

PROTECTION DENIED

**Continuing Israeli Human Rights
Violations in the Occupied
Palestinian Territories
1990**



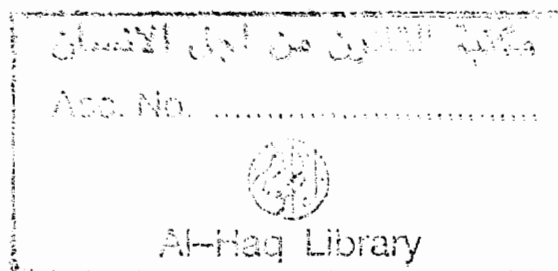
Al-Haq 1991

دبل dupl

دبل
دبل

PROTECTION DENIED

**Continuing Israeli Human Rights Violations
in the Occupied Palestinian Territories,
1990**



Al-Haq 1991

Copyright ©1991 by al-Haq. All Rights Reserved.
P.O. Box 1413, Ramallah, West Bank

Any quotation of up to 500 words may be used without permission provided that full attribution is given and the total number of words quoted does not exceed 2,000. Longer quotations or a greater number of total words may not be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature, without the express written permission of al-Haq.

Al-Haq, West Bank Affiliate, International Commission of Jurists
P.O. Box 1413, Ramallah, West Bank
Telephone: 972-2-956421 Fax: 972-2-955194

Photograph by: Issa Freij

Recent Titles by al-Haq:

A Nation Under Siege: Al-Haq Annual Report on Human Rights Violations in the Occupied Palestinian Territories, 1989 (1990).

Town Planning Under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank (1991 pre-publication copy).

Taxation in the Occupied West Bank, 1967-1989 (Arabic and English, 1990).

The Right to Unite: The Family Reunification Question in the Palestinian Occupied Territories -- Law and Practice (Arabic and English, 1990).

Application Denied: Separated Palestinian Families Tell Their Stories (Arabic and English, 1991).

Israel's Deportation Policy in the Occupied West Bank and Gaza (Arabic, 1990; English, 1988).

Al-Haq's Response to the U.S. State Department Country Reports on Human Rights Practices For 1991: The Occupied Territories (1991).

"Reconstruction of Events (Revised): Al-Haram Al-Sharif, Jerusalem -- Monday, 8 October 1990," (28 October 1990).

"Restriction of Access to and Through East Jerusalem," *Human Rights Focus* (Arabic and English, April 1991).

"Deportation," *Human Rights Focus* (Arabic and English, April 1991).

"The Illegal Use of Lethal Force Against 'Fleeing Suspects'," *Human Rights Focus* (Arabic and English, May 1991).

"Israeli Land Acquisition and Settlement in the Occupied Territories," *Human Rights Focus* (August 1991).

"Collective Economic Punishment: The Closure of Jenin's Commercial District," *Human Rights Focus* (Arabic, June 1991).

"How to Act Against Torture," *Know Your Rights* series (Arabic, September 1991).

"Israeli Policy Towards Family Reunification," *Know Your Rights* series (Arabic, September 1991).

"They Confiscated My Identity Card...What Should I Do?," *Know Your Rights* series (Arabic, November 1991).

