agricultural Products (M.O. 1051 Concerning Marketing of Agricultural Products), which is supposed to contain revenue from taxes on merchants to compensate farmers for providing agricultural products to industry. There is no public accountability for any of these funds.

[66]. Sgan-Aluf (Lieutenant Colonel) Dov Shefi, "Taxation in the Administered Territories," Israeli Yearbook of

Human Rights, Volume 1, (1971), p. 293.

[67]. Civil Administration (Judea and Samaria), Annual Report (1985), p. 48.

[68]. Jerusalem Post, 15 September 1989.

[69]. Meron Benvenisti, 1987 Report: Demographic, Economic, Legal, Social and Political Developments in the West Bank (Jerusalem: West Bank Data Base Project, 1987), p. 30.

[70]. UNCTAD, op. cit., p. 101.

[71]. Ibid.

[72]. Meron Benvenisti, op. cit., p. 32. See also 'Atef Alawna, "Israel's Direct and Indirect Benefits from the West Bank and Gaza Strip," al-Katib, (October 1988), p. 63 (in Arabic). The general thrust of Dr. Alawna's conclusions support those of the United Nations. According to Dr. Alawna, revenue from value-added tax accruing from economic activity in the Territories and from imports from abroad, as well as customs on imports, amounted to \$US 309 million in 1986. Revenue from income tax on the wages of Palestinians from the Occupied Territories working both in Israel and in the Territories themselves, bridge-crossing fees and travelling fees amounted to \$US 228 million. Total revenue thus amounted to \$US 537 million. See, also, Research on Human Rights in the Occupied Territories 1979-1983 (Tel Aviv: International Centre for Peace in the Middle East, 1985), pp. 75-77 and 94-95; and Sara Roy, "The Gaza Strip: A Case of Economic De-Development." Journal of Palestinian Studies, Volume XVII, No. 1, Autumn 1987, p. 63.

[73]. See description in Mona Rishmawi, Planning in Whose Interest? Land Use Planning as a Strategy for Judaization (Ramallah: Al-Haq/Law in the Service of Man, 1986).

[74]. Dr. 'Atef 'Alawna, research findings kindly made available prior to publication, October 1989.

[75]. Interview with Shimon Mizrahy, Head of the Income Tax Department, Beit El, September 1988.

[76]. There exists a further limitation on the occupant's right to collect revenue stemming from Article 48 of the Hague Regulations. Under this article, as has been seen, an occupant has the right to levy taxes and a duty to pay for the costs of the Administration out of the revenue collected. Where no such Administration exists or where the costs of such administration are reduced, the need to find revenue to pay for them will be reduced.

Thus, the more autonomous the administration (in the sense of infrastructure) of the Occupied Territories, and the more administrative expenses are covered directly from local sources or from abroad, the less do the Israeli authorities have any legal right to continue to tax the local population since to do so would be to accumulate an illegal surplus of revenue. In the last ten years or so, alternative means of providing basic services have arisen albeit under severe constraints from the authorities. Since the beginning of the current uprising, popular committees have been responsible for a range of services at the local level. These committees were declared illegal on 18 August 1988. In addition money flows from abroad were restricted and aid from groups abroad threatened by an apparent intention to use M.O. 973 to declare foreign sources of aid as hostile. However, the basic change in the direction of greater self-sufficiency critically reduces the right of the Civil Administration to collect taxes, particularly with a view to maintaining a surplus of revenue.

CHAPTER THREE

CHANGES IN THE LOCAL LAW OF TAXATION: INCIDENCE AND ASSESSMENT OF TAXES

A. INTRODUCTION

Article 48 of the Hague Regulations stipulates that if an occupant collects taxes, it shall be done, as far as possible, in accordance with the rules of incidence and assessment in force. As was discussed in Chapter 1, the justification for changing the rules of incidence and assessment may include changes in the economic climate as well as the need to increase revenue. This chapter examines the incidence and assessment of taxes in the West Bank and investigates whether the military government has upheld its obligations under international law.

So far as local law is concerned, under the Jordanian Constitution, "the government must take into consideration, when imposing taxes, the principle of progressive taxation and the realisation of equality and social justice. The government should not impose taxes beyond the ability of the taxpayer to fulfill his obligations." [1].

B. INCIDENCE OF TAX

The principal tax examined here is income tax because the rates of income tax have altered drastically and affect a large number of people. Additionally, brief mention will be made of property taxes and municipal tax.

There are various ways to assess changes in the tax burden in the West Bank. These include comparisons between

the real level of tax in 1967 and the 1988 level; comparisons between the current level in the West Bank and that in Jordan; and comparisons between current tax levels in the West Bank and those prevailing in other Less Developed Countries (LDCs). Such comparisons can be further broken down into assessments of the burden as regards individuals (at the microeconomic level) and as regards the economy as a whole (at a macroeconomic level). With respect to microeconomic changes, this chapter compares the 1967 tax rates to those in effect at present, since this is the most significant comparison from a legal point of view. At a macroeconomic level, the simplest option is to compare the West Bank case with that of similar economies. [2].

1. Income Tax

Chapters 6 and 8 of the 1964 Income Tax Law deal with personal and family exemptions and rates of tax respectively. These provisions have been amended extensively and a full list of the relevant orders is given in Appendix II.

(a) Microeconomic Effects of Changes in Tax Rates and Tax Brackets

The following table compares income tax rates and brackets in 1967 with those issued by the Civil Administration in November 1988 (still applicable as of June 1989) [3]; (the figures in the left hand column refer to the first 400 dinars on which a person paid tax, the next 400 dinars and so on):

1964 rates
and brackets

1988 rates and brackets
and JD equivalent at
NIS 3=JD 1

(Rates and brackets refer to annual chargeable income of self-employed persons)

Brackets	Rate	Brackets	Rate
JD 400	5%	NIS 1600 (JD 533)	5.5%
400	7	1600 (JD 533)	7.7
400	10	1600 (JD 533)	11
400	15	1332 (JD 444)	16.5
400	20	1332 (JD 444)	22
400	25	1332 (JD 444)	27.5
400	30	1332 (JD 444)	33
1200	35	1332 (JD 444)	38.5
2000	40	3996 (JD 1332)	44
3000	45	2220 (JD 2220)	49.5
Total			
Income: JD 9000		NIS 22,116 (JD 7372)	
over JD 9000:		over NIS 22,116: 55%	
50%			

Two preliminary observations may be made. Firstly, the income brackets subject to different rates of tax have altered, and secondly, the rates of tax charged on these brackets have increased by 10 percent. (It should be noted that if an exchange rate of NIS 4 or 5 = JD 1 were used, the effect would be a narrowing of tax brackets.)

The above table illustrates the 1967 and 1989 levels of his/her income above which the (self-employed) tax payer had to pay the top rate of tax. In 1967 the tax payer was not obliged to pay the top rate of tax, namely 50 percent, until his income topped JD 9000 per month. In 1989, as a result of the progressive narrowing of tax brackets, the top rate of tax, namely 55 percent, is paid on all income over NIS 22,116 or roughly JD 7372 (at the rate of JD 1 = NIS 3). However,

in real terms, i.e., at 1968 prices, the level of income over which tax is paid at the top rate is closer to JD 1.5 since prices have increased by a factor of about 5000 since 1967. (See Appendix VI.) Despite the fact that the shekel (the currency in which taxes are paid) has depreciated against the dinar (the currency in which incomes and profits are computed) this has not off-set the effects of inflation. (The effect of this may be inferred from the table at note 36 of this chapter showing the relative tax burdens of wage earners in the West Bank and Israel.)

The following table compares the percentage of tax paid by individuals with incomes of JD 500, 2000, 5000, 8000 and 10,000 per period, using the rates of tax in 1967 and those in 1988. The actual length of the period is not significant - so long as it is the same for both 1967 and 1989 - since the desired comparison is between percentages and not absolute figures:

<u>Income/ period</u>	<u>1967</u>	<u>1988</u>
JD 500	5%	5%
JD 2000	11%	10%
JD 5000	25%	25%
JD 8000	32%	35%
JD 10,000	35%	39%

It is clear that the proportion of income paid as tax has not altered substantially. However, given that inflation has reduced the value of money in the Occupied Territories by a factor of approximately 5000, the proportion of income paid as tax in each of the above examples should have decreased, all other things being equal. The fact that this has not occurred in itself indicates an increase in the tax burden.

This illustration demonstrates the importance of one of the hidden costs of inflation, namely "fiscal drag." Because

governments cannot adjust the various levels at which individuals pay various rates of tax quickly enough to keep pace with inflation, the tax payer pays tax at the same rate on sums of money whose value is constantly diminishing. Thus the tax system becomes progressively out of date until the following budget adjusts rates in line with the cost of living. The problem of fiscal drag affects income tax whether applied to individuals' incomes or company profits. In most countries this problem is dealt with by the simple mechanism of adjusting tax brackets upwards each budget. [4]. However, in the West Bank, no such adjustments have been made in the law, and according to accountants the situation is no better in practice. In a statement dated 20 January 1989, Jamal Saba al-Yousef, a Certified Public Accountant, said:

The Jordanian Income Tax Law No. 25 of 1964 which has been in effect since the 1967 occupation of the West Bank does not address in any way the complexities of inflation and the resulting successive devaluations of the shekel that took place in the last ten years. Accordingly, there was a big dilemma facing accountants and the tax authorities as to how to deal with the issue ... No attempt has been made by the tax authorities to address the inflation issue. [5].

Following the change in the calculation of taxes from Jordanian Dinars to Israeli Shekels in 1973, the effect of the declining purchasing power of the dinar in the West Bank was, in theory, capable of being offset by altering the dinar/shekel exchange rate. [6]. Thus, other things being equal, a fall in the purchasing power of the dinar by 20 percent should be offset by an equivalent change in the exchange rate given that the brackets of tax do not change. However, due to the fact that the exchange rate has tended not to compensate sufficiently for increases in the cost of living, the effects of fiscal drag have remained significant.

(b) Macroeconomic Effects of Changes in Tax Rates and Brackets

What has been the effect of these changes in the real burden of tax on individuals in macroeconomic terms? So far as direct taxes are concerned these amount to between 2-5 percent of GNP in most LDC's. [7]. In the case of the West Bank the proportion is 5.63 percent. [8].

The proportion of the population paying income tax in LDC's is approximately three percent as compared with 60-80 percent in developed economies. [9]. The reason for this is that in LDC's it would be administratively too costly and economically regressive to collect substantial revenues from the poor.

In the West Bank a single person starts paying taxes when (s)he earns NIS 155 per month. In order to estimate what percentage of the population is at least supposedly covered by income tax it is necessary to have an idea of the income distribution of the population. In research conducted by Dr. Abd-al-Fatah Abu Shuker, published in 1987, data concerning the number of families within particular income brackets were collected, together with data showing average family size per bracket. [10]. Dr. Abu Shuker divides income into five brackets: less than JD 100 per month, 101-200, 201-400, 401-600, and over 600. The results indicate the following distribution in a sample of 728 taken from towns, villages and refugee camps in the West Bank [11]:

<u>Earnings per Month (Dinars)</u>	<u>No. of Families</u>	<u>No. of Families as a Percentage of Sample</u>
Less than 100	318	44%
101-200	199	27%
201-400	159	22%
401-600	32	4%
Over 600	20	3%
TOTAL:	<u>728</u>	<u>100%</u>

The table indicates that some 56 percent of families in the West Bank have monthly incomes of JD 101 or more. Even at current exchange rates, a substantial proportion of the remaining 44 percent may be presumed to have monthly incomes over NIS 155. Thus at least 56 percent of income earners are liable to pay income tax as compared with three percent in other countries with similar economies. [12].

The reason for this is, of course, the remarkably low level of income required in order to become liable for income tax in the West Bank. Given current cost of living conditions, NIS 155 - the bottom tax bracket - is about a fifth of the income designated in the above-mentioned report as a subsistence income for a family. It seems clear that the effect of Civil Administration fiscal policy has been an unjust and economically retrogressive regime under which the poor have suffered most.

2. Rural Property Tax

Under the Land Tax Law of 1955 a nominal fee of JD 0.25 was imposed per acre of land planted with fruits or vegetables.

After 1967, the rate of the Land Tax was changed to JD 0.6 per dunam (1000 square metres). The rate stood at JD 2 in 1987. [13].

3. Urban Property Tax [14]

Under Jordanian Tax Laws No. 11 of 1954 and No. 9 of 1967, a property tax was imposed on buildings and land located within city limits at the rate of 17 percent of the net annual rental value of buildings and ten percent of the net annual rental value of land. The tax was collected by the Ministry of Finance of the Central Government on behalf of the Municipalities, and collection charges were deducted. Of the net tax collected, 42 percent was allocated to municipal and village councils as their share of total net collections. The remaining 58 percent went to the government. [15]. The rate has not altered under Israeli occupation.

4. Municipal Taxation: Education Tax

Under Education By-Law No. 1 of 1965, residents of municipal areas were subject to a three percent tax on the estimated rental value of buildings. [16].

Under Military Orders 501, 763 and 821 the rate of tax was raised to five percent and later seven percent, the proceeds of which are credited to the education departments of municipal authorities for the upkeep and construction of school buildings. The rate currently remains at seven percent. [17].

C. ASSESSMENT OF TAX

Again, the key changes that have occurred concern the assessment of income tax. The relevant military orders amending the 1964 Income Tax law with respect to assessment of income tax are M.O.s 406, 509, 533, 770, 924, 1174, 1176, 1185, 1257, 1266, and 1286.

1. Procedure for Deduction of Income Tax at Source

Under the 1964 Law, deduction of tax includes: tax payable on dividends, payable to company shareholders; tax payable on salaries, wages and pensions of employees and ex-employees; and tax payable on interest due on a mortgage to a person not resident in the West Bank (see Articles 26-29 of the 1964 law). [18]. Following an appeal, any amount found owing by the Court had to be paid within 30 days of the assessee receiving a notice of tax due from him. [19]. Under current Israeli military legislation, however, any amount owed shall be paid within seven days of an agreed assessment or court decision. [20].

2. Payment of Tax on Income Other Than Income Derived from Employment

(a) Taxpayer's Duty to Complete a Return

Under the 1964 law, payment of tax on income derived from, for example, self-employment in a business was made annually and in arrears. Thus under Article 35 (2) of the 1964 law, the tax payer was obliged to:

submit to the office of the Assessing Officer in his district, not later than the first day of June each year, a return, in the prescribed form, giving the required particulars and showing the amount of his chargeable income and the tax due from him.

This situation has been radically altered by the provisions of Military Orders 770 and 1185. Payment of tax is now made in monthly instalments based on the assessed income of the taxpayer in the previous year, irrespective of his income in the current year. Each instalment is equivalent to ten percent of the tax as it was finally assessed on the previous year's income (i.e., the amount which was not challenged or, if challenged, finally assessed by the Objections Committee, whichever is the greater) [21], and is payable on the tenth day of every month during the period February - November [22], the tax year being from 1 January - 31 December. [23].

These amounts and dates are different if a 'group of persons' is concerned. [24].

Under Article 10 of M.O. 1185, if the Assessing Officer is convinced by reason of the need to preserve order, he may make special regulations concerning how assessments are to be made with regard to making payments, and advance payments, and forming lists of income tax due.

(b) Appeals

Under Article 56 of the 1964 Law:

(1) The Assessing Officer shall arrange for the serving on every person whose name appears in the assessment register, either personally or by registered post, of a notice addressed to his usual place of residence or his place of business, indicating the amount of his chargeable income and the amount of tax due from him, and informing him of his rights under the next sub-section.

(2) Where any person wishes to object to the assessment in respect of which he has been served with a notice under the last preceding sub-section of this section, he may serve a written notice or objection to the Assessing Officer requesting him to review and revise the tax assessed ...

Under Article 59 of the 1964 law, payment had to be made within 30 days of the date of assessment. Under Israeli military legislation, this period has been reduced to 15 days. [25].

Under the Regulation Concerning Payment of Assessed Tax No. 14 (1965); pending resolution of an appeal against any assessment made under the 1964 law, the tax debtor was obliged to pay 50 percent of the amount as assessed or estimated (on account). This was payable in two instalments, the first of which fell due within 30 days of the final notice of payment or of the date of the appeal. The second was due

three months after the first.

Under the law as amended by Israeli military legislation, any amount which is not disputed should be paid within 15 days of assessment, pending an appeal. [26]. This provision would appear to apply to tax deducted at source as well.

Following a final decision by the Court, the tax payer had 30 days to pay the outstanding debts. [27]. Under Israeli military orders, the tax payer has 15 days. [28].

(c) The System of Taxation Courts

Perhaps the most significant change in assessment procedures has been in the forum of appeal itself. Under Article 57 of the 1964 Law, appeals against tax assessments lay to an "Income Tax Court of Appeal" at first instance; the Court dealt exclusively with matters of taxation and was to consider all income tax appeals as matters of urgency. Thereafter, appeal lay to the supreme court of appeal, the Court of Cassation in Amman. The composition of the Income Tax Court of Appeal included a Presiding Judge whose rank was not less than Grade 2 and two other judges whose rank was not less than Grade 4. [29].

Following the occupation of the West Bank and Gaza Strip in 1967, appeal to the Court of Cassation was terminated in so far as residents of the Occupied Territories were concerned. [30]. Subsequently, under M.O. 109, all powers of the Income Tax Appeal Court were transferred to the Ramallah District Court presided over by a single judge. [31]. Finally, by virtue of M.O. 406 (1970) all appeals concerning income tax were to be heard by the Objections Committee established under M.O. 172 in 1967. [32].

The Objections Committee not only does not specialise in income tax matters, it does not even restrict itself to matters of taxation in general since it deals with a total of at least 28 matters of different kinds. It is composed of military officers whose job is to examine complaints against the military authorities. [33]. Additionally, it only has powers

to make recommendations to the Area Commander, not to take final decisions. (See Appendix V.) By contrast, the Income Tax Court of Appeal had the power to confirm, reduce, increase or set aside an assessment. [34].

(d) Tax Liability of Income Earned by Israeli Citizens and Companies in the West Bank

Israeli citizens earning income in the West Bank pay no income tax to the Civil Administration. Rather, under an amendment to the Israel Income Tax Ordinance of 1978, they have paid taxes directly to the government of Israel. Prior to this amendment Israeli citizens paid no income tax whatsoever on income earned in the West Bank.

Israeli companies registered in Israel but operating in the West Bank through branches pay corporation taxes according to Israeli law directly to the government of Israel. Companies registered in the West Bank (which number roughly 300) pay income tax and VAT to the Civil Administration. [35].

The result of this system is that neither Israeli citizens working in the West Bank nor Israeli companies registered in Israel but operating in the West Bank make any tax contributions to the maintenance of services in the West Bank. Rather the benefit of their economic activities accrues to the government of Israel. At the same time, the construction of roads and other capital expenditures primarily designed for the benefit of these same Israeli citizens and companies are financed by revenues collected from Palestinian taxpayers and supplemented by Israeli companies registered in the West Bank.

This extension of Israeli law into the occupied West Bank constitutes a substantial alteration of the local law of taxation wholly unjustified by reasons of security or the interests of the local (Palestinian) inhabitants. In addition, it represents a further outflow of funds from the West Bank to the Israeli government which should be taken into account when assessing the need to change the law of income tax in

order to increase the Civil Administration's revenue.

D. SUMMARY OF CHANGES RELATING TO INCIDENCE AND ASSESSMENT; CONCLUSIONS

The principal changes relating to incidence and assessment concern the 1964 Income Tax Law. These changes must be measured against the rules contained in Article 48 of the Hague Regulations which state that if the occupant collects taxes it should "as far as possible" do so in accordance with the rules of incidence and assessment in force. Situations which would justify a departure from the system in force include general economic factors.

The main changes that have occurred in the law of taxation relating to incidence and assessment comprise:

1. Incidence

Taxation on the individual has increased greatly since 1967. This is due to a ten percent increase in tax rates compounded by the drastic narrowing of brackets. Thus, a person earning an income of JD 1000 per month paid 6.8 percent of his income in income tax in 1967; in 1989 he paid 38.7 percent.

The effect of inflation has lowered the level of income over which a taxpayer pays the top rate of tax in 1967 prices, to JD 0.16. In 1967 this sum was JD 9000. Adjustment of exchange rates between the shekel (in which tax has been paid since 1973) and the dinar (the currency of most people's wages in the West Bank) have not compensated for this.

At a macroeconomic level, the excessive burden of tax on the individual, particularly at the lower income levels, has been matched by increasing the number of those caught in the income tax net. Income tax constitutes 5.63 percent of GNP. This is higher than the top of the range for most LDC economies which range between two and five percent.

2. Assessment

(a) Prior to 1967, the structure of appeal courts as regards tax matters comprised an 'Income Tax Court of Appeal' and the supreme court, the Court of Cassation.

In 1967 and then in 1970, these courts were abolished and replaced with an 'Objections Committee' which was only invested with power to make recommendations to the IDF Area Commander.

(b) Prior to 1967, income tax other than that deducted at source was assessed annually and in arrears.

In 1978, such assessments were made monthly and based on the income tax assessed the previous year, irrespective of the current year's income.

(c) Prior to 1967, in an appeal to the Income Tax Court of Appeal, 50 percent of the amount assessed or estimated on account pending resolution of the Court was payable in two instalments, 30 days from the final notice of payment and then three months later.

In 1978, any amount not disputed had to be paid within 15 days of the date of assessment. This applies whether the tax is deductible at source or not.

(d) Prior to 1967, tax not deductible at source which was finally determined by the Court was payable within 30 days of the decision of the Court.

In 1981, the period for paying such tax was reduced to 15 days.

(e) Prior to 1967, following settlement of a preliminary objection against an assessment of the Assessing Officer (of tax deductible at source) to the tax department, the tax payer had 30 days to pay.

In 1986 this period was reduced to seven days.

(f) Israeli citizens and Israeli companies registered in Israel but operating in the West Bank have effectively been exempted from the assessment of tax under the 1964 Jordanian Law.

3. Conclusions

In the areas of incidence and assessment, several key changes have occurred in the law of income tax. These have not occurred as a result of the current uprising. Rather (and with the exception of the system of tax courts) they were introduced gradually in the late 1970's and early 1980's. As regards assessment, the changes essentially affect two main areas: firstly, the rights of the tax payer in appealing against assessments, and, secondly, the Jordanian principle that income tax should be payable on the current year's income and not on an estimate of the current year's income based on the previous year's income.

With respect to the incidence of taxation it is clear that the burden of income tax on individuals has increased substantially, especially at the lower levels of income. This becomes especially striking when the effects of inflation are taken into account. Such a fiscal policy does not appear to be justified by economic considerations since, as was discussed above, taxation policies which attempt to extract maximum revenue from the lower income ranges in the context of LDC economies are generally regarded as retrogressive from a developmental point of view. Nor could it be argued that the increase in the burden of taxes was necessitated by a lack of revenue since the basic principle discussed above (that changes not be made in the system of taxation where a surplus exists) also applies to the incidence of tax. [36].

The changes effected by the Israeli authorities in the incidence and assessment of taxes contravene Article 48 of the Hague Regulations. Neither the dismantling of the system of appeal courts, nor the radical change in the periods for which tax is assessed, nor the drastic increase in the burden of tax can be justified by changing economic circumstances

or security needs. In fact the reverse is perhaps more likely, namely, that a fair system of appeal and equitable methods of assessing taxation reduce the incentive to evade payments and therefore serve both the security interests of the occupant and the economic interests of the local inhabitants.

Nor have the Israeli authorities respected the fiscal principles of equality and social justice contained in local law, or the requirement that citizens should not be taxed beyond their ability to pay. The fact that these principles are set out in the fundamental instrument of local law, the Jordanian Constitution, makes their abandonment all the more grave.

NOTES TO CHAPTER 3

[1]. Article 111 of the Jordanian Constitution.

[2]. Article 48 of the Hague Regulations does not specify whether the incidence of taxation refers to the burden on individuals or the proportion of, for example, the gross national product (GNP) of the occupied territory. The point is significant since with changes in the distribution of income among the population of the occupied territory, simply maintaining rates and brackets of tax as they were at the beginning of the occupation may result in significant macroeconomic changes. Thus, where changes in either rates or brackets of tax significantly alter the burden on individuals this should at least be counter-balanced by the maintenance of the ratio of revenues to GNP.

However, as a result of the lack of statistics relating to the ratio of revenue to GNP in 1967, it is not possible to judge accurately to what extent the present ratio of revenues to GNP represents a macroeconomic change. The best that can be done is to compare tax revenue as a proportion of GNP in the West Bank today with the proportion in a) Jordan today, and b) other LDC's today. The significance of the former is that had the West Bank remained part of Jordan, then, all other things being equal, the ratio of tax revenue to GNP would, today, be the same in Jordan and the West Bank. On the other hand, the extent to which the Jordanian economy has been supported in the last two decades by money from the Arab oil-producing states makes a comparison of the ratio of tax to GNP in present day Jordan with that in the West Bank today of limited value.

G.N.P. per capita in the West Bank and Gaza Strip (combined average) in 1983 was \$US 687 per annum as

compared with \$US 1640 in Jordan at the same time (current prices): see Yusif A. Sayigh, "Dispossession and Pauperisation: The Palestinian Economy Under Occupation," in George T. Abed (ed.), The Palestinian Economy, Studies in Development Under Prolonged Occupation (London: Routledge, 1988), p. 275. See also Antoine Mansour, "The West Bank Economy: 1948-1984," *ibid*, p. 82. See also Jerusalem Post, 2 February 1989, for estimates of the annual sums of money accruing to Jordan since the Arab League summit in Baghdad, in 1978.

Thus the most meaningful comparison at a macroeconomic level is between the average ratio of revenue to GNP among LDC's with that of the West Bank, in order to obtain at least circumstantial evidence relating to the macroeconomic significance of Israeli taxation practices in the West Bank.

The author would like to acknowledge the assistance of Drs. Samir Abdullah and 'Atef Alawna from al-Najah National University, Nablus, in contributing to his understanding of the technical economic matters discussed in this chapter. Any remaining errors in the text remain, of course, the sole responsibility of the author.

[3]. Income Tax Law of the Hashemite Kingdom of Jordan No. 25, 1964, Article 24; Civil Administration (Judea and Samaria), Deduction of Income tax from Salaries and Wages, Judea and Samaria, November 1988. Exchange rates constantly fluctuated during 1988 and 1989 and have been very unstable. The rate chosen here is not meant to be exact. Rather it is an approximation of the average rate as it was in 1988-1989.

[4]. David Begg, Stanley Fischer and Rudiger Dornbusch, Economics (London: McGraw Hill, 1987), p. 609. It should be noted that a thorough examination of changes in the incidence of taxation would consider the extent to which the increased burden of tax paid by employers on behalf of employees had in fact been passed on in the form of lower wages. Unfortunately the statistical research required to make such an assessment renders this impossi-

ble in this report.

[5]. Document available in Al-Haq.

[6]. The exchange rate used by the tax authorities differs substantially from the exchange rate used by local money changers. Until the devaluation of the dinar in 1988/9, the official NIS/JD rate was always lower than the rate offered in the markets. For example, if the rate was NIS 5 = JD 1 in the markets, the rate might be NIS 3.5 = JD 1 vis-a-vis tax payments. However, since the dinar's value plunged in October 1988, the official rate has in fact been somewhat higher than the market rate. See Jerusalem Post, 10 February 1989 concerning the flotation of the dinar. See also M.O. 1274 fixing the value of the Jordanian dinar at NIS 4.5 = JD 1.

[7]. Michael P. Todaro, Economic Development in the Third World (New York and London: Longman, 3rd ed., reprinted in 1986), p. 509.

[8]. 1986 GNP = \$US 1,473,849,000 (\$US 1 = NIS 1.50003). Revenue from income tax on Palestinian workers in Israel and the Occupied Territories, in 1986, is estimated at \$US 83 million.

[9]. Todaro, op. cit., p. 510.

[10]. Dr 'Abd-al-Fatah Abu Shuker, The Social Structure and Nature of Income Distribution in the West Bank and Gaza Strip (Nablus: 1987). (In Arabic.)

[11]. Ibid., p. 61.

[12]. Agricultural workers are exempt from income tax. However, according to the 1988 Statistical Abstract of Israel, 36, 000 persons out of a total of 177, 600 employed in the West Bank (about 20 percent of the total) worked in agriculture. Since figures for wages of employees indicate that those working in agriculture have the lowest wages, these 20 percent are almost certainly all within the 44 percent of families with incomes less than

JD 100 per month.

[13]. United Nations Conference on Trade and Development, The Palestinian Financial Sector Under Israeli Occupation, UNCTAD/ST/SEU/3, 8 July 1987, pp. 107 and 115.

[14]. There is a case for classifying the urban property tax as a local tax given that part of the revenue collected is distributed to municipalities. However, over half the revenue accrues to the central government and for that reason it is discussed here as a central government tax.

[15]. UNCTAD, The Palestinian Financial Sector, pp. 107 and 113.

[16]. Ibid, p 115. Other local taxes include taxes on crafts and industry, a fire service tax, and a garbage tax.

[17]. Ibid As discussed in Chapter 1, an occupant does not have the right to collect taxes that were previously collected by local bodies or by the central government for later distribution at the local level. In the West Bank nearly all municipal councils are currently appointed by the military authorities. Thus it can be argued that they are effectively branches of the central military government and not local authorities. Technically, therefore, the appointed local authorities are barred by international law from collecting the education tax and more than 58 percent of the urban property tax. Even if Jordanian municipal bodies themselves were effectively centrally controlled, that would not in itself affect the nature of the taxes they collect, since if the revenue from those taxes was intended for eventual redistribution at the regional, district, county, or community levels, they remain 'local' for the purposes of the Occupant.

However, the problem is not susceptible to a clear-cut solution. The definition of a 'local body' remains difficult. Unresolved questions include: How important is it that officials be elected? What is the alternative to

what may effectively be centrally collected and administered municipal taxes if services are to be provided? The only technical solution is to have properly elected municipalities. Yet, the experience of 1981-1982, when elected mayors and municipal councils were summarily dismissed and replaced by appointed officials, has shown this to be an unlikely development.

[18]. In this part of the report it is only intended to deal with the second of these, namely deductions from the salaries, wages and pensions of employees and ex-employees.

[19]. See Article 3 of the Regulations Governing Payment for Income Tax Due, No. 14 (1965).

[20]. See M.O. 1174 Concerning Amendment of the Law of Income Tax.

[21]. Ibid, Article 59(d) as amended by M.O.s 770 and 1185.

[22]. Ibid, Article 59(a) as amended by M.O. 770.

[23]. Ibid, Article 59(a) as amended by M.O.s 770 and 1185.

[24]. Article 59(b) as amended by M.O. 770.

[25]. Article 60(A) as amended by M.O. 770. The system of payments in advance introduced in the West Bank is also used in Israel and other countries. However, in the West Bank there are certain distinguishing features which make the operation of the system particularly unjust. These include the fact that payments are indexed to an average shekel/dinar exchange rate, the result of which is that payments in the West Bank are inevitably higher than those in Israel (in similar cases) since the exchange rate tends to depreciate faster than the cost of living appreciates. This problem affects payment of other taxes in the West Bank also. Another negative feature of the system is that it restricts the availability of savings

for investment: instead, savings are used for tax payments. See further in UNCTAD, The Palestinian Financial Sector, p. 111.

[26]. Ibid.

[27]. Article 63 of the 1964 Law.

[28]. M.O. 924 Concerning Amendment of the Law of Income Tax.

[29]. Interview with Advocate Fouad Shehadeh, June 1989. Before 1967, judges were ranked on a scale of 1-10 reflecting their seniority. Thus a magistrate could only be appointed from among those who were of Grade 6 seniority or above; an Appeal Court judge could only be appointed from those of Grade 2 seniority or above. Beyond Grade 1 there was another scale for the most senior judges.

[30]. M.O. 39 Concerning Extension of the Regional Jurisdiction of the Court, 1967 and M.O. 412 Concerning Local Courts, 1970. See discussion in R. Shehadeh and J. Kuttab, The West Bank and the Rule of law (Ramallah: International Commission of Jurists, 1980), pp. 18-20.

[31]. Article 2, M.O. 109 Concerning Income Tax Appeals.

[32]. Article 2, M.O. 406 Concerning Income Tax Appeals.

[33]. The system of military courts appears to violate the principle of natural justice known as nemo iudex in causa sua (no one shall be a judge in his own cause). The principle has two aspects: that an adjudicator shall "not have a proprietary or financial interest" in proceedings over which he presides, and secondly, that "he must not be reasonably suspected, or show a real likelihood, of bias." Stanley de Smith, Constitutional and Administrative Law (Middlesex: Penguin Books, Fifth Edition, (eds.) Harry Street and Rodney Brazier), p. 583.

[34]. Article 57 (5) of the 1964 Law.

[35]. Interview with Shimon Mizrahy, Head of the Income Tax Department of the Civil Administration, Beit El, September 1988. See also UNCTAD, The Palestinian Financial Sector, p. 113.

[36]. A recent article by Sidney J. Baxendale, entitled "Taxation of Income in Israel and the West Bank: A Comparative Study," Journal of Palestine Studies, Volume XVIII, No. 3 (Spring 1989), gives a convincing picture of the relative income tax burdens of Israelis and West Bank Palestinians. Using a rate of NIS 4.6=JD 1 (current in January 1988) a West Bank Palestinian reaches the top Israeli income tax rate of 48 percent with an annual taxable income of NIS 24,064; by contrast, a wage earner in the State of Israel does not reach the top rate of 48 percent until annual taxable income exceeds NIS 45,000. Baxendale also points out that were certain provisions of the Jordanian Income Tax Law to be enforced, the tax burden would be even greater. In particular the provision that a wife's income be counted as her husband's income, and the provision that the net annual rental value of buildings and property be considered taxable income are not enforced.

Baxendale summarises his findings with respect to wage earners as follows:

Income Taxes as a Percentage of Annual Gross Wage

Annual Gross Wage	Israeli Wage	West Bank
Wage	Earner	Earner
NIS 12,000	5.8%	13.0%
NIS 24,000	18.3%	28.5%
NIS 36,000	26.3%	36.9%
NIS 48,000	31.1%	41.4%
NIS 60,000	34.1%	45.0%

The burden of income tax in Israel is considerably

higher than in the United States. As compared with European countries, Israel's tax rates are relatively unremarkable. See Israel Economist, December 1988, p. 17.

As regards business owners, it is not possible to draw clear conclusions as to the burden of income tax in Israel relative to that in the West Bank.

CHAPTER FOUR

PRACTICE DURING THE UPRISING

A. INTRODUCTION

Since almost the beginning of the current uprising in the Occupied Territories the Israeli authorities have been confronted with a widespread tax revolt. [1]. The reasons for this boycott have been articulated on different occasions. [2]. Most recently, the residents of Beit Sahour issued a statement explaining why they refused to pay their taxes. The statement asked:

Why do we not pay taxes? First the military authority does not represent us, and we did not invite them to come to our land ... no taxation without representation. Second, the collected taxes are used to increase the harsh measures against our people. Must we pay for the bullets that kill our children? Or for the growing number of prisons? Or for the expenses of the occupying army? [3].

In response to the position articulated by the residents of Beit Sahour, the authorities launched an all-out campaign of tax raids on the town, declaring it a closed military area for many weeks. During this, the whole gamut of violations encountered during tax raids elsewhere in the Territories, occurred in Beit Sahour. As well as the specific incidents of violence etc., detailed below, the case of Beit Sahour was notable for the fact that, throughout the period of raids, the authorities were acting under military orders issued during the raids, but only published afterwards. (See discussion of M.O.s 1285 and 1287 in Chapter 2.) Effectively, therefore, the authorities were acting under secret laws, while human rights

organizations like Al-Haq, as well as local lawyers, were advising clients on the basis of outdated law.

Clearly, the tax revolt has had an effect on the revenue of the military government. How this is calculated depends on how revenue as a whole is calculated. As we have seen, the authorities have a narrow definition of how revenues are to be assessed. Thus, according to the authorities, total revenue expected in the year 1 January 1988 - 31 December 1988 for the West Bank alone was NIS 220-250 million (or roughly \$US 110-125 million); this figure included an estimated NIS 50 million (roughly \$US 25 million) in income tax and a further NIS 50 million in VAT. Around April 1988, this expected total revenue was revised downwards to NIS 180 million (roughly \$US 90 million) [4], principally because "collection of receipts, which had been gradually dropping since January of ... [1988], had ground to a complete halt by March." [5].

However, when all revenue accruing to the authorities from the Territories is accounted for, including that payable by Palestinians on imports and on income earned in Israel, it is clear that official estimates of the fall-off in revenue do not even come near to eliminating the existing surplus. While imports into the Territories from abroad have declined as a result of the uprising, the main cause of this decline has been the specific boycott of Israeli products in particular, rather than a general boycott on all imported products. This conclusion is borne out by the fact that although purchases of Israeli products in the Territories declined by an estimated 30 percent in 1988, imports into Israel (which includes imports on their way to the Territories) remained stable. As for the number of Palestinians working in Israel, this declined by no more than about 20 percent during 1988. [6]. Thus even if the surplus calculated by Benvenisti for 1986 fell by a generous third, this would leave the authorities with roughly a \$US 53 million tax revenue surplus, enough to cover their own officially calculated estimate of the fall-off in revenue for 1988 amply. [7].