**In memory of those martyred during the al-Haram
al-Sharif massacre -- 8 October 1990**

**لذكرى شهداء مجزرة الحرم القدسي الشريف
٨ تشرين اول ١٩٩٠**

Table of Contents

PART I: BACKGROUND

Chapter 1 -- Introduction	1
Chapter 2 -- Legal Developments	9

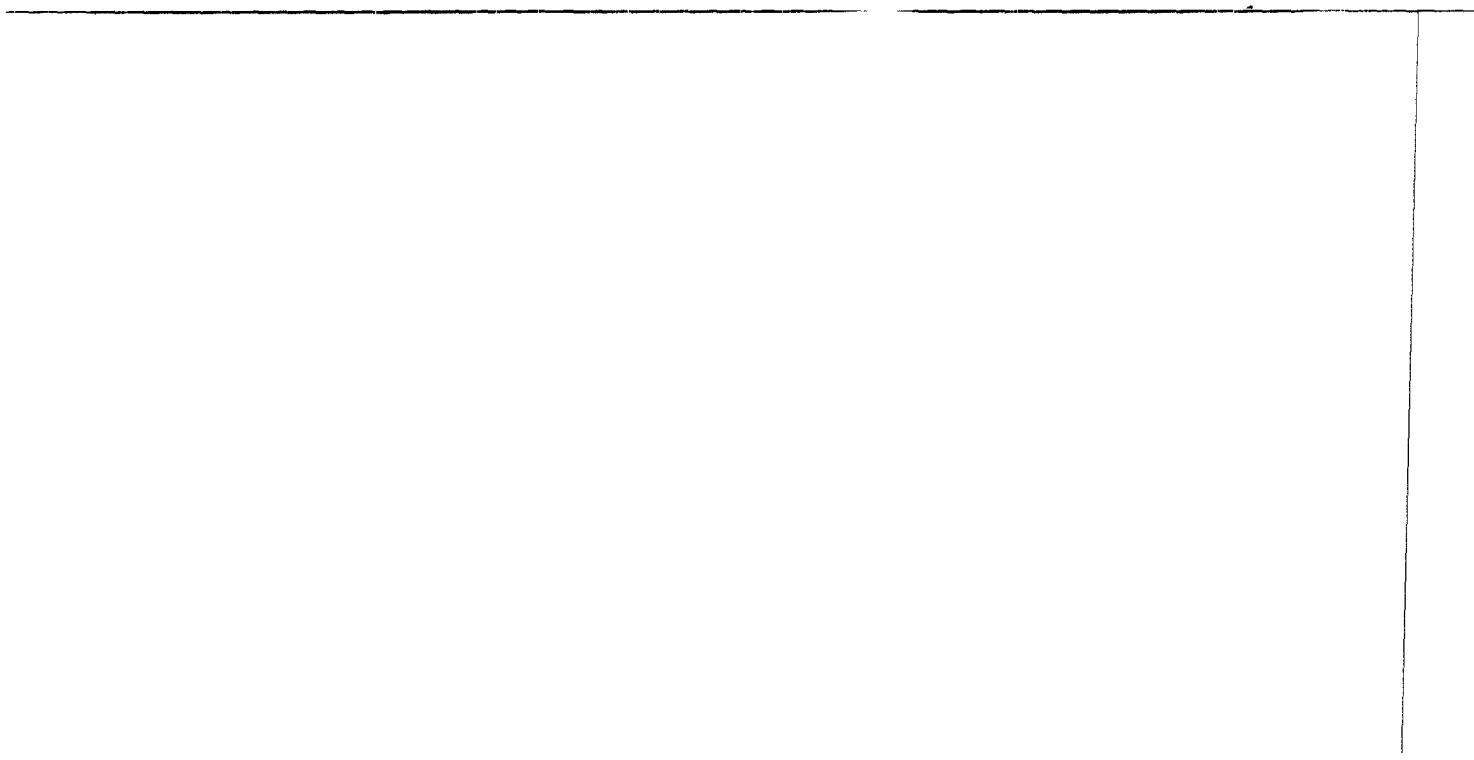
PART II: VIOLATIONS

Chapter 3 -- Use of Force	25
Chapter 4 -- Settler Violence	57
Chapter 5 -- Overview of Restrictions on Economic Development ..	65
Chapter 6 -- Land Use and Planning in the West Bank	73
Chapter 7 -- Taxation	79
Chapter 8 -- Restrictions on Movement	85
Chapter 9 -- Human Rights Violations Against Workers	93
Chapter 10 -- Human Rights Violations Against Women	101
Chapter 11 -- Family Reunification	111
Chapter 12 -- Medical Care	121
Chapter 13 -- Education	129
Chapter 14 -- Religion	135
Chapter 15 -- 'Ein Yabroud: A West Bank Case Study	141
Chapter 16 -- Bureij Refugee Camp: A Gaza Strip Case Study	147
Chapter 17 -- Detention Memoirs of Fieldworker Sha'wan Jabarin ..	155

PART III: ROLE OF THE INTERNATIONAL COMMUNITY

Chapter 18 -- Ensuring Israel's Respect for International Law in the Occupied Palestinian Territories: Third Party Practice During 1990	173
---	-----

Background



CHAPTER ONE

Introduction

On 8 October 1990, Israeli border guards and police killed 17 Palestinians and wounded at least 150 others in al-Haram al-Sharif in the Old City of Jerusalem in the deadliest single incident of the Palestinian uprising.¹ This was the third of four major occurrences of multiple Palestinian death and injury during 1990. These four confrontations alone resulted in the killing of 41 Palestinians and the injury of approximately 3,000.² These and other incidents prompted a number of appeals for international protection by the Palestinian community in the Occupied Palestinian Territories -- appeals which went effectively unheeded. In a year when the United Nations Security Council found itself able to mobilize massively against Iraq's invasion and annexation of Kuwait, charges that international law remains selectively enforced and is subject to political expediency have not yet been effectively rebutted in the context of the Israeli occupation and annexation of Arab land.

Twenty-four years after Israel's occupation of the West Bank and Gaza Strip, and three years after the beginning of the intifada, Israel persisted in its refusal to accept its legal obligations under the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Rather, Israel continued to commit widespread human rights violations in the Occupied Territories, including grave

¹ Al-Haram al-Sharif, the compound including al-Aqsa Mosque and the Dome of the Rock, is the third holiest site in Islam and the holiest Islamic site in the Occupied Territories.

² This number does not include the seven Palestinian workers killed in Rishon Letzion (inside Israel) by an Israeli gunman on 20 May 1990.

breaches of the Convention, such as willful killing, torture, deportation,³ house demolition, and land confiscation.

Protection Denied: Continuing Israeli Human Rights Violations in the Occupied Palestinian Territories, 1990, updates the status of Palestinian human rights in the Occupied Territories in the context of Israeli policies. The report relies to a large extent on the legal analysis exhaustively laid out in al-Haq's 1988 and 1989 annual reports.⁴ For more detailed background and legal analysis of specific Israeli policies and measures, many of the footnotes in *Protection Denied* refer the reader to previous al-Haq publications. As in past years, most of the documentation for this report has come from al-Haq's fieldwork unit, which utilized affidavits, interviews, and questionnaires, and was crucial in enabling the organization to accurately report on the 1990 human rights situation in the Occupied Territories.

As discussed in Chapter 2 (Part I), international humanitarian law continued to be undermined in the Occupied Territories by Israeli High Court rulings and military orders. The military orders -- which at the end of 1990 numbered over 1,320 in the West Bank alone (excluding East Jerusalem) -- change or amend existing local law in order to serve Israeli occupation policies. The majority of these amendments violate Article 43 of the Annex to the 1907 Hague Convention Respecting the Laws and Customs of War on Land, which requires the occupying power to "ensure ... public order and safety, while respecting, unless absolutely prevented, the laws in force" on the eve of occupation.

Part II of *Protection Denied* -- Chapters 3 through 17 -- summarizes specific types of human rights violations in the Occupied Territories during 1990. The picture which emerges from Part II is of "excesses" becoming the norm and "aberrations" of Israeli policy occurring almost daily. For example, the illegal and excessive use of lethal force (Chapter 3), incidents of settler violence (Chapter 4), and the widespread

³ Although there were no deportations between August 1989 and December 1990, by the middle of December the Israeli authorities had issued deportation orders for four Palestinians from the Gaza Strip who were then deported on 8 January 1991. This means that although the practice of deportation was suspended, the policy remained unchanged. These deportations and others which occurred later in 1991 are outlined in Al-Haq, "Deportation," *Human Rights Focus*, 7 April 1991.

⁴ Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988). Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990).

use of extended 24-hour curfews as a form of collective punishment (Chapter 8) have become part of the daily life of Palestinians in the Occupied Territories and have passed virtually unnoticed by the international community. During 1990, an average of one Palestinian was killed by Israeli security forces, settlers, or Palestinians collaborating with the Israeli authorities every 2.3 days.

Restrictions on economic development persisted in the Occupied Territories, especially the subordination of the Palestinian economy to Israeli economic interests (Chapter 5). As discussed in Chapter 6, an extremely limited number of applications permitting the improvement, expansion or building of Palestinian homes or businesses were approved in 1990. During the same time period, according to al-Haq's documentation, 208 Palestinian houses were demolished or sealed for "security" reasons.⁵ An estimated 202 additional houses were demolished for lack of proper licensing.⁶ The imposition of excessive fees and taxes by the Israeli occupation authorities also continued and, in many instances, the rates themselves increased significantly (Chapter 7). Palestinian laborers who travelled to Israel to work were subjected to violence and continued to encounter restrictions on movement such as 24-hour curfews, night curfews, border checkpoints, and the closure of areas; the Israeli authorities also persisted in restricting trade union activity by Palestinians who work in the Occupied Territories (Chapter 9).

Palestinian women were subjected to excessive force, physical abuse, and tear gas during curfews and military raids on homes (Chapter 10). In addition, the continuing Israeli policy of rejecting the majority of applications for family reunification affected hundreds of women and men who either cannot live together with their families in the Occupied Territories or do so "illegally" because they do not have the residency permits required by the occupation authorities (Chapters 10 and 11). Access to medical care -- especially at the scene of clashes or during curfews - continued to be obstructed and violations of medical neutrality persisted in the Occupied Territories (Chapter 12). The Israeli authorities also persisted in restricting freedom of worship and violating religious norms (Chapter 14).

School closures, which are used as a form of collective punishment, have

⁵ The breakdown of this figure is as follows: 91 homes were totally demolished; 23 homes were partially demolished; 76 homes were completely sealed off; and 18 homes were partially sealed off.