Despite this, a drop in revenue caused by the tax revolt has been used by the authorities to justify both cut-

backs in services and a range of new collection procedures. Many of the latter procedures are unsupported by specific military legislation and thus have not been discussed in the preceding chapters. Therefore, in order to complete the examination of official claims that the authorities act in accordance with international (and indeed local) law, it is necessary to review the day-to-day reality of Israeli tax policies in the West Bank.

B. CUTTING SERVICES

During the uprising, a variety of services have been reduced or terminated in their entirety. For example, on 15 April 1988, the military authorities announced that the 8000-9000 teachers in government schools would receive only half their salary for that month, and thereafter would be given an "unpaid vacation" until schools were to reopen. On 23 May 1988, schools were reopened. [8]. By 21 July 1988, all schools were again closed, and remained so until 19 December 1988. On 20 January 1989, schools were closed again until their phased reopening over the period 22 July - 30 August 1989. [9]. According to Al-Haq's information, roughly NIS 40 million were spent on salaries by the Civil Administration in 1987, a large portion of which was spent on teachers' salaries. [10]. Thus, a reduction in teachers' salaries can be assumed to have been a significant factor in the prolonged closure of schools.

In July 1988, the Civil Administration announced that 1000 Civil Administration officials would be laid off, including workers in government hospitals. [11]. According to the Head of the Income Tax Department of the Civil Administration, other capital items such as new telephone lines, roads, etc., were to be dropped from the Civil Administration's plans for the foreseeable future in an attempt to save money. [12].

According to a report published by the Israeli State Comptroller, as reported in the Jerusalem Post on 29 May 1989,

The decline in Civil Administration tax revenues

during the intifada led to budget cuts and a reduction in health and welfare services to Palestinians. Yet the Civil Administration had no idea what effect such a reduction would have on the attitude of Palestinians to the Civil Administration and on their links to it [13].

The effect has been quite clear and was indeed entirely predictable on the basis of the reasons for the tax revolt first articulated by the Unified National Leadership of the Uprising. Since the boycott of taxes was prompted, inter alia, by a lack of services, it was not likely that further cuts would lead to a weakening of the boycott.

To what extent do these reductions conform with international law? Under Article 43 of the Hague Regulations, an occupant has the absolute duty to restore, and ensure, as far as possible, public order and safety. However, as Von Glahn has pointed out:

As long as one of the major obligations of a belligerent occupant is to restore and maintain order and public safety in an occupied territory, it would appear to be only fair that the beneficiaries of such activities pay for their cost. If ... national taxes ... are insufficient to pay for the administration of the occupied territory, then the burden of funding falls on the occupant ... [14].

In the case of the Occupied Territories the problem is not that the local inhabitants have not paid enough to cover services: the existence of a surplus proves this. Rather, the authorities have not invested all revenue collected. The obligation to restore and maintain la vie publique is absolute. Certain rights such as the right to education and the right to medical services, are also absolute. [15]. The implication of these legal rights is that sufficient funds must be invested to ensure them. If, after the surplus accruing to the authorities has been spent for its legitimate purpose, there is still a lack of funds, then the absolute duty to ensure public order and safety logically necessitates the transfer of funds from the occupant to the occupied territory.

Until all revenue collected is invested in the Territories, and until certain absolute human rights are ensured - whether through revenue collected from the Territories, or from Israeli tax payers - there is no legal justification at all for the cutbacks in services introduced during the uprising.

C. ASSESSMENT AND COLLECTION OF TAXES IN PRACTICE

The second response of the authorities to the tax boycott has been to employ increasingly aggressive methods of tax assessment and collection. The following survey is by no means exhaustive of the many procedures employed. However, they are representative of the more common types of incidents that have occurred in connection with the assessment and collection of tax. The cases below have been documented by Al-Haq in the form of sworn affidavits, questionnaires and/or interviews. Case studies are intended to give the reader as real an impression of tax collection in the West Bank as possible.

1. Arbitrary and Excessive Assessment: Article 86 of the 1985 VAT Regulations

One of the most common practices during the uprising has been the abuse by the 'Person Responsible' of his powers of discretion under Article 86 of the illegal VAT Regulations of 1985. Under this article, the Person Responsible has the right to determine the VAT payable by a person in the event that no periodic return has been filed. The assessment of the Person Responsible is not subject to appeal. However, generally, the tax debtor is given 30 days to submit a periodic return, in the event of which the assessment of the Person Responsible lapses and a proper assessment must be made. This is then subject to the rules concerning contestation and appeal in Articles 93 and 94 of the Regulations. If no returns are filed within the 30 days, then the estimated assessment of the Person Responsible will stand.

Both before and during the uprising, for the reasons

discussed in Chapter 2, West Bank Palestinians have often refused to comply with the book-keeping requirements of the VAT law. This practice has continued during the uprising and has included a refusal to submit returns of any sort. Although failure to keep books correctly has always occurred on a wide scale in the Occupied Territories, the authorities have clearly used this failure during the uprising to demand wholly unrealistic sums of money from individuals.

A couple of examples will suffice to illustrate the operation of Article 86. Mr. Tamimi (real name withheld from publication) runs a small garage in Ramallah. He has always paid his taxes. In April 1989, the authorities sent him demands for VAT for two consecutive months amounting to NIS 1,560 and NIS 2,080 respectively. The average tax he had paid for the previous ten months was NIS 80. Thus the amount that Mr. Tamimi was asked to pay for the second month was 26 times the usual amount. The reason for the authorities' use of Article 86 was that Mr. Tamini had failed to submit periodic returns. However, the authorities themselves confiscated his books shortly after he finished paying off his previous tax bills. In effect, the tax authorities had deprived him of the means of filing his returns, and then, on the basis that he had not done so, 'assessed' his tax under Article 86. [17].

In the case of 'Afif Mohammed Saleh, a blacksmith from the village of Silwad, near Ramallah, the authorities made an assessment, on the basis of Article 86, of NIS 30,000 and set a limit of 30 days for payment of the sum or presentation of returns. Between 1976 and 1986 'Afif Saleh's main source of income was a car (model: Opel) that he operated as a taxi. Subsequently he started work as a blacksmith. Since 1988 the workshop has been closed. Even allowing for the assessment of tax as far back as 1984 (under Article 89), it seems most unlikely that such a sum could possibly reflect a reasonable assessment of tax owing. [18].

Even where individuals have submitted their account books or have had them seized by the authorities, they have been subject to very large assessments relative to what they have normally paid in the past, even allowing for the addition

of fines, interest and inflation. For example, Nichola Michael Saleh Qanawati, 41, owner of the Three Arches company in Bethlehem, stopped paying taxes in March 1988. In November 1988 he was assessed for the period March-November 1988 at a rate of NIS 800 per month. In January 1989 he was assessed at NIS 250,000 for the previous nine months, i.e., an average of almost NIS 30,000 per month, or nearly 40 times the previous amounts he was asked to pay. [19].

2. Collection of Tax

The following practices are characteristic of the collection procedures employed by the authorities during the present uprising, and demonstrate a willingness to employ aggressive means that often amount to (illegal) measures of collective punishment in order to combat the tax revolt.

(a) Intimidation

Under new Instructions issued during the uprising, the appointed tax collection officer is authorised to "overcome all resistance" and to break into buildings and property "by force" to obtain goods and equipment belonging to the tax debtor. [20]. As the following examples show, "resistance" and "force" have been broadly interpreted by tax collection officers. It should be emphasised that similarly documented cases of intimidation and violence have occurred on a very wide scale throughout the uprising.

Cases # 4 and 5 below also bring out another fairly common feature of tax raids during the uprising: the fact that they may occur in the middle of the night. Under Article 8(f) of the 1952 Law for the Collection of Government Monies, the Collection Officer may be authorised to enter premises by force if necessary. Instructions to this effect were indeed issued in 1988. (See Appendix 1.) However, under Article 8 (f) of the 1952 Law, it is stipulated that forcible entry of property should occur only during the day. Yet, under military law, customs and VAT officials have military powers to search premises at any time. Total disregard for

the humanitarian safeguards in the 1952 Law, exhibited both by amendments to the law and practice, means that tax raids have frequently occurred in the middle of the night, terrorising families as a result.

Case # 1

At 9:00 a.m., on 19 September 1989, soldiers arrived at the shop of Mr. George Beshara Mas'ad, a resident of Beit Sahour. They arrested his son, Beshara, and informed him that he would remain in their custody until his father paid his taxes. At 2:30 p.m., a group of approximately fifty soldiers went to Mr. George Mas'ad's house. Finding themselves unable to force their way indoors, the soldiers went upstairs to the house of his brother, Mr. Elias Beshara Mas'ad, where they were let in by the latter's mother and wife. When Mr. Mas'ad's mother, Mrs. Regina Hannouna, a woman in her late 60's, protested that this was not George's house but rather that of his brother Elias, she was shoved to the ground by a soldier. She immediately suffered what her doctor later described as a stress-induced "heart blockage." When Elias' wife attempted to call a doctor, a soldier ripped the telephone cord out of the wall. Both women were subsequently locked into a room by the soldiers while sofas, carpets, a stereo, a television and a guitar were removed from the house. A military doctor was finally called by a soldier. He stated that Regina Hannouna had suffered a minor heart attack, yet he failed to call an ambulance. Only after the soldiers had left was Elias' wife able to summon an ambulance. Regina Hannouna was immediately admitted to the intensive-care unit of al-Maqassed Islamic Charitable Hospital in East Jerusalem. [21].

Case # 2

At approximately 8:30 a.m., on 21 September 1989, Mr. Nasir Muti' Jabr Abu-'Aita and his father, Muti', were standing outside the building in Beit Sahour where Nasir lives. A large group of soldiers and tax officials arrived. Nasir and his father were taken to the ground floor of the building and beaten and kicked while being asked questions such as "where is your factory?" and "where is your sewing shop?" They were

then arrested, handcuffed and blindfolded, and taken to the temporary military installation in Beit Sahour. Once there, they were again kicked and beaten, this time with clubs and pieces of hosepipe, and ordered to pay their taxes. Nasir was then taken back to his house to collect the keys to his shop, a video store which has been out of operation since 1984. When Nasir asked that he not be taken to his house because the sight of his swollen eyes would cause problems when the neighbours saw him, the soldier accompanying him replied: "We want problems!"

Meanwhile, back at Nasir's house, soldiers were removing possessions. When his mother protested that the television did not belong to them, she was sprayed in the face with a noxious substance from an aerosol can by an official dressed in civilian clothes. She was then hit hard in the face by a tax official and collapsed onto the sofa, where she was subsequently pummelled by three soldiers and tax officials using rifle butts. At one point one of them was heard to say: "She isn't dead yet!" A tax official then put the end of his revolver into her mouth. When the wives of Nasir and his brother Ayman attempted to intervene, the soldiers shoved them onto the sofa and beat them. The mother subsequently required hospitalisation.

Nasir and his brother Ayman were taken to the video store. Stones were thrown at the soldiers and tax officials accompanying them. Every time a stone was thrown, Ayman was beaten by a soldier. Some 90 minutes later both brothers were taken back to the military encampment. There they were shown a large club and told that it had been found in the shop and that Nasir stood accused of beating a soldier with it. When Nasir protested his innocence, his brother was accused. When Ayman denied the charge as well, the charge was transferred to his father. A soldier was brought in, introduced as the one who had been assaulted with the club, and was asked if the father was indeed the man responsible for the offence. The soldier affirmed that he was. [22].

Case # 3

On 21 July 1989, Mr. Mahmoud (real name withheld

from publication), a 63-year-old resident of al-Bireh, went to the tax office in the neighbouring town of Ramallah. It was 5:45 a.m. The purpose of the visit was to obtain the "bara'at thimah," a certificate proving he had paid his taxes, did not have a record with the authorities, and so forth; Mr. Mahmoud needed this as a prerequisite to changing his car licence plate (a revenue-raising measure recently introduced by the military authorities: see discussion in Chapter 2 on 'Special Payment on Vehicles'). By around 7:30 a.m., there were about 400 people outside the tax office. At approximately 8:30 a.m., a soldier began calling people in. Lots of people pushed forward in order to hear their names better. The soldier tried to push them away but couldn't. Six other soldiers then came out. One took out a gun and fastened a ten cm cylinder to it. He took aim at people's legs. An old woman was standing in front of him. The soldier then fired a "sound bomb," a device which makes a deafening noise similar to an exploding bomb. The canister hit the woman's leg. The other soldiers fired three more sound bombs causing widespread panic and a mass rush away from the tax office. [23].

This incident occurred after Mr. Mahmoud had spent some three weeks going from one Civil Administration office to another to obtain stamps from the various tax and administrative offices, usually queuing for long periods. This image of an appalling bureaucratic gauntlet culminating in the treatment described above conveys, better than most, the ordinary daily life of Palestinians in the Territories, tax boycotters or not.

Case # 4

At 2:45 a.m., on Wednesday, 24 May 1989, Adnan Mohayedin Abd-al-Latif al-Sheikh Qasem, 29, a carpenter and resident of al-Am'ari camp, was asleep in his home with his wife and children. He was awoken by the sound of banging on the door. For about two minutes he stayed in bed out of fear. Four soldiers burst into the room. One of them grabbed him by the vest and pulled him off the bed. He asked to put his pyjamas on. His request was refused. The soldiers began to hit him in the groin. They continued to kick and punch him for about five minutes. The soldiers then took Mr.

Qasem to his brother's room and pushed him so hard that he broke the wardrobe. By then there were about 30 soldiers in the house picking up furniture and utensils and throwing them about. The soldiers asked Mr. Qasem about a neighbour, Nader Ibrahim 'Anabi. He denied any knowledge of him. Again he was kicked about the pelvis and beaten with a club on the head and forearms. The soldiers left. At about 5:30 a.m., another group of six soldiers came to the house. Mr. Qasem was ordered to go to the local school. There were some 150 people sitting on the ground, their heads bowed and hands bound. People were being divided up into groups. There were three officials dressed in civilian clothes whom Mr. Qasem recognised as officials from the customs and VAT department of the Civil Administration. Mr. Qasem was then taken to the Ramallah tax office. He was told to pay NIS 2900 in taxes and a NIS 1000 fine. His identity papers were confiscated and he was told to return daily to the office to renew his temporary pass. He returned the following day where he was questioned by a man named "Jad'oun." Mr. Qasem said he did not have the means to pay the taxes. He was slapped several times in the face by "Jad'oun" and ordered to leave. [24].

Case # 5

The case of Shuqba village is also typical. At 2:30 a.m., on 13 June 1989, it was raided by approximately 200 soldiers in 15 military cars, two military buses, two bulldozers and three tax department vehicles. A curfew was announced at about 4 a.m. and everyone over the age of 16 was told to go to the Shuqba Preparatory School for Boys. Meanwhile, houses were searched, property overturned and foods mixed together. About 400 people were gathered together. Identity cards were taken from all of them. Car owners were told to bring their vehicles to the school. Cars were seized for a period of 2-3 days and then returned. About 20 people were taken to the tax office in Ramallah and given 2-3 days to pay their taxes. They were given receipts for their identity cards valid for one day. The soldiers left the village at around 12:00 noon. [25].

(b) Pressure on Third Parties

A common occurrence during the uprising has been the penalisation of third parties for the non-payment of taxes by their relatives, friends, employers, or fellow villagers. Such practices are among the most strikingly lawless patterns of collecting taxes in the West Bank, although they are by no means exceptional and show no signs of abating.

The basis for the penalisation of taxpayers in this way consists of a combination of illegal military regulations and orders. Under Article 119 of the 1985 VAT Regulations (as amended), in cases where a company is controlled by a maximum of five persons, certain members of the families of those five persons are regarded as being in control of the company. Thus, in the case of a son whose father has not fulfilled his tax obligations, the combination of M.O. 1262 and Article 119 of the 1985 VAT Regulations permits the authorities to prevent the son from obtaining any of the licences listed in the first schedule to M.O. 1262. [26].

Both M.O. 1262 and the 1985 VAT Regulations are entirely new measures of taxation introduced by the Israeli authorities, and are illegal under international law. There is no sound basis for the practice of holding third parties accountable under international law.

Case # 1

On 13 February 1989, Nabil Qassis Issa Khalil, a Bir Zeit University lecturer, went to the Bethlehem Car Registration Office in order to change his licence plates in accordance with the requirements of the recently issued M.O. 1249 Concerning Special Payment on Vehicles, (See discussion in Chapter 2 above.) After paying NIS 30 for a new plate and a NIS 812 'Special Payment,' Mr. Qassis was told that he would not be given a new plate until his father provided the tax authorities with various documents concerning sales in the travel agency he runs. This was despite the fact that Mr. Qassis has no material interest of any kind in his father's business. Mr. Qassis' car was nominally attached but he was given permission to drive it. [27].

Case # 2

At about 9:00 a.m., on 16 May 1989, Adnan Wissam Abd-al-Aziz Abdullah, 19, a student from the village of 'Ein Yabroud near Ramallah, was arrested near his house. He was taken to the local secondary boys' school with a large number of other villagers. After his identity card had been confiscated, he was put in a military bus with some 50 others and taken to the military base in Ramallah. At about 5:00 p.m. that evening, he was summoned to the office of a "Captain Adam." "Captain Adam" told Mr. Abdullah that his father owed tax on his shop and that he should pay it. Mr. Abdullah replied that his father was not in the country. "Captain Adam" replied that in that case Mr. Abdullah would have to pay the tax himself. Mr. Abdullah was then cursed and punched twice in the stomach. He was then given a receipt instead of his regular identity card. The receipt was valid till 8:00 a.m. the following day. Mr. Abdullah was therefore forced to return to the Civil Administration office in Ramallah the next day. He waited until 3:00 p.m. He was finally summoned to "Captain Adam's" office. He was asked if he was now prepared to pay his father's taxes. Mr. Abdullah said that he had not paid his father's taxes. "Captain Adam" replied that Mr. Abdullah would not be able to obtain any permits etc. from the military government until he paid. Mr. Abdullah's temporary identity papers were renewed for another 24 hours, thus forcing him to return the next day.

This situation continued until 21 May 1989. That day, there was a general strike called by the "Unified Leadership" and consequently no transportation. Mr. Abdullah therefore had to walk seven kilometres to Ramallah where he waited from 8:00 a.m. to 4:00 p.m. He was then summoned to "Captain Adam's" office, where he was blindfolded and had his hands bound with plastic handcuffs. He was taken in a car to the Ramallah tax office. After an interview with a tax officer who told him to pay his father's taxes, Mr. Abdullah was given another temporary identity pass valid for four days. He did not return to the Civil Administration again. Mr. Abdullah's case was taken up by Al-Haq and the Association for Civil Rights in Israel (ACRI). His case was one of several presented in an application to the High Court for the return

of confiscated identity cards. Mr. Abdullah's identity card was returned and he has not been held responsible for his father's taxes since then. [28].

(c) Confiscation of Identity Cards

On 26 June 1989, a group of lawyers from ACRI, in Jerusalem presented a petition to the Israeli High Court asking the Commander of the Israel Defence Forces and the Head of Civil Administration in the West Bank to show reason why, *inter alia*, the identity cards of seven petitioners should not be returned to them following their confiscation. [29]. The petitioners argued that under Article 4 of the Order Regarding Identity Cards and Registration of Population (Judea and Samaria) (No. 297), 1969, every resident of the West Bank over the age of 16 years is obliged to carry an identity card. A resident not carrying an identity card commits a criminal offence under Article 21 of M.O. 297 and is liable to one year's imprisonment. The petitioners further argued that there is no legal authority permitting the confiscation of identity cards and that consequently the administrative confiscation of identity cards is forbidden. (The fact that a recent order, M.O. 1262, actually specified certain licences and permits that were conditional on payment of taxes further indicated that all other licences, etc. (including identity cards), were not so tied.)

On 6 July 1989, the Court (presided over by the President of the Supreme Court, Meir Shamgar) delivered its judgement. [30]. The Court rejected the petition on the grounds that a new military order (M.O. 1276) had been issued clarifying the conditions under which identity cards might be confiscated. Specifically, the Court relied on a statement submitted by the State Attorney on 23 June 1989. According to that statement, two circumstances existed in which a confiscation might be legal: first to facilitate an order to remove obstacles (such as road blocks) or slogans [31]; second, to ensure the attendance of a person wanted by the military authorities. [32]. Concerning taking identity cards to pressure tax debtors, the statement of the Attorney General was quite specific:

When the identity card is removed in order to ensure presentation, the card will be returned immediately (emphasis in original) upon presentation, and its return will not be made conditional upon the performance of any further action whatsoever, such as payment of tax, or anything similar. [33].

Despite the lack of a legal basis for taking identity cards from tax defaulters, this has been a widespread characteristic of the tax authorities' behaviour during the uprising. Some of the cases mentioned above illustrate this practice. Al-Haq has documented many other examples of which the following are a small sample:

Case # 1

On 9 June 1988, Ramallah and al-Bireh traders were ordered by the head of the Ramallah Chamber of Commerce to go to the Civil Administration. There, officials confiscated the identity cards of some of the merchants for non-payment of taxes. [34].

Case # 2

On 19 July 1988, soldiers surrounded the town of Ya'abad in the Jenin area from 3.00 a.m. until the evening of the same day. All car owners were ordered to go to a local school. Owners' identity cards were confiscated and they were ordered to pay their taxes. [35].

Case # 3

In early August 1989, the house of Kamal Abu Sahida, a resident of Beit Sahour, was raided at about midnight. He was arrested and taken to the military headquarters in Bethlehem. He underwent six days of interrogation concerning tax matters. On or about 1 September 1989, Mr. Sahida had his identity card confiscated. For the next 20 days he was forced to return to the military headquarters in Bethlehem to obtain 24-hour passes. [36].

(d) First-Time Assessments of Tax Without Warning

A particularly harsh practice since the beginning of the current uprising has been the imposition of taxes for the first time on sources of income or wealth without prior warning. [37]. Most significant has been the harassment of olive press owners during the 1988 olive harvest.

During 1988, the Israeli authorities took steps to prevent the harvesting of crops, fruit and vegetables in villages perceived by the authorities to be sources of disturbance and unrest. On 22 September 1988, Amram Mitzna, then Central Area Commander, was quoted as saying:

We will not permit a situation in which villages or areas riot ... and then be able to act as though nothing had happened. This was the policy during the plum harvest and during the grape harvest. It will also be in effect during the olive harvest. [38].

Various measures were taken by the authorities to thwart the olive harvest, among them the imposition of very high taxes on olive presses. The tax imposed was for the most part VAT. It was the first time most of the olive presses had ever been assessed for tax. If olives are not pressed within several weeks after harvesting, the oil rapidly sours and becomes unusable. Despite this, or perhaps because of it, press owners were given tax demands just prior to or during the critical period when olives must be pressed. When press owners explained that they were unable to pay the sums required, presses were frequently welded shut or the keys confiscated.

Case

According to Farhan Husni Abdallah Suleiman, 37, a farmer and resident of Bal'a village, near Tulkarem, at about 4:30 a.m. on Sunday 11 October, 1988, around 20 military vehicles arrived in the village. The vehicles included a bus full of troops and a bulldozer. Soldiers spread out into the streets and declared a curfew through loudspeakers "until further notice." At 7 a.m. that day, a 'Major Fares' from

the military government at Tulkarem came to Mr. Suleiman's house and ordered his father, through a loudspeaker affixed to the front of the army vehicle, to come out of the house. He informed his father orally not to operate his olive-pressing machine or else he would order it to be destroyed by bulldozers. Then the officer ordered Mr. Suleiman to accompany him to the houses of the owners of the three other pressing machines in the village. On the way, soldiers were ordering people not to harvest the olives. Other press owners were similarly ordered not to use their presses, including Rushdi Khalil Abu Khadra, Muhammad Fayyad 'Ammawi and their partners. On the third day of the curfew (13 October 1988) a force of about ten soldiers and an officer came to Mr. Suleiman's house and asked him to hand over the keys to the pressing machine and repeated the order banning him and his father from operating it. At about 11 a.m. on 15 October 1988, while the curfew was still in force on the village, "Major Fares" and a VAT official called "Hamza" came to Mr. Suleiman's house and asked him and his father to accompany them to the secondary boys' school. In the school were dozens of other villagers, including owners of pressing machines, owners of tailoring workshops, shop owners, farm owners and olive merchants, together with tax officials and dozens of soldiers and army officers. They asked everybody to hand in their identity cards. Then tax officials began imposing taxes. Each person was called individually and given bills to be paid at the post office bank that same day under threat that the curfew would continue and people be prevented from collecting their olives. Mr. Suleiman and his father paid NIS 2600 as a down-payment. Other pressing machine owners and tailoring workshops had to pay between NIS 2500 and NIS 3850 as a down-payment too. Those who were not able to pay the amount did not receive back their identity cards. The next day, the curfew, which lasted six days, was lifted. However, Mr. Suleiman's pressing machine was closed down for ten days because the authorities refused to give him the keys in spite of the fact that he had paid the amount demanded. Eventually Mr. Suleiman broke the locks and put the machine to work. [39].

The above case also illustrates another very common aspect of tax collection, namely the imposition of curfews.

The authority to impose curfews is contained in Article 89 of the Order Concerning Safety Regulations (M.O. 378), 1970. However these powers are not among those granted to tax officials in the VAT, customs and excise department by M.O. 309. On 28 September 1988, Al-Haq wrote to the Legal Advisor to the military government requesting to know the legal basis for the imposition of curfews. The Legal Advisor, in a letter dated 24 October 1988, denied that curfews are ever used for the purpose of tax collection.

(e) M.O. 1262

M.O. 1262, which allows the issue of permits and licences for a range of activities to be made dependent on full payment of all outstanding taxes and fines, has been used extensively since it was introduced in 1988. The following examples illustrate the effect of M.O. 1262 on businesses. It should be noted that M.O. 1262 is also commonly used to block applications for travel permits, driving licences, etc.

Case # 1

On 1 March 1989, the Civil Administration wrote a letter to 'Omar Mahmoud Darwish of the Darwish Tourism Agency in Ramallah, stating that he should obtain clearance from, inter alia, the VAT and income tax departments in the Civil Administration before attempting to renew his licence for the period 1989/1990. In another letter, reference no. 89/367, the Judea and Samaria Tourism Authority sent him a letter demanding a guarantee of NIS 39,450 as a condition for the 1989/90 licence. [40].

Case # 2

Similarly, the Civil Administration wrote to accountants in Ramallah stating that under the terms of M.O. 1262, they should obtain proof of payment of all taxes before applying to renew their licences for 1989. [41].

D. SUMMARY AND CONCLUSIONS

The boycott of taxes during the current uprising began as a reaction to the authorities' methods of raising revenue during the past 22 years and the realisation that insufficient services were being provided in return. Although the boycott was not the first to have occurred (protest and demonstrations greeted the introduction of VAT in 1976), the current boycott has been of a broader and more sustained nature.

The response of the authorities has been to slash investment in capital and current items of expenditure and to engage in the campaign of tax collection described in this chapter. Both the cuts in services and many of the methods of tax collection have been in clear breach of international law. During the uprising, military legislation has moved to keep up with practice but not fast enough. Thus, although new orders have been issued, for example, explicitly sanctioning the use of force in tax collection, no military law yet sanctions the random physical attacks on the relatives of tax debtors, often old and weak, that occur all too regularly.

However, the distinction between acts which are explicitly covered by military orders and those practices which occur de facto but without explicit legal basis, should not be allowed to obscure the fact that all measures taken by the military are susceptible to judgement under international law. Simply because a particular practice is outlawed by the Israeli High Court does not mean it will cease to be used in villages and camps beyond the purview of the courts. The fact that confiscation of identity cards is illegal under military law has made little if any difference in practice. Still less does the presence in local Jordanian law of certain guarantees necessarily mean protection of individuals in practice. The fundamental provision of the Jordanian Constitution that a state shall not collect more revenue than it needs is a prime example.

Therefore the amendments to the local law as well as the day-to-day practice of the authorities must ultimately be assessed not according to local law but international law since international law - by the authorities' own admission

[42] - is the ultimate legal yardstick during an occupation. Thus, in addition to the illegal amendments to the law introduced by the Israeli military authorities (discussed in Chapters 2 and 3) must now be added the findings of this chapter.

NOTES TO CHAPTER 4

[1]. This is not the first time residents of the Territories have protested the tax policies of the authorities. See Ann Mosely Lesch, Political Perceptions of the Palestinians on the West Bank and the Gaza Strip (Washington: The Middle East Institute, 1980), p. 81.

[2]. See, for example, Leaflets nos. 6 and 14 issued by the Unified National Leadership of the Uprising. These leaflets have regularly appeared on the streets since the beginning of the uprising and set out the goals and tasks of the uprising every two weeks or so.

[3]. "A Call from Beit Sahour," delivered at a press conference in Beit Sahour on 26 September 1989.

[4]. Interview with Shimon Mizrahy, Head of Income Tax Department, Civil Administration, Beit El, September 1988.

[5]. The Israel Economist (May 1988), p. 12. The fall in revenue accruing to the authorities has been a result of three factors: the refusal to pay taxes on a widespread basis; the fall in taxable income and turnover of individuals and companies; and the disruption of the tax collection capabilities of the authorities due to the resignation of Palestinian civil servants from Beit El and personnel at the eight regional tax collection offices in the West Bank:

(i) Refusal to Pay Taxes

From February 1988, non-payment of taxes has formed an important part of the attempt by the labour force in the West Bank and Gaza Strip to weaken the

dependence of the Palestinian infrastructure on the control and direction of the Israeli Civil Administration. In a more general sense it has represented a refusal to cooperate with the Israeli authorities at any level.

The extent to which the tax strike has been supported is difficult to gauge since the political consequences of both payment and non-payment of taxes restrict open discussion of the subject. There is also a problem of definition since, according to local accountants in Nablus, the vast majority of people neither withhold nor pay taxes in full; rather, account books and tax forms are completed but using figures which underestimate the tax payable.

(ii) Fall in Taxable Income and Turnover

The second reason for the fall in revenue is the general economic boycott of Israel in the areas of trade and employment, together with the commercial strike which have substantially reduced the income of merchants and businesses (especially those dealing in non-necessities) and made it even harder than before to meet tax bills.

(iii) Resignation of Tax Officials

Thirdly, in March 1988 most of the Palestinians among the 60 or so employees in the tax department of the West Bank, together with those working in Gaza, resigned, thus reducing the technical capacity of the authorities to deal with already severe problems of collection.

[6]. See Central Bureau of Statistics figures published in the Jerusalem Post, 30 December 1988. See also the figures announced by the Ministry of Industry and Trade as reported in the Jerusalem Post, 21 December 1988.

[7]. See Chapter 2 for further details of the budget.

[8]. See Punishing a Nation (Ramallah: Al-Haq, 1988), Chapter 8.

[9]. On 22 July 1989, primary schools and 12th grade pupils were allowed back to school.

[10]. Interview with Shimon Mizrahy, Head of Income Tax Department, Civil Administration, Beit El, September 1988.

[11]. Jerusalem Post, 7 August 1988.

[12]. Interview with Shimon Mizrahy, Head of Income Tax Department, Civil Administration, Beit El, September 1988.

[13]. Jerusalem Post, 29 May 1989.

[14]. Gerhard von Glahn, "Taxation Under Belligerent Occupation", in Emma Playfair (ed.) International Law and Administration of Occupied Territory: the West Bank and Gaza 1967-1987 (forthcoming), p. 20 (unpublished version).

[15]. See chapters on health and education in Al-Haq, Punishing a Nation.

[16]. See discussion of VAT in Chapter 2 above.

[17]. Case documented by author.

[18]. Case documented by author.

[19]. Al-Haq affidavit no. 1596.

[20]. Article 4 of Instructions Concerning Collection of Government Monies, 1988. See Appendix I.

[21]. Case documented by the author.

[22]. Case documented by Al-Haq and published in Al-Haq document, "Representation to State Signatories of the Fourth Geneva Convention - Israeli Tax Policies in the West Bank: The Case of Beit Sahour" (27 September 1989).

[23]. Al-Haq affidavit no. 1902 (2 July 1989).

[24]. Al-Haq affidavit no. 1837 (27 May 1989).

[25]. Al-Haq fieldwork report. Many other examples of intimidation, of varying degrees of severity, have been documented by Al-Haq. For example the following extract is taken from an affidavit taken on 5 December 1988. (Al-Haq affidavit no. 1324.) The affiant asked that his name be withheld from publication for fear of reprisal from the authorities. The incident described took place during a tax raid on his village at the time of the 1988 olive harvest.

On Thursday 10 November 1988 at 2:15 p.m., while I and some other workers were present at an olive pressing machine which belongs to shareholders of the village of [name withheld], and while we were working on extracting oil from what was left of the olives, five Israeli army vehicles stopped and the soldiers in them got out and surrounded the location of the pressing machine. When I attempted to walk out I was stopped by a soldier - later I realised that he was a Captain as that is what the other soldiers called him. The Captain slapped me on the face without saying anything. He asked for my identity card then put his hand in my pocket and took it out.

Abdul-Majid Abdullah Ueidah, 20, a school porter and a resident of Silwan village in the district of Jerusalem, stated in a sworn affidavit taken by Al-Haq (no. 1570) (20 January 1989), as follows:

On 12 January 1989 at about 2 p.m., while Silwan was under curfew, a number of police and tax officials raided our house. They asked where our TV set was. When I showed them the TV set, they asked if I had paid my tax. When I said no, they asked me why. I replied that I hadn't received the form. The policemen began to swear at us in the house, and one of them hit me in the face.

They took the colour TV set with them. It costs about NIS 800. When I went to check with the TV tax office on Jaffa Road, I was told that if I didn't pay a tax of NIS 1400 before the 9th of February, then the TV set would be sold on auction.

[26]. See discussion of M.O. 1262 in Chapter 2 above.

[27]. Case documented by author.

[28]. Al-Haq affidavit no. 1864 (10 June 1989), and interview with author.

[29]. Copy of petition available at Al-Haq.

[30]. HCJ 278/89.

[31]. Articles 88(b) and 91(a) of the Order Regarding Security Instructions (Removal of Obstacles and Erasure of Slogans).

[32]. Ibid, Article 73(a).

[33]. Under M.O. 543, as amended by M.O. 1257 (Amendment no. 35) (Accounting Rules) issued 18 September 1988, the Head of the Civil Administration has the right to issue regulations obliging tax collectors to demand personal details and information relating to the ID cards of tax debtors. No provision is made for the seizure of the ID card of a tax debtor.

[34]. Al-Haq questionnaire.

[35]. Al-Haq questionnaire.

[36]. Documented by author.

[37]. In the Jerusalem area a tax was imposed on televisions in the towns of Silwan and Issawiya (among others) in January 1989. (See Al-Haq affidavit no. 1571.) Similarly property tax has been more widely imposed than

previously.

[38]. George Moffett, Christian Science Monitor, 27 September 1988.

[39]. Al-Haq affidavit no. 1466, 9 November 1988.

[40]. Document available at Al-Haq.

[41]. Document available at Al-Haq.

[42]. See discussion of Abu Ita et al., in Chapter 1.

CONCLUSION

In many countries, including Israel, international law may not be justiciable in courts unless incorporated by a separate law passed by the legislature of that country, and even then may only be binding in so far as it does not contradict another pre-existing law. [1]. Thus, although something may be declared illegal under international law, it may at the same time be legal under the laws of the particular state in question.

At the risk of unnecessary repetition, it is worth summarising again the difference between these systems and the legal framework applicable in territories under occupation. The only legal guidelines that are relevant in territories under occupation are those set out in international law. In the case of the Israeli-occupied territories these comprise both the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, as well as certain provisions of human rights law. The key provision in these laws is that expressed in Article 43 of the Hague Regulations, namely that an occupant should act on the basis of the local laws in force with a view to ensuring and restoring, as far as possible, "public order and safety." [2]. These laws may be amended, if absolutely necessary, in order to achieve these goals. Local laws are thus the means by which international law facilitates the task of the occupant in restoring and ensuring public order and safety.

With respect to taxation, Article 43 remains the basic article. In addition, a certain gloss is placed upon Article 43 by Article 48. This states, firstly, that if taxes are collected they should be used to defray the expenses of the administration of the Occupied Territories and, secondly, that so far as incidence and assessment of tax are concerned, the local law may be altered - in order to ensure public order and safety - on slightly less stringent conditions than those imposed by

Article 43 for other amendments.

On the basis of the wording of the Hague Regulations, together with other sources of international law, it is possible to summarise the occupant's licence to raise revenue as follows: an occupant may raise revenue in the form of taxes on two conditions. Firstly, all revenue collected must return to the territory occupied for the administration of that territory. Secondly, the administration of the tax system must be in accordance with international law.