⁶ PHRIC, *The Cost of Freedom: 1990: Palestinian Human Rights Under Israeli Occupation* (Chicago: PHRIC International, 1991), p. 21; an additional 18 "other structures" were demolished for lack of licensing.

had a destabilizing effect on a society that has traditionally placed great value on the education of its children, and are likely to have long-term negative effects. As outlined in Chapter 13, most Palestinian universities remained closed during 1990; moreover, the school year for many children in the Occupied Territories was seriously reduced, despite the fact that the Israeli authorities lifted the blanket closure on most primary and secondary schools in response to international and local pressure.

Chapters 15 and 16 of *Protection Denied* present case studies of 'Ein Yabroud, a West Bank village in the Ramallah district, and Bureij refugee camp in the Gaza Strip. The chapter on 'Ein Yabroud reports some of the results of an al-Haq research project on human rights violations perpetrated against 'Ein Yabroud residents and their property since the 1967 Israeli occupation. Bureij refugee camp suffered a particularly devastating year during 1990; the chapter gives a brief profile of the camp, outlines the prevailing living conditions, and discusses some of the serious human rights violations that occurred, especially in the latter part of the year after an Israeli soldier was killed in the camp.

The arbitrary arrest of Palestinians and the practice of administrative detention (detention without charge or trial), continued on a large scale during 1990. According to an Israeli Defense Force (IDF) spokesperson, at the beginning of December 1990, a total of 9,972 Palestinians were imprisoned in military detention centers; 762 of these were administrative detainees.⁷ The Palestine Human Rights Information Center (PHRIC) estimates that an additional 4,000 Palestinians were held in civilian prisons as of the beginning of December.⁸ Al-Haq did not comprehensively document the number of Palestinians who were administratively or otherwise imprisoned during 1990. According to PHRIC's estimates, approximately 30,000 were detained for more than 24 hours between January and December of 1990; of these, between 2,800 and 3,000 were administratively detained for periods

⁷ Quoted in *Al-Bayader al-Siyasi*, No. 429, 15 December 1990. 4,401 of the 9,972 detainees had been charged and sentenced, 3,477 had not been charged, and 1,332 were awaiting trial. According to PHRIC, approximately 1,000 children (under the age of 16) were detained in 1990 (PHRIC, *The Cost of Freedom: 1990*, p. 23).

⁸ PHRIC, *Human Rights Update: December 1990* (Chicago: PHRIC, 1991), p. 530. PHRIC estimates that when the numbers of Palestinian administrative detainees in civilian prisons are added to the IDF figure of 762, the total number of administrative detainees as of 3 December 1990 becomes 910. For a discussion of the different types of detention facilities in the Occupied Territories and Israel, see Al-Haq, *A Nation Under Siege*, pp. 166-168.

ranging from three months to a year.⁹

By the end of 1990, at least 5,915 Palestinian detainees were being held in Ansar III, the Israeli military detention center located in the Negev desert.¹⁰ The harsh treatment of Palestinian prisoners and the extreme conditions that exist at Ansar III are described in Chapter 17 of this report, which consists of the translated affidavit of Sha'wan Jabarin, an al-Haq fieldworker who was administratively detained for over nine months beginning in late 1989.

Although the subject is not addressed in the present report, recent al-Haq research indicates that Israeli land acquisition in the Occupied Territories increased dramatically during 1990. Moreover, the pace of Jewish settlement accelerated, especially in East Jerusalem.¹¹ Land confiscation and settlement in an occupied territory are -- with limited exceptions -- illegal under the laws of belligerent occupation. In addition, these practices indicate an Israeli policy of *de facto* annexation, which is prohibited by international law.

The issue of collaboration with the Israeli authorities was dealt with in al-Haq's 1989 report, *A Nation Under Siege*, and will be briefly discussed here.¹² Palestinian collaborators, who are recruited, trained, sometimes armed, and usually protected by the Israeli occupation authorities -- and as such are agents of the state as defined by humanitarian law -- continued to commit human rights violations against Palestinians in the Occupied Territories. As was the case in previous years, many collaborators assumed security-related tasks normally carried out by the Israeli intelligence and security forces. Collaborators killed six Palestinians with live ammunition during 1990.¹³ Al-Haq's documentation also indicates that, as in past

⁹ PHRIC, *The Cost of Freedom*, p. 23.

¹⁰ PHRIC, *Human Rights Update*, p. 530.

¹¹ For a further discussion of the confiscation and settlement of land since January 1990, see Al-Haq, "Israeli Land Acquisition and Settlement in the Occupied Territories," *Human Rights Focus*, 20 August 1991.

¹² Al-Haq, *A Nation Under Siege*, pp. 151-163.