As stated in the introduction to this report, the Israeli authorities maintain that taxes are collected in the Occupied Territories in accordance with international law. It is now clear, having examined the law and practice of taxation in the West Bank, that these claims are without foundation. The two conditions limiting the right of the authorities to raise revenues from the local inhabitants of the West Bank have been violated on a consistent and widespread basis.

The authorities maintain that the local law has been amended by military orders in accordance with international law, and that these orders permit the practices outlined in this report. However, many of the orders discussed in this report quite clearly abuse the "security needs" and "welfare of the local population" arguments used to justify their introduction. As such, the mere fact that certain tax collection practices comply with these orders (for example, giving full military powers to VAT officials and allowing assessment of VAT on third parties) is wholly irrelevant. They remain illegal under the only relevant yardstick, namely international law. In addition, it is clear that many practices, such as physical intimidation of third parties and attachment of their property for non-payment of a relative's income tax, while not covered by military orders, are very widespread. Finally, some practices are specifically outlawed by military orders and rulings of the High Court, such as confiscation of identity cards for non-payment of taxes. These orders and rulings are often entirely ineffective in practical terms: confiscation of identity cards for non-payment of taxes, for example, continues to be a widespread phenomenon in the West Bank.

What consequences follow from these conclusions? As stated in Chapter 1 of this report, acts which are illegal under the Hague Regulations are also ultra vires (literally, "beyond the powers"). The executive and legislative licence in Article 43 is restricted by conditions in Article 43 itself, as well as by conditions contained in other articles - Article 48 in the case of taxation. If these conditions are substantive and go to the root of the licence in Article 43, then if violated they have the effect of rendering the licence as a whole null and void. If they are procedural in nature but inextricably bound up with the licence itself, then if violated they again render the licence null and void. However, if they are merely peripheral to the licence they cannot have this effect.

Have the Israeli authorities violated the conditions on which their licence to raise revenue stands? And if so, has this occurred in such a way as to render their attempts to raise revenue null and void? This question is best approached in stages. The first and most important condition attached to the licence to collect taxes, namely that all revenue should return to the Territories, has been substantively violated. As discussed in Chapter 2 of this report, the overwhelming weight of evidence indicates that the authorities collect a substantial surplus every year from the Territories in the form of VAT and customs on imports and income tax on Palestinians from the Territories working in Israel. One response might be for the residents of the Territories to pay only a percentage of their taxes. However this is unrealistic given the lack of sufficiently precise information concerning revenue. Since breach of the condition concerning revenue goes to the very root of the licence to collect taxes, and since it cannot be corrected by partial payment of taxes, it follows that all further attempts to collect taxes from the local inhabitants of the Territories are null and void.

The second condition - that collection of taxes should be in accordance with the law - has also been violated in certain substantive respects. Most important of these are the fiscal provisions enshrined in the Jordanian Constitution which have been ignored by the military authorities. These are that a) the budget should be a public affair, encoded in a

law and, as such, available to the public in published form; b) the state should not collect more revenue than is required for the needs of the state; c) taxes should be imposed in accordance with the principles of justice and equality and should not exceed the tax payer's ability to pay.

As was discussed in Chapter 2 above, the budget is not encoded in a law which is available to the public. Repeated attempts to obtain copies of the budget by members of the public in the West Bank have been met with either no response at all or a blank refusal on the grounds that it is a "security matter." The fact that this situation has gone unremedied for 22 years adds to its gravity. The basic precept that the state should not collect more than it requires has been violated by the accumulation of a surplus. Finally, the drastic increase in income tax rates on the poorer sections of society, the arbitrary and excessive assessments, the abolition of all due process in the form of independent tax appeal courts, the increase in administrative fines and other measures, the penalisation of key economic sectors such as the olive pressing sector, as well as the linkage of tax payments to permits for businesses etc. (often belonging to third parties), contradict the precepts of justice and equality referred to in the Constitution.

In addition, the practice of confiscating identity cards to enforce payment of taxes, the terrorisation and violence directed against unarmed civilians, often in the middle of the night, together with the practice of attaching the property of third parties are so serious, and so widespread that, although perhaps more procedural than substantive, it is not possible to ignore them and maintain that they are not part and parcel of the methods used by the authorities to raise revenue. Consequently, they also have the effect in and of themselves of rendering the authorities' attempts to raise revenue null and void.

However, the fact that the authorities have lost the right to raise revenue from the inhabitants of the West Bank does not affect their duty to maintain public order and safety. The duty remains an absolute one. Instead, so long as the extraction of revenue from the inhabitants of the West Bank

continues to be null and void, the obligation to provide sufficient funds to carry out this duty and to safeguard certain absolute human rights in the Territories must be met from elsewhere. The most obvious alternative is the Israeli taxpayer. [3].

As for the international community, it should now be clear that the measures taken by the authorities against tax boycotters in the Territories are wholly unjustified. These measures cannot be regarded as legitimate debt recovery exercises: rather they constitute breaches of international law. As such they demand close monitoring by the international community and concrete measures to afford international protection of their human rights to the Palestinian inhabitants of the Territories.

NOTES TO CONCLUSION

[1]. See discussion in Ian Brownlie, Principles of International Law (Oxford: Clarendon Press, 3rd ed., reprinted in 1982), pp. 36-38.

[2]. See discussion in Chapter 1.

[3]. See Gerhard von Glahn, "Taxation Under Belligerent Occupation," in Emma Playfair (ed.), International Law and Administration of Occupied Territory: the West Bank and Gaza, 1967-1987 (forthcoming), p. 21 of unpublished version. See also Chapter 1 above.

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APPENDIX I

OUTLINE OF THE LAW OF ASSESSMENT AND COLLECTION OF INCOME TAX IN THE WEST BANK (AS AMENDED)

(See Chapter 2 of this report for an explanation of the relationship between local and military income tax laws)

A. DEDUCTION OF TAX AT SOURCE FROM SALARIES AND WAGES

1. Income Tax Must Be Deducted Monthly

The person responsible for deducting income tax from employees' salaries (for example a company manager, inhouse accountant or whoever is regularly responsible for the payment of salaries and wages to a group of employees) must send an account of deductions to the Assessing Officer (i.e., an employee authorised by the head of the Income Tax Department at Beit El) before the 14th day of each month or such other day as the Assessing Officer may approve (Article 5 of Regulation no. 16, 1965); the period within which payment must be made may be extended at the discretion of the Assessing Officer. (See Article 61(b) of the 1964 Law as amended by M.O. 924.)

2. Failure to Deduct Income Tax Correctly or At All

Under Article 29(a)(a) of the 1964 Law (as amended by M.O. 1174), if the deduction is not made or not made accurately, the Assessing Officer has the right to make an assessment himself. (See also Article 29(a)(b) as amended by M.O. 1174.)

Failure to comply with the above requirements renders the person responsible for payment liable personally as a debtor to the military government (Article 28(3) of the 1964 Law) unless the person responsible for deducting tax and for submitting payments to the Assessing Officer acts on behalf of a company in which case the company is liable to repay the debt. The fact that the company becomes the direct debtor in this latter case does not prevent the Assessing Officer from recovering the tax from the person responsible for payments under provisions of the law discussed below. (Article 28(3) of the 1964 Law.)

3. Assessing Officer's Right of Inspection

The Assessing Officer (or any other public officer authorised by him) has the right to enter the premises of any employer and inspect books, records, or any other documents relating to deduction of taxes from salaries, wages or pensions. The Assessing Officer also has the right to question the employer or any employee if he deems it necessary to ensure compliance with the requirement of deducting tax from salaries, wages and pensions. (Article 28(3) of the 1964 Law.) Any person so questioned must "afford every facility," i.e., do everything reasonably possible, to permit the examination or investigation in question. They must also answer truthfully and fully every question put to them. (Article 28(5) of the 1964 Law.)

The Assessing Officer's rights in the above respects are without prejudice to any other rights he has under other provisions of the law. (Article 28(4) of the 1964 Law.)

Decisions of the Assessing Officer may be appealed according to Article 57 of the 1964 Law. (See Article 29(b)(b) of the 1964 Law as amended by M.O. 1174.) However any amount owing shall be paid within seven days of an agreed assessment or of a decision of the court. (See M.O. 1174.)

Having made the deductions, the person responsible must give to the person from whose income tax has been deducted a certificate showing the total income from which

tax has been deducted and the amount of tax itself. This should be done not later than the end of March in the year of assessment. (Article 6, Regulations No. 16.)

B. Payment of Tax on Income Other than Income Derived from Employment

1. Taxpayer's Duty to Complete a Return and Power of the Assessing Officer to Enter Premises for the Purposes of Assessment

(a) Payment by Instalments

Payment of tax on income other than that earned through employment is by way of instalments paid in advance of any final assessment. Each instalment is equivalent to ten percent of the tax as it was finally assessed on the previous year's income (i.e., the amount which was not challenged or, if challenged has been finally assessed by the Objections Committee, whichever is the greater: Article 59(d) of the 1964 Law as amended by M.O.s 770 and 1185), and is payable on the tenth day of every month during the period February-November inclusive. (Article 59(a) of the 1964 Law as amended by M.O. 770.) The tax year is from 1 January - 31 December (See Article 59(a) of the 1964 Law as amended by M.O.s 770 and 1185.)

(b) Final Assessment

The taxpayer has a duty to submit a return showing income, etc., not later than 1 March. (See Article 35 of the 1964 Law as amended by M.O. 1185.) With the return, the taxpayer should send money corresponding to the tax specified in the return. (Article 60 of the 1964 Law as amended by M.O. 770.)

The Assessing Officer may exempt a person from all or part of the payments made on account if the taxpayer proves to the satisfaction of the Assessing Officer that the tax payable for the current financial year is less than the tax as assessed on the previous year. However no exemption may be

made in the event that accounts have not been completed. (Article 59 (f)(b)(1) of the 1964 Law as amended by M.O. 770.)

(c) Assessing Officer's Powers of Inspection

As is the case with salaries, wages and pensions (see above), the Assessing Officer has certain rights which he may exercise in order to ascertain the taxable income of a person derived from a business, for example. The Officer may do the following:

- * send a written notice to a person requiring the preparation and submission by that person, within a reasonable period of time, of information pertaining to any of the matters which the taxpayer is obliged to divulge under the 1964 Law; the notice may also require that the person concerned produce books of account, documents, returns, or any other documents which the Assessing Officer deems to be necessary. (See Article 37(1) of the 1964 Law.)

- * enter the place of business, provided that he has been authorised to do so by the Person Responsible (emphasis added), and inspect the goods in stock, cash, equipment, machinery, books of account, records and other documents relating to the business, and may require explanations in connection with them to ensure compliance with the law. (See Article 37(2) of the 1964 Law.) [The "Person Responsible" is the person appointed (ultimately) by the Area Commander to administer income tax: see, for example, M.O. 135.]

- * retain any of the records, books of account, or other documents described above, provided he has been authorised to do so by the Person Responsible. (See Article 37(3) of the 1964 Law.)

The Person Responsible may himself perform either of the latter two functions described above. In addition, the Head of the Civil Administration may issue directions to assessees concerning the keeping of accounts for income derived from work or industry and may oblige the assessee to provide

personal details and information relating to his identity card. (See Article 34(A) as amended by M.O. 1257.)

(d) Assessing Officer's Right to Check and Alter the Return. Assessments

Once the taxpayer has made a return showing details of his income it is up to the Assessing Officer to accept or refuse the return, in whole or in part, and if he refuses it, to make an assessment based on his own judgement. The alternatives are thus that he:

- * fully accepts the return and makes an assessment of tax owing on the basis of the return as submitted;
- * wholly refuses it and makes an assessment based on his own judgement and discretion;
- * provisionally accepts the return, but without prejudice to his right to alter the assessment later. (See Article 53(1) of the 1964 Law.)

Where the taxpayer has failed to submit any return at all, the Assessing Officer may assess the income on which tax is due on the basis of his judgement and discretion, and assess the tax accordingly. This does not affect any penalties to which the taxpayer may be liable as a result of failing to complete a return at all. (Article 53(2) of the 1964 Law.)

The Assessing Officer has a duty to maintain a file on every taxpayer recording the returns, assessments and other relevant information. (Article 55(3) of the 1964 Law.)

Finally, under Section 10 of M.O. 1185, if the Assessing Officer is convinced by reason of the need to preserve order, he may make special regulations concerning how assessments are to be made with regard to making payments, advance payments and forming lists of income tax due.

2. Service of Assessment Notice; Appeal to the Assessing Officer

Once the Assessing Officer has made a decision as to the correct amount of tax owing, he must send a (written) notice of tax owing to the taxpayer's place of residence or place of business indicating the amount of tax owing and informing the taxpayer of his/her right to object to the assessment to the Assessing Officer himself. (Article 56(1) of the 1964 Law.)

Payment must be made within 15 days of the date of the assessment. (Article 60A of the 1964 Law as amended by M.O. 770.)

An objection must be in writing. It should request the Assessing Officer to review the assessment that has been made. It should state in detail the grounds on which the objection is based and it should be submitted within 15 days of receiving the notice of assessment. Where the Assessing Officer is satisfied that the objection has been delayed for a reasonable cause (for example, if the taxpayer was out of the country at the time the notice of assessment was sent or if the taxpayer was sick), then the Assessing Officer may extend the period in which appeal may be made. (Article 56(2) of the Law.) Any assessed tax which is not objected to should be paid (within the 15 days). (Article 60A of the 1964 Law as amended by M.O. 770.)

In deciding whether or not to agree to the objection, the Assessing Officer has the right to require the taxpayer to give details of his income and produce books of accounts and any other documents relating to the taxpayer's income that he deems necessary. He may also summon any person to give evidence before him, under oath, concerning the assessment.

Once the Assessing Officer has decided either to agree or disagree with the objection, he must send the taxpayer written notice of the assessment. (Article 56(4) and (5) of the Law.) Payment should be made within 15 days of the Assessing Officer's final assessment (subject to an appeal being

lodged to the Objection's Committee - see below).

3. Appeal Against the Decision of the Assessing Officer

If the taxpayer disagrees with the final assessment of the Assessing Officer, he has the right to appeal to the Objections Committee. (Article 57 of the Law as amended by M.O. 406.)

The objection statement should be lodged within 30 days of being informed of the Assessing Officer's final decision. (See Instructions Regarding Due Process in the Objections Committee in Appendix V.) Any part of the assessment which is not disagreed with should be paid within 15 days. (See Article 60 (A) of the 1964 Law as amended by M.O. 770.)

The burden of proof that the Assessing Officer's assessment was in error is on the appellant.

Any amount finally assessed by the Objections Committee shall be paid within 15 days. (Article 61(c) of the 1964 Law as amended by M.O. 924.)

4. Penalties for Late Payment of Taxes; Powers of the Assessing Officer in the Event of Reasonable Suspicion of Non-Payment

Delay in the payment in advance of monthly instalments of taxes incurs a penalty of 1.5 percent of the delayed amount for every 15 days delay up until the day specified for the submission of the annual return. This does not affect the basic sum of tax for which the taxpayer is liable. Eight percent interest is payable on late payments. (See M.O.s 1266 and 1286.)

In addition, under M.O. 1263 a variety of offences under the 1964 Income Tax Law and regulations relating to the 1964 Law are punishable with administrative fines issued by registrars or inspectors. (See Appendix VII for a full trans-

lation of M.O. 1263.)

C. ENFORCING PAYMENT OF TAX

1. Procedure for the Collection of Taxes Under the 1964 Law as Amended by M.O. 1241

If, at any stage, the Assessing Officer has reason to doubt that tax that is due will be paid, whether because the taxpayer wishes to leave the West Bank or for other cause, he may do the following:

- * require in writing a guarantee (satisfactory to the Assessing Officer) of payments in advance that are owing; [s. 63(a)(1) of the 1964 Law as amended by M.O. 770];

- * require a guarantee (satisfactory to the Assessing Officer) that assessed tax will be paid; [see s. 37(3) of the 1964 Law];

- * correct a report, or if no report has been submitted, assess the chargeable income according to what he finds reasonable, and in either case give notice of the assessment to the taxpayer. If no report is yet due, require in writing that one immediately be forwarded. [S. 63(a)(3) and (b) of the 1964 Law as amended by M.O. 770.]

Where a taxpayer fails to pay the tax or to give a guarantee of its payment, the Assessing Officer can give an order (even in the absence of the taxpayer) to:

- a) delay his departure from the country, or
- b) put a lien on his property.

The taxpayer may appeal this order to the Objections Committee in accordance with M.O. 172. (S. 63(c) of the Law as amended by M.O. 1241.)

NB: Concerning first-time payers, see Article 59(g) as amended by M.O. 791; concerning cost of living differences, reductions and penalties, see Article 61 as amended by M.O. 791.

2. Attachment of Property Under the 1952 Law

Where tax debts are enforced under the 1952 Law, the Collection Officer responsible for a particular area has a duty to prepare a list of the tax debtors in his area and the amounts of money they owe. A copy of the list should be affixed in a public place where it can be easily seen by the public. Another copy should be returned to the sub-accountant. The list should contain a demand that the tax be paid within a period of 15 days from the date on which it was published. (Article 6 of the 1952 Law; the list should follow the form specified in Schedule 1 of the 1988 Instructions.) However, these requirements may be waived by the Collection Officer and, instead, announcements (including name, address, identity card number etc.) be placed in one Arabic-language newspaper, on two days, or in two Arabic-language newspapers on the same day. The tax debtor then has 15 days in which to report to the tax office before becoming liable to attachment of his property. (M.O. 1287, s. 1.)

In certain cases, i.e., where the Collection Officer deems that it is necessary to prevent non-payment of taxes, he may "temporarily" attach property. The tax debtor then has a period of ten days within which to prove, or offer, payment. (See M.O. 1285.)

3. Procedure Following Order for Attachment (Whether Under Article 63 (as Amended by M.O. 1241) or Under the 1952 Law)

Under Article 62 of the 1964 Law as amended by M.O. 791, the Collection Officer has the right to enforce the payment of any amount outstanding under the law by the measures provided for under the 1952 Law. This law is 'interpreted' in Instructions issued under M.O. 113 in 1988.

The Collection Officer accompanied by the mayor or by another person specified by the Person Responsible may enter the house, land or shop of the tax debtor and attach such property as in their opinion equals the amount of the tax owing and the expenses of the attachment itself. Where the Collection Officer is unable to effect entry to premises, the 'Committee' shall have the right to issue an order permitting entry by force during the day. Entry shall be in the presence of the mayor (or two members of the Committee within whose jurisdiction the property falls) and a policeman. (Articles 3 (a) and (f) of the 1952 Law.) The Collection Officer is authorised to order the tax debtor to open any place or building containing equipment, or which is thought to contain movable property. (S. 3, 1988 Instructions.) The Collection Officer is permitted to overcome all resistance and to break into buildings, property, goods and equipment belonging to the tax debtor, using force, provided that the decision to enter by force is in writing. (S. 4(a) and (b), 1988 Instructions.) A certificate of attachment shall be given to the debtor or to an adult living with him or placed in an obvious place. A receipt shall be given for any cash attached. (S. 6, 1988 Instructions.) The Collection Officer has the right to enter premises housing attached property at any time in order to inspect property. (S. 7, 1988 Instructions.)

Where the Collection Officer deems it necessary to prevent non-payment of taxes, he may issue a "temporary" attachment order on a tax debtor's property which doubles as a last warning to the tax debtor. The attachment may be of property in the hands of third parties, no matter how long they have been in that person's possession. If within ten days tax debts have still not been paid, the property is deemed to be confiscated and subject to the provisions of Article 8 of the 1952 Law. (M.O. 1285.)

Following the period of a week, during which the attached property may be kept with the Collection Officer or with a third party, the attached property may be sold by auction. (See Article 8(a) of the 1952 Law.) The period of a week may be extended if the Collection Officer finds just cause. (Article 8(b)(2).) Property that is liable to rot may be

sold immediately in an auction either with the agreement of the owner or by order of the Person Responsible. (See Article 7 of the 1952 Law for provisions relating to persons residing outside the Occupied Territories.)

Detailed instructions concerning the timing and conduct of auctions are contained in ss. 9-12 of the 1988 Instructions.

4. Attachment of Property of Third Parties

M.O. 1095 (amendment no.2) replaced Article 9 of the 1952 Law and extended the powers of the Person Responsible to attach the property of third parties. Under the order, the Person Responsible has the right to attach the property of a debtor including such property as may be in the possession of a third party. The third party should be informed within three months of the date of attachment. (Article 9(a) of the 1952 Law as amended.) Where, however, attachment of property in the hands of a third party is pursuant to M.O. 1285, there is no requirement as to informing the third party within a specified period of time.

If property attached under M.O. 1095 is the joint property of the tax debtor and a third party, then the lien shall apply to that part which is the property of the tax debtor only. If the property is owned in unspecified shares, then the property will be presumed to be in equal shares unless the Person Responsible is convinced otherwise. (See Article 9 (b)(1) of the 1952 Law as amended.)

Where property is owned jointly and in unspecified shares by the taxpayer and one of his relatives, then that share which is the property of the relative shall not be affected until 21 days from the date of being informed or until the order is cancelled, whichever is the first. (See Article 9(b)(2).)

For the purposes of M.O. 1095, 'relative' means any of the following: husband, brother, sister, parents, grandparents, children or any legal organisation in which the tax debtor has the following shares: at least 51 percent of the share capital

(whether through voting power or purchasing power) or the right thereto, and the right to at least 51 percent of the profits and the right to appoint the director. (See Article 9(c) of the 1952 Law as amended.)

Where a third party has been informed, he should present to the Collection Officer, within 10 days, a letter regarding the existence of property with him. If all or part of the property is not in his possession, he must mention this. (See Article 9(a)(a) of the 1952 Law as amended.)

Where a third party has received property that has been attached within three months of being informed, then he shall inform the Collection Officer in writing within a period of 10 days of its receipt. (See Article 9(a)(b) of the 1952 Law as amended.) Where a third party fails to give full and accurate information, the Person Responsible may invite the third party for interrogation. The Person Responsible further has the right to collect evidence in support of the application of his authority. (Article 9(a)(c) of the 1952 Law as amended.)

Where the third party has informed the Collection Officer that no property in his possession belongs to the tax debtor, and this is confirmed by the Collection Officer's own information, the Person Responsible may cancel the lien on the third party. (Article 9(a)(d) of the 1952 Law.)

Concerning the duty of the third party to hand over attached property, M.O. 1095 states as follows: the third party shall hand over attached property to the Collection Officer in the manner, date and place specified by the Person Responsible. Where the property concerned consists of outstanding debts owing from the third party to the tax debtor, then they are to be paid on the date on which they fall due. Provided the third party has no claim on the debts and provided the Person Responsible is convinced that handing over the debt will not damage other interests of the tax debtor, the third party shall transfer the debt to the Collection Officer. (See Article 9(b)(a) of the 1952 Law as amended.)

Where the third party delays the handing over of property as required under Article 9(a)(b) of the 1952 Law - see above - without a reasonable justification, or relinquishes the property or pays the debt knowing of the existence of the attachment order, then the Person Responsible shall force the payment of the debt so long as it has not been paid by the tax debtor and provided it does not exceed the value of the attached property or the debt owing to the tax debtor from the third party, whichever is the lower.

Where the third party is obliged under Article 9(b)(b) of the 1952 Law, as amended, to pay a debt to the Assessing Officer, then the third party shall be regarded as the tax debtor for the purposes of that debt, and the date of payment shall be the date on which it should have been paid according to the order of the Person Responsible.

Once a third party has handed over the requisite property, then the usual provisions relating to the sale of property by auction apply. (See Article 8 of the 1952 Law as amended.) Moreover, the payment of debts or the handing over of attached property to the Collection Officer shall exempt the third party from obligation to the tax debtor.

5. Attachment of Immovable Property

If the tax collector is unable to locate (movable) property but the tax debtor owns immovable property, the Person Responsible has the right to sell this property by auction. Any money left over from the sale shall be returned to the tax debtor. (See Article 10(a) of the 1952 Law.) If the property in question is not sold at auction it may be registered at the Land Registry in the name of the Civil Administration. Any surplus value shall be returned to the tax debtor. If within four years of the registration the tax debtor repays such tax as is owing plus any further expenses, the registration of the land shall be transferred from the Treasury into the name of the tax debtor. (See Article 11(a)-(e) of the 1952 Law.)

6. Exemptions from Attachment

Under Article 13 the following are exempt from seizure:

- any household goods regarded by the Person Responsible as necessary for the tax debtor or his family;
- any equipment, seeds or beasts necessary for the subject in his work as a farmer, or in other types of work as are acceptable to the Person Responsible in his discretion;
- crops before harvest, vegetables and fruits which are not as yet ripe;
- the legal place of residence of the subject, and such land as is necessary for the subject in order to make a living;
- any amount exceeding one-third of the subject's salary ...
- pension allowances allocated for orphans, widows and other allowances permitted by the Shari'a Court.

If the Person Responsible is unable to find either movable or immovable property, he may check the tax debtor's living conditions and decide whether the tax debtor has to pay the tax immediately or in instalments. If the Person Responsible is convinced that the tax debtor is capable of paying but has refused to pay tax due (whether in whole or in instalments), then the Person Responsible may imprison him for a period not exceeding one month. Imprisonment does not, however, exempt the subject from any tax which is still owing.

7. Powers under M.O. 1262

(See Chapter 2 above.)

APPENDIX II

LIST OF MILITARY ORDERS RELATING TO INCOME TAX, ITS ASSESSMENT AND COLLECTION

A. MILITARY ORDERS AMENDING THE 1964 LAW

1. In Numbered Series

(NB: "RED" = Order concerns Rates, Exemptions, Deductions or all three.)

- (Amendment no. 1 does not exist/is not published as a numbered amendment to the 1964 Law)

- Order Concerning Amendment of the Law of Income Tax (Am. 2), 1976, No. 655 (RED)

- Title as above (Am. 3), 1977, No. 725 (RED)

- " " " (Am. 4), 1978, No. 754 (RED)

- " " " (Am. 5), 1978, No. 770 (Penalties/payments in advance)

- " " " (Am. 6), 1979, No. 782 (RED)

- " " " (Am. 7), 1979, No. 791 (Penalties)

- " " " (Am. 8), 1980, No. 816 (RED)

- " " " (Am. 9), 1980, No. 835 (RED)

-	"	"	"	(Am. 10), 1980, No. 873 (RED)
-	"	"	"	(Am. 11), 1981, No. 900 (RED)
-	"	"	"	(Am. 12), 1981, No. 907 (RED)
-	"	"	"	(Am. 13), 1981, No. 920 (RED)
-	"	"	"	(Am. 14), 1981, No. 924 (Ex- tending period of payment)
-	"	"	"	(Am. 15), 1981, No. 943 (RED)
-	"	"	"	(Am. 16), 1982, No. 958 (RED)
-	"	"	"	(Am. 17), 1982, No. 976 (RED)
-	"	"	"	(Am. 18), 1982, No. 978 (RED)
-	"	"	"	(Am. 19), 1982, No. 1014 (RED)
-	"	"	"	(Am. 20), 1982, No. 1029 (RED)
-	"	"	"	(Am. 21), 1983, No. 1050 (RED)
-	"	"	"	(Am. 22), 1983, No. 1062 (RED)
-	"	"	"	(Am. 23), 1983, No. 1084 (RED)
-	"	"	"	(Am. 24), 1983, No. 1094 (RED)
-	"	"	"	(Am. 25), 1984, No. 1098 (RED)
-	"	"	"	(Am. 26), 1984, No. 1106 (RED)
-	"	"	"	(Am. 27), 1985, No. 1143 (Settlement of Debts in Lieu of Tax Payments)
-	"	"	"	(Am. 28), 1985, No. 1160 (Fines)
-	"	"	"	(Am. 29), 1986, No. 1174 (Pro-

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|---|---|---|---|---------------------------------------------------------------------------------------|
| - | " | " | " | cedure for Objections)
(Am. 30), 1986, No. 1176 (Re-
payments) |
| - | " | " | " | (Am. 31), 1987, No. 1185 (Auth-
ority to make special regula-
tions) |
| - | " | " | " | (Am. 32), 1987, No. 1206 (Rep-
resentation in the Objections
Committee) |
| - | " | " | " | (Am. 33), 1987, No. 1225 (RED) |
| - | " | " | " | (Am. 34), 1988, No. 1241 (En-
forcing payment) |
| - | " | " | " | (Am. 35), 1988, No. 1257 (Account-
ing rules) |
| - | " | " | " | (Am. 36), 1989, No. 1266 (Defini-
tion of 'Differences in
Value') |
| - | " | " | " | (Am. 37), 1989, No. 1286 (Adj-
ustments of Differences
in Value/Interest Rates) |

2. Not in Numbered Series

- Order Concerning Income Tax Appeals, 1967, No. 109
- " " " " " , 1970, No. 406
- Order Concerning Amendment of Income Tax Law, 1972,
No. 485 (RED)
- Order Concerning Payment of Taxes, 1973, No. 509 (Pay-
ment in NIS not JD)
- Order Concerning Income Tax Law, 1974, No. 533 (Power to

exempt cost of living increases from income tax)

- Order Concerning Amendment of Income Tax Law, 1974, No. 543 (RED)
- Order Concerning Payment of Taxes (Temporary Instructions), 1975, No. 586
- Order Concerning Payment of Taxes (Temporary Instructions), 1975, No. 612
- Order Concerning Amendment of Income Tax Law, 1976, No. 636 (RED)

3. Orders Affecting Both Income and Property Taxes

- Order Concerning Income and Property Taxes, 1967, No. 28 (sic) (Appointments)
- Order Concerning Income and Property Taxes, 1967, No. 28 (sic) (Appointments)
- Order Concerning Income and Property Taxes, 1967, No. 84 (Am. 1) (Appointments)
- Order Concerning Income and Property Taxes, 1967, No. 120 (Am. 1) (Appointments)
- Order Concerning Income and Property Taxes, 1967, No. 238 (Am. 3) (Definitions)

4. Regulations Issued under Military Orders

(a) Issued under Military Order 28:

- Income Tax Regulation (Deductions from Payments for Services, Goods and Contracts) 31/3/78
- Income Tax Regulation (Insurance Payments as Income), No. 3/86

- Income Tax Regulation (Payments for Construction and Services as Income), No. 4/86
- Income Tax Regulation (Deduction from Insurance Payments), No. 5/86
- Income Tax Regulation (Deduction from Payments for Construction and Transportation), No. 6/86
- Authorisation No. 49, No. 7/86
- Income Tax Regulation (System of Deduction at Source), No. 1/87
- Income Tax Regulation (Various Amendments Concerning Year of Assessment), No. 3/87
- Income Tax Regulation (Determination of Payments for Services, Goods and Contracts as Income)(Amendment) 2/12/89

(b) Issued under Military Order 111:

- Order Concerning Error in Amendment

B. MILITARY ORDERS AMENDING LAW OF COLLECTION OF GOVERNMENT MONIES, 1952

- Order Concerning Amendment of Law of Collection of Government Monies, 1967, No. 113 (transfers power to the Military Commander of the West Bank)
- Order Concerning Amendment of Law Collection of Government Monies, 1967, No. 135 (Am. 1), (gives power to delegate authority)
- Order Concerning the Structure of Authority and Command, 10 April 1973, no number (gives concurrent powers of authority)
- Order Concerning Amendment of Law of Collection of

Government Monies, 1983, No. 1095 (Am. 2), (allowing attachment of property in hands of third parties)

- Order Concerning Amendment of Law of Collection of Government Monies, 1987, No. 1193 (Am. 3), (power to declare any payment subject to 1952 law)

- Order Concerning Amendment of Law of Collection of Government Monies, 1989, No. 1285 (Am. 4), (power to issue "temporary" attachment order - without warning - to prevent non-payment of taxes)

- Instructions Concerning Collection of Government Monies, issued under Military Order 113, 1988 (wideranging amendments to procedure for enforcing collection. Also use of banks in enforcement process)

C. MISCELLANEOUS

- Order Concerning Collection of Monies (Enabling Authority) (Temporary Instructions) 1988, No. 1262 (makes grant of licences contingent on payment of taxes); extended and amended by Order Concerning Collection of Monies Enabling Authority (Temporary Instructions), No. 1277. Further amended by Order Concerning Collection of Taxes (Enabling Authority)(Temporary Instructions) (Am. 2) [sic] allowing last warnings to be published in newspapers.

- Order Concerning Administrative Offences (No. 1263) (Judea and Samaria) 1988. Amended in Order Concerning Administrative Offences. (M.O. 1291.)

the accounts of a person liable to pay tax who twice fails to register in the same tax year (or within 12 months of two consecutive tax years) the receipt or distribution of goods, and who has received a written warning from the Person Responsible shall not be accepted, including the period of two years preceding the year in which he failed to make a registration, even if he has presented his accounts and estimates.

The person liable to pay tax may object to the decision of the Person Responsible within a period of 60 days under Article 94. (Article 87(a)(d) as amended in Am. no. 9.)

Under Article 88:

A determination of tax or assessment may also be made for several, even non-consecutive periods of return.

This provision gives the Person Responsible the right to determine and assess tax on a business, without warning, for transactions that have occurred in years past.

Under Article 89 of the Regulations, the Person Responsible has the right to amend a determination or assessment within five years (or seven years where the person liable to pay tax has been convicted of an offence).

Under Article 90 of the Regulations:

Notice of a determination of tax or assessment or any amendment thereof shall be served upon the person liable to tax personally or by registered post.

(b) Contestation and Appeal

Under Article 93 of the Regulations:

(a) A person who disputes an assessment may

contest it in written (and detailed [Am. no. 9]) form before the Person Responsible within 30 days after the notice of assessment was served upon him or within such later period as the Director may permit for special reasons.

(b) If the person liable to tax and the Person Responsible reach agreement as to the tax due, the assessment shall be amended accordingly. If no agreement is reached, the Director shall decide upon the contestation; he may confirm, increase or reduce the assessment.

(c) Notice of the consent of the Person Responsible or of his decision on the contestation and of the reasons for such decision shall be served upon the person liable to tax.

(d) Where the Person Responsible does not decide as provided in subsection (b) within one year from the date when the contestation was filed, the contestation shall be deemed to have been allowed.

(e) Whoever is responsible for estimating the tax shall not settle a contestation upon it [Am. no 9, Art. 13 (2)].

(f) A contestation shall not hinder the authority granted the Person Responsible under the laws and regulations [Am. no. 9. Article 13(2)].

And under Article 94 of the Regulations:

(a) A person who considers himself aggrieved by the decision of the Person Responsible upon contestation may appeal to the Objections Committee.

(b) The onus of proof shall be on the appellant, where the return is not supported by properly kept account books.

Under Article 95 of the Regulations:

There shall be no contestation or appeal under this chapter unless any tax not in dispute has been paid.

Under Article 99 (as amended: Am. no. 9, Article 16):

Where a contestation or appeal has been filed, the contestor or appellant may refrain from paying the amount in dispute; and the Person Responsible has the right not to return the extra amount which is in dispute.

2. Collection and Enforcement of Value-Added Tax; Penalties

(a) Collection and Enforcement

The collection of outstanding VAT debts is governed by the Law Concerning the Collection of Government Monies, Law no. 6 of 1952. (See Article 112.) In addition, certain other powers are given under the VAT Regulations themselves. Thus under Article 115 of the Regulations (as amended by Am. no. 9, s. 21), if the property of the tax payer has been transferred or liquidated, and the tax payer is liable to pay tax, the Person Responsible can levy all outstanding taxes from those who have received the property, even if as a gift, provided that the outstanding tax does not exceed the value of the property received. Finally, extensive military powers of search, seizure, confiscation and arrest as specified in Chapter D of M.O. 378 (as amended), are granted by virtue of M.O. 309. The procedure for appealing against measures taken in pursuance of these powers is the same as that for any measure relating to M.O. 378. (See M.O. 378 as amended and translated: Al-Haq files.)

Nothing contained in these articles above affects the criminal liability of the tax payer. (See Article 114.)

Further powers to restrict the activity of persons liable to pay tax are contained in Chapter 15 of the 1985 VAT Regulations. Under Article 116:

(A) If it comes to the attention of the tax official that the owner of a business does not submit income statements as required regarding his dealings, or if the latter refrains from paying taxes in accordance with the statement which he submits, or if he did not submit for the previous year more than two statements in accordance with Article 76, or if he committed a violation with the intention of evading the payment of taxes, the official may:

(1) Ask the owner of a business to submit a guarantee to pay any debt; or the official may take any measure in accordance with the law and regulations if the guarantee is not submitted banning him from practising his business until the guarantee is submitted.

(2) Ban him from transporting goods or rendering services unless he marks his invoices or his dispatch certificates or any other document decided upon by the official.