¹³ According to al-Haq's database unit, the following are the Palestinians killed by collaborators in 1990: 16-year-old 'Amer 'Abd al-Nabi 'Amro of Doura (Hebron district), killed on 11 April; 19-year-old Muhammad Mahmoud Hamad 'Allan of Yatta village (Hebron district), killed on 11 May; 17-year-old 'Imad al-Din Mahmoud Theeb

years, collaborators were responsible for uprooting trees and destroying other property, in addition to beating, shooting, stoning, harassing, intimidating, ambushing, kidnapping, and informing on Palestinians in their communities.¹⁴ Collaborators were rarely held accountable for human rights violations committed against the Palestinian community. In fact, Israeli policy and practice relative to this question indicates that the authorities have condoned, if not openly encouraged, the activities of collaborators.

Part III (Chapter 18) of this report reviews the statements and actions of selected individual states, regional organizations, and international bodies during 1990 in response to Israeli violations of international humanitarian law in the Occupied Territories.

The Israeli government's refusal to permit the entry of a UN mission to investigate the massacre at al-Haram al-Sharif in Jerusalem on 8 October was a clear example of its continual resistance to any effort by the international community to intervene on behalf of Palestinians in the Occupied Territories. In light of Israel's repeated refusal to accept or abide by its obligations under international treaty and customary law, the Palestinian community has appealed to state signatories to fulfill their obligation under Article 1 of the 1949 Fourth Geneva Convention to ensure respect for the provisions of the Convention.

As 1990 drew to a close, UN Security Council Resolution 681 was passed unanimously. Although the resolution was not as far-reaching as some members of the international community had wished, it contained elements of potentially major significance in the effort to provide international protection to the Palestinian population in the Occupied Territories pending a just resolution of the conflict and an end to the occupation. One of these elements was a call upon all states party to the 1949 Fourth Geneva Convention to ensure that Israel respect the Convention in the Occupied Territories. Realizing this protection of basic human rights depends

of Janzoura (Jenin district), killed on 31 May; 26-year-old Samir Sabri Muhammad Ghuraib of Beit Ijza (Ramallah district), killed on 9 July; 19-year-old Muhammad Nayef Shreim of Jabaa' (Jenin district), killed on 18 November; and, 24-year-old Rabi' Hamza Hamarsha of Ya'bad (Jenin district), killed on 30 December.

¹⁴ Al-Haq Affidavit No. 3183; Al-Haq Fieldwork Reports No. 43/90, 68/90, 110/90, and 118/90; and Al-Haq Information Sheets No. 112/90, 181/90, 207/90, 253/90, 267/90, 293/90, 359/90, and 364/90. The documentation indicates that a majority of these violations occurred in the Jenin area in the northern part of the West Bank.

to a large extent upon state parties to the Convention refusing -- in real terms -- to tolerate Israel's persistent violation of international humanitarian law in the Occupied Territories and its dismissal of UN Security Council resolutions regarding those violations.

Whether Israel will be permitted to persist in its disregard of international law and relevant UN Security Council resolutions remains a question of immediate urgency for Palestinians in the Occupied Territories, who continue to be denied the protection to which they are entitled by law.

CHAPTER TWO

Legal Developments

Introduction:

This section reviews 1990 Israeli military orders pertaining to the West Bank and selected judgements of the Israeli High Court of Justice affecting Palestinians in the Occupied Territories excluding East Jerusalem.¹ Al-Haq believes that since 1967, the rule of law in the Occupied Territories has been seriously undermined by the use of the tools of law, such as military orders and judgements of the Israeli High Court, to legitimize systemic human rights violations by the Israeli authorities. This can be seen in three principal ways: (a) the amendment of local legislation for reasons other than those permitted by international law; (b) the issuance of military orders, the provisions of which contradict international legal standards; and (c) decisions of the Israeli High Court of Justice upholding administrative acts of Israeli military commanders which violate international law. The routine failure to publish the results of official investigations has also contributed to undermining the rule of law in the Occupied Territories.² These points have been articulated repeatedly over the past 11 years by al-Haq and other human rights organizations and are thus not the main subject of this section, although they provide a context for it.

¹ For reasons of space, this section does not deal with legal developments affecting occupied East Jerusalem, which is governed by Israeli civil law (as opposed to Israeli military orders) as a result of Israel's illegal annexation of the area in 1967.

² This point is dealt with at length in al-Haq's last annual report, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990), pp. 555-566.

Israel's Use of Military Orders:

Over the past 24 years, the Israeli authorities have introduced over 1,300 military orders in the West Bank, and over 1,000 in the Gaza Strip. Their authority to do so derives from Article 43 of the 1907 Hague Regulations, which requires an occupying power to take

all the measures in his [sic] 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.

This article, in conjunction with other provisions of humanitarian law applicable to an occupation, has been consistently interpreted to mean that an occupier has a duty to balance the security needs of the occupying forces with the welfare of the local population. According to this standard, changes to existing legislation are permissible only if this is absolutely necessary. Since 1979, however, al-Haq has repeatedly exposed the Israeli authorities' misuse and abuse of the powers given to an occupier under Article 43 by, *inter alia*, declaring certain measures to be necessary for military purposes which are, in fact, simply convenient or opportune, and defining "local population" to include the Jewish settler population which lives in the Occupied Territories in contravention of international law.

Summary of 1990 Military Orders in the West Bank:

In 1990, as in every year since 1967, the Israeli military authorities introduced a number of military orders in both the West Bank and Gaza Strip.³ This section reviews only those military orders issued for the West Bank, excluding East

³ It is notable that many of the measures taken by the Israeli authorities which have been the most disruptive of daily life, have been administrative acts for which the authority had already been given to military personnel by virtue of previous military orders and regulations. For example, the extensive use of the permit system for travel in and out of the Occupied Territories, which has often totally disrupted daily business, commerce, and social life, did not require a new military order empowering the area military commander to restrict travel in this way; instead, he could rely on previous military orders declaring the Occupied Territories closed military areas, and requiring anyone entering or leaving the area to have special permission to do so.

Jerusalem.⁴ These orders -- 26 numbered and at least 50 unnumbered -- cover a broad range of issues and affect virtually every aspect of daily life in the Occupied Territories. The majority of the military orders published in 1990 relate to tax issues, fees payable for licenses, customs duties, and other financial matters. A number of others make technical amendments to already existing military orders, such as extending their period of validity. All these orders are issued by the Area (Military) Commander of the West Bank, and it is virtually impossible to challenge them successfully.

Of the numbered orders issued in 1990, four concerned taxation (Nos. 1296, 1301, 1302 and 1313); two concerned the Military Objections Committee (Nos. 1303 and 1311); two concerned land issues (Nos. 1308 and 1319); three concerned amendments to the main military order on security-related matters (Nos. 1297, 1309 and 1316). A number of orders were issued pertaining to a variety of miscellaneous matters, including product labelling (No. 1320); to whom a taxi license may be issued (No. 1312); sabbaticals for governmental employees (No. 1305); the dates of the school year (1315); the force-feeding of prisoners and banning of certain people from visiting prisoners (No. 1317); and an order authorizing the Israeli army to compel homeowners in the Occupied Territories to build a fence or a wall if this is required for security purposes (No. 1314). Five military orders simply extended the validity period of previously issued military orders (Nos. 1299, 1306, 1307, 1318 and 1321). The remaining four orders were not published (Nos. 1298, 1300, 1304, and 1310).

In addition to these numbered orders, al-Haq is aware of at least 50 unnumbered orders that were issued in 1990. These involved a wide variety of issues, including the appointment of selected individuals to positions on municipal councils; banning certain organizations; licensing the Israeli Electricity Company to operate in areas inside the West Bank; defining certain areas as archeological sites; authorizing the head of the civil administration⁵ or the Area (Military) Commander retroactive authority to confiscate any telephone or have any line cut under certain circumstances; and expropriating land for "public use." Two orders listed a number

⁴ This section does not review military orders which can be compared to secondary legislation, i.e. specific orders made pursuant to other military orders, which authorize the demolition or sealing of houses, or deportations, for example. In any case, there is some doubt as to whether such orders are written, or merely verbal, as lawyers have frequently had considerable difficulty in obtaining copies of these orders.

⁵ The head of the civil administration is appointed by the Area (Military) Commander.

of books which were declared prohibited. Six orders dealt with the Customs Law on local products.

A few general observations can be made about the military orders issued in 1990. The overall sloppiness in translation and inattention to detail in many of the military orders, which had been noted by al-Haq on previous occasions, persisted. In one unnumbered order, issued on 12 March 1990, 'Issa Boulos 'Issa Totah was appointed to the Ramallah municipal council although he had been dead for three years at the time the order was issued. In a number of cases the number of the order in Arabic was either illegible or simply wrong. For example, a "3" often appeared as a "2." Only by referring back to the Hebrew could the real number of the order be ascertained.⁶ In one military order, Number 1313,⁷ the Arabic text could be read as either permitting the rate of tax to be set at 70 percent or 170 percent of that in Israel. Only by referring to the original Hebrew was it possible to clarify that the tax rate was set at 70 percent. Further, unnumbered military orders regarding land expropriation usually referred to a map which apparently outlined the area of the land declared expropriated; however, in every case examined by al-Haq, the map was missing.

The problem of delayed issuance and receipt of military orders also continued. Local lawyers routinely received orders four to six months after they were issued. In one case, an unnumbered order determining the date on which clocks were to be changed (Daylight Savings Time) was issued on 29 March, five days after the date specified for the time change. Moreover, the order itself was not available until one week after the date specified for the time change, and was not received by one local Jerusalem lawyer until seven months after the date of issue.