Under Article 116(A)(a) (as amended by Am. no. 9, Article 22):

(a) If the Person Responsible believes that fees payable on commercial transactions have not been paid as a result of an intention by the person liable to pay tax to leave the area, or for any other reason, he has the right to:

(i) if the person liable to pay tax has made an estimate pursuant to Article 87, demand, in writing, an immediate guarantee of payment of the determined assessment, such as is satisfactory to the Person Responsible.

(ii) estimate the outstanding tax at his discretion, including cost of living differences, interest and penalties, where the person liable to pay tax has

not made an estimate.

(b) The Person Responsible shall provide a statement, in writing, of the estimate in (A)(a)(ii) above, which will be payable on receipt.

(c) If no payment is made of the amount mentioned in 116 (A)(b) above, and no bail provided in its stead, the Person Responsible has the right to issue an order, even in the absence of the person liable to pay tax:

1. to delay his departure from the area

2. to attach his property

(d) If the outstanding tax has been paid as required, or bail given therefor, the person liable to pay tax has the right to present a contestation or objection in the manner prescribed for contestation or objection to assessments under Article 87.

(e) Without prejudice to paragraph (d) above, any person has the right to object to the Objections Committee against any injustice arising out of the application of this article.

(B) The official's decision regarding the banning of business or transport of goods or rendering services becomes effective after 15 days as of the date of notification.

(C) An objection may be submitted on the official's decision. The objection postpones the carrying out of the decision unless the Objection's Committee decides otherwise.

Under Article 117 of the Regulations:

(a) If a person refrains from keeping books, or keeps books in a way that differs considerably from required standards, the official shall send him a notice to that effect. If the person does not correct his books within a month as of the date of

receiving the notice, the official may prevent him from issuing tax invoices.

(b) The taxpayer may object before the Objections Committee after receiving the notice or after the official's decision to ban him from issuing invoices, as he wishes.

(c) The objection must be submitted within 30 [Am. 9, s. 23] days as of the date of issuing the notice or the date of the banning notification. Submission of the objection shall not postpone the carrying out of the decision unless the Objections Committee decides otherwise.

(d) Presentation of an objection under Article 117(B) does not substitute for a contestation according to Article 93. If the objection is refused, the account books will be regarded as unacceptable for the purposes of an objection to an assessment.

(e) If the person liable to pay tax has not submitted an objection according to section (B) above, he has the right to object to the statement sent by the Person Responsible, or as a result of his decision, pursuant to this article, together with an objection under Article 94.

Under Article 118 of the Regulations:

The official may not permit the release of goods which belong to the taxpayer from customs until all the due debt is paid in accordance with the regulation, or until all required statements are submitted.

Under Article 119 of the Regulations:

(A) [As amended by Am. no. 9, Article 24.] The Responsible Person may issue an order - even in his absence - to delay the departure of the debtor from the area and for the attachment of his

property until he satisfies the conditions required by the Person Responsible concerning payment of outstanding tax, guaranteeing its payment or presenting a report that he has been asked to present but has not done so.

(B) If the tax-payer is a company made up of a few members, the tax official may issue orders banning any active manager in the company or any managing director or any member who has a minimum of 26 percent of the shares, or 26 percent of the capital in the case of liquidation.

(C) In this article:

"a company made up of a few members" is a company which is controlled by a maximum of five members and which is not a branch company for another company and in which the public has no real interests.

"a company controlled by a maximum of five members" is a company controlled directly or indirectly by five persons or less, or those who have the right to control the company - i.e., if they together have the right to a majority of the share capital or have voting authority over it or to the majority of the shares that are issued or that part of the income of the company the majority of which they have title to when distributed among the shareholders of the company.

When a certain company is considered to be controlled by five persons, the following shall be regarded as one person:

(1) Any member and his relative. For this purpose "relative" is the spouse, brother, sister, parent, grandparent, son and daughter and their spouses.

(2) The member and his representative.

(3) Partners in an ordinary partnership.

(D) [As amended Am. no. 9, s. 25.] Whoever feels that injustice has been done by an order or direction given according to this article has the right to appeal against it, at such time as he sees fit, to the Objections Committee.

Under Article 121 provision is made for the Person Responsible to demand and inspect documents and samples:

A. In order to guarantee that the law and regulations are enforced, the Person Responsible may:

1. ask any person to provide him with any relevant information, documents or samples and has the right to photocopy them.

2. ask the taxpayer to provide him with relevant books, documents, samples and information ... on condition that these be returned within a period of three months from the time of submitting them, unless a formal charge has been laid in the meantime.

(b) Penalties

Penalties for failing to comply with book-keeping requirements, time limits for payment of tax and other matters are principally dealt with in Articles 102, 103 and 122 of the Regulations and in M.O. 1263 concerning administrative fines. (See Appendix VIII for a translation of M.O. 1263.)

Under Article 102, as amended, late submission of periodic income statements or the provisional statement (where appropriate) is punishable with a fine of NIS 43 for every two weeks or part of two weeks delay. (Am. no. 19, re. amounts.) Failure to keep books and records as required by the regulations and standards governing book-keeping is punishable by a fine of one percent on the individual or total transactions of the person liable to pay tax, for the relevant

period of the tax year, provided that the fine is no less than NIS 27 monthly. (Am. no. 19.) The person liable to pay tax has the right to object to the Objections Committee against a decision under Article 102, within a period of 30 days from notification of the decision. Submission of the objection does not permit delay in payment of the taxes unless the Objections Committee decides otherwise.

Late payment of taxes is punishable with a fine of 1.5 percent of the value of the amount due for every week or part of a week of delay. (See Article 104.) Cost of living differences, interest and collection expenses may increase the amount payable. Fines are payable within one month of notification. (Article 111.)

In addition to the above provisions, Article 122 provides that:

Any person who violates any of the forthcoming clauses shall in accordance with the law and regulations issued in accordance with the law be sentenced to one year in prison or shall pay a fine of [NIS 16, 000: M.O. 845 as amended] or four times the profit he derived or intended to derive, whichever is the greater, or both:

1. refuses or refrains from submitting the required information, documents, samples and records after being asked to do so.
2. refuses or refrains from attending interrogation after being asked to do so.
3. submits false or inaccurate information or statement without reasonable justification.
4. refrains from doing what is necessary for purposes of registration.
5. issues a tax invoice without having a licence or after being prevented from issuing invoices.

6. refrains from submitting a statement on time in accordance with the law and regulations including the statement required by the tax official.

7. refrains from keeping books or records as found by a final determination under Articles 85 [Am. no. 9, s. 25], 106 or 107, or keeps books and records in a way that differs considerably from acceptable book-keeping standards and that differs from what the law and regulations require; for this purpose, 'a final determination' is a determination according to these regulations to which no objection was filed or, if it was, was rejected [Am. no. 9, s. 25].

8. uses a mark that was not provided by the Person Responsible, or uses it after being banned from doing so.

9. illegally gives tax-free goods to another person, while still operating a business, which should be used by him alone.

10. transports goods without a dispatch certificate [Am. no. 9, s. 25].

11. possesses merchandise which he is selling while its purchase has not been registered in an account book.

12. is required to register his receipts on an electronic machine, receipt, invoice, sales book or other document according to the law and regulations, and has not done so.

13. does not issue a tax invoice when required to.

14. issues a tax invoice but fails to pay taxes on time.

15. does not ask for a tax invoice when required.

16. [Am. no. 9, s. 25] impedes or prevents a person

from carrying out orders in accordance with the law and the regulations.

(A) Where the employee or agent of the person liable to pay tax fails to record purchases or receipts under section (A)(11) and (12) above, the employee or agent will be accused of violating the law, and the person liable to pay tax likewise, unless the violation was committed without his knowledge and he has taken all reasonable measures to prevent such a violation.

(A)(a) Anyone transferring goods to another without transferring ownership in order to avoid payment of due tax shall be sentenced to two years imprisonment, whether the transferor is an individual or a group of persons.

(A)(b) Any person dividing up property of a company among its members for the purpose of avoiding payment of taxes that are due or may fall due shall be sentenced to two years imprisonment provided that if a penalty is also imposed it does not exceed the amount of the debt itself.

(B) If any person commits any of the violations mentioned in paragraph A with the intention of evading taxes or does anything with that intention or commits any of the following offences [Am. no. 9, s. 25], he shall be sentenced to three years in prison or shall pay a fine of [NIS 15,000: M.O. 845 as amended] or shall pay four times the taxes he evaded or intended to evade or the profit he acquired or intended to acquire, whichever is the greater, or both:

1. conceals or destroys any book or document he is supposed to submit.
2. continues in business after being banned from doing so or before meeting the conditions required of him in order to resume business.

3. issues a tax invoice without carrying out or pledging to carry out a business deal.

4. knowingly deducts a refund invoice without having the tax invoice for that purpose.

5. knowingly transfers goods without a certificate [shehadet irsaal] or invoice.

(C). If a person is convicted of committing a crime as in (B) above, the court may within three years of his conviction ban him from practising his business for any period of time irrespective of other penalties.

Article 124 deals with joint liability for failure to comply with the requirements of the law:

If an offence under these Regulations is committed by a group of persons, whether organised or not, responsibility shall also fall on every active manager, secretary, representative, partner, accountant or any other official in the company unless he proves that the offence was committed without his knowledge or that he took all necessary steps to guarantee compliance with the law and regulations.

Under Article 127, provision is made for administrative fines to be imposed on a person liable to pay tax. These fines may be appealed to the Objections Committee within 30 days.

APPENDIX IV

LIST OF MILITARY ORDERS AND REGULATIONS RELATING TO VALUE-ADDED TAX

A. MILITARY ORDERS AND REGULATIONS AMENDING THE JORDANIAN LAW OF EXCISE ON LOCAL PRODUCTS, NO. 16, 1963

1. Amendments 1-6 (1967-1985)

2. Regulation Concerning Excise on Local Products, 26 April 1985

3. Regulation Concerning the Keeping of Account Books, 26 April 1985

B. REGULATIONS ISSUED PURSUANT TO THE 1963 LAW ON LOCAL PRODUCTS AND AMENDING REGULATION CONCERNING EXCISE ON LOCAL PRODUCTS, 26 APRIL 1985

1. Regulations Concerning

Excise on

Local Products,

Am. no. 7, 16 September 1986

2. " " " " 8, 30 November 1986

3. " " " " 9, 16 March 1987

4. " " " Amending " 9, 18 August 1987

5. " " " " 10, 8 April 1987

6. " " "	11, 10 May 1987
7. " " "	12, 1 July 1987
8. " " "	13, 1 September 1987
9. " " "	14, 20 November 1987
10. " " "	15, 13 December 1987
11. " " "	16, 6 September 1988
12. " " "	17, 23 October 1988
13. " " "	18, 1 February 1989
14. " " "	19, 2 February 1989
15. " " "	Announcement Concerning Excise on Local Products (Appointment of Egypt as a Neighbouring State), 7 May 1987

APPENDIX V

PROCEDURE FOR APPEAL TO THE OBJECTIONS COMMITTEE

The Objections Committee is the forum in which all appeals against matters relating to taxation are heard. The Committee was set up in 1967 and has come to replace in its entirety the system of appeal against decisions relating to taxation that existed under the Jordanian system of law in 1967. The Committee was established by Military Order 172. This has been amended several times. The procedure of the Committee is principally contained in the "Instructions Regarding Due Process in the Objections Committee," issued in 1987. Translations of the official texts of both M.O. 172, as amended, and the Instructions are reproduced below.

NOTE: Certain minor amendments to M.O. 172 have not been included here where they do not bear directly on the question of taxation.

ORDER NUMBER 172 ORDER REGARDING OBJECTIONS COMMITTEES

In light of the authority vested in me in my capacity as IDF Commander in the Area, I do hereby order the following:

Establishment of an Objections Committee

1. One or more Objections Committees shall be established in the Area to look into the objections submitted against the decisions taken in accordance with any of the [legislation or

security legislation: M.O. 1019] that is listed in the appendix below, or to look into any matter which the Area Commander authorises it to look into.

Appointment of the Objections Committee's Members

2. The IDF Area Commander shall appoint:

(1) A number of people, on condition that some of them have legal qualifications, to be members of the Objections Committees.

(2) One member of the Objections Committee who has legal qualifications shall be the Supervisor of the Objections Committee. [M.O. 1019.]

(3) Any member of the Objections Committee with legal qualifications shall have the right to act as Supervisor in the absence of the Supervisor himself. [M.O. 1019.]

Authority of the Supervisor

3(a)(1) The Supervisor shall appoint tripartite bodies from among the members of the Objections Committees. Each body forms an Objections Committee pursuant to this order.

(2) The Supervisor shall appoint a Chairperson for each of the committees from among its members.

(3) Each Committee shall include a member who has legal qualifications.

(b) The Supervisor may decide to chair the Objections Committee.

(c) The Supervisor sets the administration rules for all Committees.

Limits of Authority

4. The authority of the Objections Committee shall cover the whole area. Each Objections Committee shall look into any matter under its authority in accordance with this order. However, the Supervisor may issue instructions, in writing, restricting the jurisdiction of the Committee to a certain type of issue, or a particular issue for a certain period of time or in some other way.

Replacement of an Objections Committee Member

5. If the Chairperson or any other member of the Objections Committee does not continue to carry out his task, or if he does not attend two consecutive hearings, the Supervisor may replace him by another, and the objection shall be looked into from the point where it has stopped, unless the Supervisor orders otherwise.

Authority of the Committee

6. At the end of its discussions, the Objections Committee may recommend, to the IDF Area Commander, the cancellation or the amendment of the measure which caused the submission of the objection, or take any other decision regarding that measure. If the Objections Committee does not recommend any of the above, or if the Area Commander rejects this recommendation or any part of it, the measure objected to shall continue to be effective.

Independence

7. The members of the Objections Committee shall not be subject, in this capacity, to any authority other than the law, or [M.O. 303] security legislation and they shall not be under the authority of any commander.

Due Process

8(a) The Objections Committee shall not restrict itself to the rules of evidence or to due process, except for what has been decided in this order. The Committee sets the standards of due process itself - in accordance with paragraph (b) - on condition that the person submitting the objection is guaranteed to attend the hearings to present his evidence and claims, or to be represented by an attorney.

(b) The Supervisor may establish rules of due process, including setting the dates for the submission of objections, in a way that guarantees that those concerned are informed. He may also order the publishing of these instructions. However, not publishing any instructions regarding due process shall not affect their legitimacy.

(c) The Objections Committee shall have the same authority as that of the military court regarding calling a witness, asking him to take the legal oath and requiring him to attend and bring the necessary documents. Whoever fails to execute the instructions of the Objections Committee according to this paragraph shall be considered to have violated the rules of this order. [M.O. 303.]

(d) The Chairperson of the Committee decides where discussions shall take place.

(e) The Committee may decide at any stage to hold discussions in closed sessions.

(f) The Chairperson of the Committee - or any other member appointed by him - shall take minutes of the hearings of the Committee during which claims or evidence are submitted.

(g) The recommendation of the Objections Committee shall be issued in writing and shall be signed by all members.

(h) The Objections Committee shall have to justify all but temporary decisions.

(i) The recommendations of the Objections Committee may be

issued unanimously or by majority vote.

(j) Recommendations of the Objections Committee shall be submitted to the IDF Area Commander.

9(a) The submission of an objection shall not prevent the carrying out of measures taken in accordance with any order, unless the Supervisor so orders - before assigning the Committee which is to look into the objection - or when the Chairperson of the Committee orders so - after the formation of the Committee.

(b) The Supervisor, or the Chairperson of the Committee, according to the circumstances may prevent the carrying out of measures on certain conditions. [M.O. 476.]

9(A) The Supervisor shall have the right to order the cancellation of an objection in accordance with the following conditions: [M.O. 1019]

(a) lack of legal basis to the objection

(b) lack of jurisdiction

(c) if the objection form is not completed according to the requirements of the Objections Committee. [M.O. 1019.]

9(A)(a) The Supervisor or the Chairman of the Committee shall have the right to issue temporary orders in the presence of both parties or of one of them and in accordance with conditions specified by the parties. [M.O. 1212.]

(b) A temporary order given in the absence of one of the parties shall expire within ten days unless extended by the Supervisor, the Committee or the Chairman of the Committee within the same period after a session at which all parties were in attendance. [M.O. 1212.]

(c) In addition to whatever may be specified in any legislation or security legislation, the temporary order may be enforced by a soldier, or policeman, or in any other way specified by the Supervisor, the Committee or the Chairman of the Committee. [M.O. 1212.]

10. Every decision issued by the Committee shall be in accordance with the Order Concerning the Law of Retirement (West Bank) (No. 290), 1968.

11. Every decision issued by the Committee shall be in accordance with the Order Concerning Retirement of Local Policemen (West Bank) (No. 420), 1971.

Date Order is in Effect

10. [Sic] This order shall be effective as of 22 November 1967.

Name

11. [Sic] This order shall be named "Order Regarding Objections Committees (West Bank area) (Number 172) for the year 1967"

November 22, 1967

General Uzi Narbis

IDF Commander of the West Bank

APPENDIX TO M.O. 172 [M.O. 1019]

(Author's note: This appendix lists those matters dealt with by the Objections Committee and is appended to M.O. 172 (as amended by M.O. 1019). Those matters relating to taxation have been marked with an *.)

1(a) Order Concerning Deserted Property (Private Property) (Judea and Samaria)(Number 58)[1967].

(b) Order Concerning Deserted Property (Private Property)(Judea and Samaria)(Number 58), 1967. Articles 10(d) and 15(c).

2. Order Regarding Government Property (Judea and Samaria)(Number 59), 1967.

3.* Classification and Assessment of Goods Pursuant to Order Concerning Customs Tariffs (Judea and Samaria)(Number 103),

1967.

4.* Classification and assessment of goods under all orders for the imposition of duty on goods produced locally as issued pursuant to Order Concerning Appointments Relating to the Laws of Customs and Duties (Judea and Samaria)(Number 31), 1967.

5.* Any decision taken by the Person Responsible under Article 12(a) of the Order Concerning Customs Authorities (Judea and Samaria)(Number 309), 1969.

6. Classification of Goods Under Order Concerning Closed Areas (Forbidding Transfer of Goods)(Judea and Samaria)(Number 49), 1967.

7. Authority of the Court under Order Concerning Land Law (Possession of Public Projects)(Number 321), 1979. Instead of the 'Founder' read 'Concerned Authority.'

8. Order Concerning Use of Natural Resources (Judea and Samaria) (Number 389), 1970, Article 4.

9. Order Concerning Registration of Companies (Judea and Samaria) (Number 398), 1970, Article 4.

10.* Income Tax Appeals Pursuant to Income Tax Law, No. 64, 1964.

11. Order Concerning Amendment of the Law for the Registration of Immovable Property which has not been Registered (Judea and Samaria)(Number 448), 1971, Article 3.