Military Orders of Special Import:

The following 1990 military orders are highlighted either because they represent a development in the way the Israeli authorities are using military orders, or because of the extensive impact these orders are likely to have on the Palestinian population in the Occupied Territories.

No. 1308 (20 July) – This order amends Military Order No. 59 (31 July 1967), which enables the Israeli Custodian of Government Property to declare land to be state

⁶ For example, Military Orders No. 1302 and 1303 appeared to be identical in the Arabic translation.

⁷ Military Order No. 1313 amended Military Order No. 543 on income tax.

land, and then to assume control over it and manage it for the duration of the occupation. Military Order No. 1308 expands the definition of state land, increasing the amount of land eligible for appropriation on that basis.

No. 1311 (30 July) – This order amends the procedural rules governing hearings of the Military Objections Committee.⁸ It allows the Area (Military) Commander to refuse to give evidence if he gives a signed statement to the Objections Committee to the effect that giving the evidence might harm local security or public order. It also enables the Objections Committee to receive evidence in the absence of the petitioner or his/her lawyer, or without revealing it to them, if members of the Committee are of the opinion that to do so would harm local security or any aspect of the public interest. This order significantly weakens the position of an appellant in cases before the Objections Committee by depriving him/her, and in some cases the Committee itself, of the right to hear the evidence used to support the decision against which s/he is appealing.

No. 1314 (11 September) – This order empowers a military commander to sign an order requiring a landowner (defined as including a landlord and someone acting on a landowner's behalf) to carry out construction and/or fencing work if this is deemed necessary for the purpose of public order and local security. The military commander is authorized to set a deadline within which the work must be completed. If the landowner refuses to carry out the order, the military commander can order IDF soldiers to carry out the construction work instead.

This is an unusual order in that instead of restricting Palestinians from doing something, it enables a military commander to compel a Palestinian to do something -- in this case build a fence or wall on his/her property. Article 51 of the 1949 Fourth Geneva Convention allows the occupying army to compel protected persons to work only in very specific circumstances where the work is necessary for "the needs of the army of the occupation." The Convention also specifically prohibits the occupier from compelling protected persons to undertake "any work which would include them in

⁸ The Military Objections Committee was set up in 1967 and is composed entirely of Israeli military officers. Since 1967, it has been given jurisdiction to hear Palestinian objections against decisions by the Israeli authorities on a wide range of issues, including all matters relating to land expropriation, income tax assessments, and decisions on town planning. It is not bound by the laws of evidence and procedure normally observed in most world courts. It has the power to set its own rules of procedure as well as to summon witnesses and compel them to testify under oath (Raja Shehadeh, *The West Bank and the Rule of Law* (Geneva: International Commission of Jurists, 1980), pp. 30-33).

the obligation of taking part in military operations." In the official commentary to the Convention, Jean Pictet states:

It is the maintenance needs of the army of occupation and not its strategic or tactical requirements which are referred to here. This distinction is essential and should be emphasised.⁹

Contrary to this, requiring someone to build a fence or wall on their own land, presumably to restrict alleged stone-throwing from that area, cannot be justified as necessary for the maintenance needs of the army; rather, it appears to fall under the category of a strategic or tactical requirement. Given the cost in terms of time and building materials required, it also appears to be a form of collective punishment against targeted landowners.

No. 1315 (30 September) – This order retroactively stipulates that the 1989-90 academic year shall be considered to have been completed between January and July 1990. Due to the repeated closure of West Bank schools by the military authorities, the 1989-90 academic year was in fact comprised of less than four months for most West Bank schools.

The Jordanian Education Law No. 16 (1964) requires that

the number of school days in each of the compulsory and secondary stages in each scholastic year shall be between 205 and 210 days for schools which have one vacation day per week, and between 170 and 175 days for schools which have two days off each week.... It is not permissible to end the school year except after this number of days has been completed.¹⁰

Article 50 of the 1949 Fourth Geneva Convention requires the occupying power, in cooperation with the national and local authorities, to "facilitate the proper

⁹ Jean Pictet (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958), p. 294. This is not the first military order authorizing the Israeli authorities to require Palestinians to do something; see Article 91 of Military Order No. 378 (1970) which allows a military commander to require shopkeepers or other business owners to open their premises.

¹⁰ Article 112, Jordanian Education Law No. 16 (1964). See Al-Haq, *Israel's War Against Education in the West Bank: A Penalty for the Future* (Ramallah: Al-Haq, November 1988).

working of all institutions devoted to the care and education of children." Shortening the school year in this way, particularly in conjunction with the number of school days lost by forced closures of schools by the military, is in clear violation of this article.