12. Appeal Against Decision of the Concerned Authority Pursuant to Article 3 of the Order Concerning the Control of Natural Resources (Judea and Samaria)(Number 457), 1972.

13. Any Decision of the Committee Indicated in the Order Concerning Retirement (Judea and Samaria)(Number 514), 1973.

14. Any Decision Issued by the Committee Described in

Order for the Retirement of Local Policemen (Judea and Samaria)(Number 460), 1971.

15. Order Concerning Guarantee of Investors' Rights (Judea and Samaria)(Number 21), 1967.

16. Article 4(b) of Order Concerning Goods and Services (Prohibition Against Storage and Duty to Sell) (Judea and Samaria)(Number 538), 1974.

17.* Objection to the Refusal of the Person Responsible Pursuant to Article 48(c) of the Regulations Concerning Excise on Local Products (Judea and Samaria)(Number 31(75)) 1976, and to the Decision of the Person Responsible Pursuant to Article 56(A) of the Regulations.

18. Order Concerning the Appointment of Government Officials (Judea and Samaria)(Number 37), 1967, Article 2.

19. Order Concerning Copyright and Fees for Inventions (Renewal of Registration)(Judea and Samaria) (Number 555) 1974, Article 5.

20. Order Concerning Registration of Certain Building Contracts (Judea and Samaria)(Number 569) 1974, Articles 8(b)(3) and 9.

21. Order Concerning Restriction of Taxi Licences (Judea and Samaria)(Number 603) 1975, Article 10.

22. Order Concerning Industrial Accident Insurance (Judea and Samaria)(Number 662) 1976, Article 14(c).

23. Order Concerning the Planting of Household Shrubs (Judea and Samaria)(Number 818), 1980.

24. Order Concerning Monitoring the Planting of Productive Trees (Judea and Samaria)(Number 1015) 1982, Article 6.

25. Order Concerning the Transfer of Funds into the Area (Judea and Samaria) (Number 973) 1982, Article 4.

26. Order Concerning the Monitoring of Public Institutions
(Judea and Samaria)(Number 998) 1982, Article 2.

(Note: In addition to this list should be added matters specified in other laws, such as appeal against M.O.s 1249, 1262, 1263.)

**ORDER REGARDING OBJECTIONS COMMITTEES
(JUDEA AND SAMARIA)
(NO. 172) 1967**

**INSTRUCTIONS REGARDING DUE PROCESS IN
OBJECTIONS COMMITTEES (1987)**

In accordance with the authority granted to me in accordance with Article 8 (b) of the Order Regarding Objections Committees (Judea and Samaria) (Number 172), 1967 (hereafter the Order), I do hereby issue the following instructions:

CHAPTER A

DEFINITIONS

Definitions

1. In these instructions:

"The Official" shall have the same meaning as in Order Regarding Abandoned Property (Judea and Samaria) (no. 58), 1967, and Order Regarding State Property (Judea and Samaria) (no. 59) 1967.

"The Committee": The committee which has been formed in accordance with Article 1 of the Order.

"Objections Statement": The statement of objection submitted in accordance with the law and these regulations.

"The Chairperson": The supervisor or any person appointed by him to head the committee.

"The Counter-Statement": The statement submitted in response to the Objection Statement by the Official.

"Licensed Surveyor": A person who is approved to be a licensed surveyor by the survey officer, or a person who has a surveying licence from Israel.

"Members of the Committee": Those who were appointed as members of the Committee in accordance with Article 3 of this order.

"Secretariat": The secretariat of the Objections Committee near the local court. [Sic.]

"Commander": The Head of the Civil Administration in Judea and Samaria.

"Supervisor": The supervisor of the Objections Committee as defined in this order.

"Government Official": A person who belongs to or works for the IDF in Judea and Samaria or works for any agency of the State of Israel.

"Objections Regarding Immovable Property": an objection statement regarding immovable property.

"Order": Order Concerning Objections Committees (Judea and Samaria) (no. 172), 1967.

"Affidavit": Statement given in writing under oath in accordance with the legislation of the place in which it was given.

CHAPTER B

OBJECTION STATEMENT AND COUNTER-STATEMENT

Submission of the Objection

1 (a). The Objection Statement shall be submitted within 30 days as of the date of receiving the decision objected to.

(b). [Sic]

Details of the Objection Statement

2 (a). The Objection Statement should include the following:

- (1) the name, description, place of residence and mailing address of the person submitting the objection;
- (2) details of the decision objected to, date of receiving it, or date the appellant first knew about it;
- (3) facts upon which he bases his objection;
- (4) copies of all documents upon which he bases his objection;
- (5) demands of the person submitting the objections;
- (6) a list of witnesses and their addresses.

(b) Claims regarding the facts mentioned in the Objection Statement should be accompanied by an affidavit.

(c) The objection should be accompanied by a power of attorney if the person submitting the objection is to be represented by a lawyer or another representative. The representative continues in his representation unless the committee decides otherwise.

(D) The Objection Statement should enclose a receipt or a copy of the receipt showing that the objection fee has been paid.

3. [Sic.]

4. The Secretariat presents those who are the subject of the objection with the Objection Statement.

Date of Counter-Statement

5. The Counter-Statement shall be submitted within 30 days as of the date of receiving the Objection Statement.

Details of the Counter-Statement

6 (a). The Counter-Statement shall include the following:

1. Primary defence and supporting documents
2. Response to the claims in the Objection Statement
3. Copies of all documents on which the official against whom the objection is lodged wants to base his defence
4. A list of witnesses and their addresses.

(b). The claims which are included in the Counter-Statement shall be supported by an affidavit or a testimony of a government official.

Expert Opinion

7. Every claim whether in the objection or the Counter-Statement which relates to scientific subjects, agriculture, medicine, or professional knowledge must be supported by the opinion of an expert who should fill Form II (see appendix). [Form excluded here.]

The Format of the Objection and Counter-Statement and its Language

8 (a). The objection statement and the Counter-Statement and other documents must be typewritten in Hebrew or Arabic and submitted in five copies.

(b). If the document is in another language, a translation into Hebrew and Arabic is needed.

CHAPTER C

LOOKING INTO THE OBJECTION, RULES OF TRIALS, CLAIMS

Forming the Committee and Setting a Date for the Hearing

9. [Sic.]

- 10(a). The Supervisor summons the parties by registered mail or personal delivery or by any other way.
- (b). The Committee sets the dates of the hearings following the first hearing. There is no need for sending other summonses unless the Committee decides otherwise.

Initial Hearing

11. In the first hearing:

- (a) the points of dispute are clarified;
- (b) preliminary matters are clarified;
- (c) the stages for looking into the objection are set down with the topics to be discussed;
- (d) the list of witnesses to be summoned is prepared;
- (e) it will be decided whether the statement may be amended or not;
- (f) a date is set for the next hearing;
- (g) it will be decided which of the rules of trial should be followed in order to facilitate the hearing.

12. If the Committee finds that an objection is submitted by representatives of a larger number of owners or heirs, it has the right to ask to include all owners or heirs.

13. The Committee may cancel the objection based on any of the following:

- (a) if the Objection Statement is not complete;
- (b) if it appears that the aim of the objection is only to harass others;
- (c) if the Objection Statement did not take into considera-

tion part or all of the stipulations of Article 3;

(d) if the person submitting the objection refrained from attending;

(e) if the decisions of the Objection Statement are not carried out;

(f) if the issue has been looked into by a previous Objections Committee which had issued its recommendations regarding the matter.

14. The Supervisor may cancel the objections based on one of the reasons mentioned in Article 9 (a) of the order.

15. If the person submitting the objection does not attend the hearing after he has been summoned to attend, the Committee has the right to look into the objection and take a decision or reject the objection in his absence. When taking a decision, the Committee has the right to take into account the claims submitted by the person submitting the objection.

16. The Committee has the right for the security of the IDF or for the security of the public to hold secret sessions, completely or partly, or to conceal the identity of a certain witness.

17(a). If the person submitting the objection or the person objected against wish to present testimonies of witnesses to support the Objection Statement or the Counter-Statement, and the witnesses have not signed the testimonies or affidavits which were included in the Statement, the Committee may ask that these testimonies shall be submitted as affidavits, or as a testimony by a government official or as the Committee orders.

(b). If the person submitting the objection or the person objected against fails to present the affidavit of a certain witness, he has to show, in the statement, the name and address of the witness, the details of his testimony, and the reasons for not giving his testimony.

(c). If the person submitting the objection wishes to cross-examine the witnesses, he has to inform the Secretariat of the Committee at least ten days before the hearing in which the witnesses are to submit their testimonies.

(d) The Committee may accept the affidavits even if no discussion was held, if it sees that this is fair as regards the parties concerned.

18(a). The Committee shall first listen to the claims of the person submitting the objection, and then question the witnesses brought by him.

(b). The Committee will then listen to the claims of the person objected against, and then question his witnesses.

(c). The Committee has the right to decide at the end of the hearings to ask the parties to sum up their claims either orally or in writing and to set a date for that.

19. If examination of the objection does not finish on the same day, the Committee shall set a date for another hearing.

20. The Committee shall not listen to any issue not mentioned in the statement unless it is convinced of the necessity of doing so.

21(a). The Committee may look into several objections on the same issue at the same time and issue one decision regarding all of them.

(b). If different committees were appointed to look into different objections, and the supervisor comes to the realization that it may be possible to look into them as one case, he may do so upon the approval of the Chairperson of the Committee which started looking into the objection and after the parties have had the chance to submit their claims.

22. The Committee may divide the case upon the request of the parties or on its own initiative if it is convinced that this is necessary, and may issue final or partial decisions

regarding the objection which was divided.

23(a). The Committee may issue temporary decisions or orders nisi, whether all parties or only one party are present, on certain conditions.

(b). If an order nisi is issued in the presence of one party and there is a request to cancel it, the Supervisor shall set a date for a hearing as soon as possible.

(c). The Committee or the Supervisor have the right to delay issuing an order if the amount required as bail has been paid.

24. The Committee or the Supervisor have the right to extend the deadline for the completion of certain requirements of the order nisi or of these Instructions.

25. The Committee shall not be restricted to due process and rules of court if it deems that the achievement of justice so requires.

26. The Committee has the right to call for any evidence or to ask somebody to give testimony even if he was not called as a witness by any of the parties, if it sees that the evidence and the testimony is necessary for the hearings.

27(a). The Chairperson of the Committee shall sum up the discussions of the hearings in writing and all members shall sign a copy of the summary.

(b). The hearings are conducted in Hebrew unless the parties agree to the use of another language.

28(a). The Committee shall appoint a translator to translate the discussions into a language that is understood by the parties and the Committee.

(b). The person submitting the objection may dispense with all or part of the translation.

[SECTIONS 29-37 CONCERN OBJECTIONS RELATING TO

IMMOVABLE PROPERTY AND ITS REGISTRATION AND ARE NOT THE CONCERN OF THIS REPORT.]

CHAPTER F

DECISIONS AND RECOMMENDATIONS OF THE COMMITTEE

38 (a). At the end of the hearings the Committee shall submit its recommendations in writing to the Commander as soon as possible.

(b). Whenever the law or security legislation stipulates that the decision of the Committee shall be final, the Committee shall issue a reasoned decision which shall be submitted to the parties concerned.

(c). The recommendation or decision may be made unanimously or by majority vote. Any member dissenting may enclose his reservations with the recommendation or decision.

39. The Supervisor, or anyone appointed by him shall inform the parties, in writing, of the Commander's decision.

MISCELLANEOUS ISSUES

40(a). If, for any reason, a member of the Committee is not able to attend, the Supervisor shall appoint another member, and the Committee shall proceed from such point as it has reached.

(b). If two members of the Committee or the Chairperson of the Committee are not able to attend, the Supervisor shall appoint a new Committee. The new Committee shall start from the beginning unless the parties agree that the Committee proceeds from the point which the previous Committee had reached.

41. The Committee has the right to take a decision to call a

witness to come and give his testimony in the interests of achieving justice. If the witness does not attend, the Committee may compel his attendance by means of an order to be executed by the police. It may impose a fine on such a person or order him to be imprisoned in accordance with Article 8(c) of this order.

42. The Committee has the right to oblige the parties or their representatives, or both, to pay the expenses of the hearings if it is convinced that the submission of the objection or the discussions during the proceedings are intended to be vexatious.

43. The Committee may correct any typing error or any other unintended error in its recommendations and decisions.

44. The Committee shall hold its sessions in such places as are decided upon by the Committee itself or by the Supervisor.

45. Instructions regarding due process in the Objections Committees (Judea and Samaria), 1984, shall be cancelled.

46. These instructions shall be called "Instructions Regarding Due Process in Objections Committees, 1987."

14 June 1987

LIST OF AMENDMENTS TO M.O. 172
CONCERNING THE OBJECTIONS COMMITTEE

Several appointments to the Objections Committee have been made. These are not listed here. In addition, several amendments of M.O. 172 have been issued. These include the following:

- a. Order Concerning the
Objections Committee M.O. 303, 16 January 1969
- b. " " (Am. no. 2) M.O. 353, 7 December 1969
- c. " " no. 3 M.O. 410, 6 September 1970
- d. " " no. 4 M.O. 473, 10 August 1972
- e. " " no. 5 M.O. 476, 26 July 1972
- f. " " no. 6 M.O. 521, 16 September 1973
- [AMENDMENT NO. 7 APPARENTLY UNPUBLISHED]
- g. " " no. 8 M.O. 800, 28 August 1979
- h. " " no. 9 M.O. 832, 21 March 1980
- i. " " no. 10 M.O. 1013, 22 August 1982
- j. " " no. 11 M.O. 1019, 3 September 1982
- k. " " no. 12 M.O. 1173, 9 July 1986
- l. " " no. 13 M.O. 1212, 19 November 1987

APPENDIX VI

TABLE SHOWING COST OF LIVING INCREASES IN THE WEST BANK 1973-1987

GENERAL CONSUMER PRICE INDEX

Base: vii 1968 - vi 1969 = 100

1973	179.9
1974	256.5
1975	367.4
1976	114.9

Base: i 1976 = 100.

1977	156.3
1978	235.1
1979	395.3
1980	946.2
1981	2052.2
1982	4199.5
1983	10069.0
1984	46384.2
1985	195080.0
1986	292710.0
1987	330930.0

(This price index is based on statistics published in Statistical Abstract of Israel 1975, 1981, 1988.)

APPENDIX VII
SELECTED ARTICLES OF M.O. 1263
ON ADMINISTRATIVE FINES

ISRAEL DEFENCE FORCES

Order No. 1263

PROCLAMATIONS, ORDERS AND APPOINTMENTS

OF THE JUDEA AND SAMARIA AREA

Name: Order Concerning Administrative Offences (No. 1263)
(Judea and Samaria) 1988

Registration Number: Order No. 1263

Distribution: Orders

By my authority as Commander of the IDF in the Area, and because I believe this necessary for the good of the population of the area, I order as follows:

CHAPTER 1:
ADMINISTRATIVE OFFENCES

Administrative Offences 1 (a). As a result of an offence concerning the directives of a law or security legislation which appears in the appendix or concerning auxiliary legislation derived therefrom, it is possible to impose a fine by administrative means (hereafter: administrative offence). The regulations of this order will relate to an administrative offence even if the administrative offence was committed

before the beginning of the validity of this order, providing that a charge sheet was drawn up before the trial began.

Administrative Fines 2 (e). An administrative fine may be higher than the fine determined for the same offence or than the maximal fine which can be imposed for it under the Order Concerning Imposition of Fines in military legislation (Judea and Samaria) (No. 845) 1980 ... provided that it does not reach double the sum of these fines.

Imposition of an Administrative Fine 7 (a). If an inspector or registrar has reasonable grounds to suspect that a person has committed an offence which carries a fixed administrative fine according to Articles 2(b) or 2(c), he is authorised to impose the administrative fine determined for that offence. [Articles 2 (b) and (c): the types and rates of fines.]

7 (c). The person fined is authorised to inform, in writing, the person who imposed the fine that he wishes to be tried for the offence. This notice must be presented within thirty days of the presentation of the notice of the imposition of the administrative fine. Whoever makes such an announcement will be dealt with according to the directives of Articles 12 and 13.

Notice of and Response to the Matter of an Administrative Fine Which is not Fixed 8 (c). If the person receiving the notice does not respond he shall be considered as having admitted to all the facts which constitute the offence and having no objection concerning the sum of the administrative fine imposed on him.

Appeal 10 (a). A person who receives an administrative fine as stated in paragraph 9 is authorised to appeal the sum of the fine in the time and according to the legal procedures which will be determined in the regulations. [Article 9 deals with admission to an administrative offence.]

10 (b). The appeal will be submitted to the Objections Committee, established by Order Concerning Objections Committees (Judea and Samaria) (No. 172) 1967 ...

10 (c). In an appeal, the Objections Committee is authorised to approve the administrative fine or reduce it, and is also authorised to oblige the appellant to pay the costs of the appeal in the sum determined by it.

Charge Sheet 12. If a person gives notice of his wish to be tried for the offence according to paragraph 7 (c) or according to paragraph 8 (b) (3), or if he is considered, according to paragraph 8 (b) (2) as having given notice of such, he may be tried in front of a court. [Articles 8 (b) (3) and 8 (b) (2) deal with part or whole denial of the facts resulting in an administrative offence, and the wish to be tried for the offence.]

The Fine to be Imposed by the Court 13. If a person against whom a charge sheet has been drawn up according to paragraph 12 is convicted, the fine will not be reduced from the sum of the administrative fine imposed according to paragraph 7, if this is the sole punishment, unless the court, due to reasons which shall be recorded, takes note of special circumstances justifying the reduction.

Appointed Time for the Payment of the Fine 15 (b). Submitting an appeal, as stated in paragraph 10, does not postpone the date of payment of the fine. If the appeal is accepted, then the amount of the fine will be repaid, to the extent that this is demanded in the recommendation from the appeal, with additional linkage and interest as determined in the regulations.

Collection of Fines 17. The directives of the Law Concerning Collection of Government Monies, No. 6 of 1952 will apply to the collection of administrative fines not paid on time, including linkage, interest, and arrears payments.

Cancelling Registration of a Licence 19 (a). If an administrative fine is imposed on a person concerning an administrative offence connected with a dealing or action demanded by the laws of registration of ledgers, licenses or permits, and if the fine is not paid on time, the court is authorised, on the request of the prosecutor, to order the nullification of that person's name in the registration ledger or the cancellation of a licence or permit given him, or refusal of the renewal or

extension of their validity, until the fine is paid or for the duration of at least one year.