No. 1316 (21 October) – This order is the 63rd amendment to Military Order No. 378, which is the main order concerning security offenses and military courts. Military Order No. 1316 adds a clause to Article 17 of the original order, authorizing the court to impose expenses on a defense lawyer or his/her representative who either requests the postponement of a hearing, or who causes the hearing to be delayed because of negligence on their part.

It remains to be seen what impact this amendment will have. The practice of postponing trials is a serious problem in military courts. Some of these delays are caused by defense lawyers' failure to appear in court because they have had either no or insufficient notification of the hearing date; because they have been scheduled to appear at a different court at the same time; because they request a postponement on the grounds that they have had insufficient time to prepare for the hearing; or for tactical reasons.

No. 1317 (18 October) – This order amends Military Order No. 29 (1967) concerning prison regulations. It authorizes the use of force "required for implementation" of medical treatment of Palestinian prisoners in cases where a detainee's health or life is endangered (as determined by a prison physician) and the detainee has refused treatment by prison medical personnel. If force is used it must be in the presence of a doctor. Military Order No. 1317 also empowers the military commander to ban someone from visiting a prison or detention facility if he has reasonable grounds to believe that the visitor is transferring information harmful to local security or to the order of the prison facility. In addition, the order prohibits anyone who has previously been detained for committing a security offense from visiting a detainee without first acquiring permission from the military commander.

This last provision is particularly significant, given the high number of Palestinians detained throughout the uprising. According to Amnesty International's 1991 report on the military justice system in the Occupied Territories, over 30,000 Palestinians have been tried in military courts since the beginning of the uprising in December 1987.¹¹

¹¹ Amnesty International, *The Military Justice System in the Occupied Territories: Detention, Interrogation, and Trial Procedures* (London: Amnesty International, July 1991), p. 2.

Israeli High Court of Justice and the Occupied Territories:

Since 1967, the Israeli High Court of Justice has assumed jurisdiction over Israeli officials acting within the Occupied Territories on the basis that they are lawful public officeholders, belonging to the executive branch of the government, and therefore subject to the High Court under paragraph 7(b)(2) of the 1957 Israeli Courts Law. The Court is competent to order such officials to do, or to refrain from doing, any act in "the lawful exercise of their functions."

The High Court of Justice has refused to be bound by the provisions of the 1949 Fourth Geneva Convention, on the grounds that it is an international treaty, and therefore requires formal incorporation into the Israeli legal system by a decision of the Knesset before it can be applied by the High Court as part of Israeli law. However, since the Israeli government has repeatedly stated that it adheres to the "humanitarian provisions" of the Convention, these are frequently cited in the Court.

Although Palestinian petitioners are rarely successful in having a military order overturned, High Court procedures provide temporary relief by delaying the implementation of orders against specific person(s) until the victim(s) have a chance to be heard (e.g. in the case of deportations and house demolitions).¹² On many occasions the High Court is also used by Palestinian petitioners as a last resort in a particular case which is representative of a general pattern. In these cases, the Israeli authorities will often resolve the issue in a way satisfactory to the petitioner before the case ever reaches the High Court, in order, presumably, to avoid a negative precedent. Although this is of benefit to the individual petitioner, it means that issues which represent patterns of unlawful behavior on the part of Israeli officials are not dealt with on a systemic level.

Selected Judgements of the Israeli High Court of Justice in 1990:

Several cases from the Israeli High Court in 1990 concerning issues related to the Occupied Territories are reviewed below, including house demolitions, night curfew, and minors. These cases have been selected on the basis of: (a) the frequency with which the Israeli authorities used the measure whose legality was being challenged; (b) the severity of this measure; and (c) the number of people affected by this measure.

¹² For a more detailed examination of the role of the Israeli High Court of Justice, see Raja Shehadeh, *Occupier's Law: Israel and the West Bank* (Washington, D.C.: Institute for Palestine Studies, 1988), pp. 95-100.

House demolitions – House demolitions are usually authorized under Article 119 of the 1945 British Defence (Emergency) Regulations (DER).¹³ Appeal is possible to the High Court, although the Court refuses to examine the validity of the security reasons for which the demolition is ordered. Rather, the Court restricts itself to a formal review of the way in which the decision was taken: whether this decision was reasonable, taken in good faith, and within the authority of the official concerned. No appeal to the High Court against a house demolition order has ever been successful.¹⁴ In 1989, the High Court ruled that persons subject to a house demolition order should have the opportunity -- within 48 hours after the house demolition order has been issued -- to consult a lawyer, appeal to the Area (Military) Commander, and submit an appeal to the High Court.¹⁵ However, in practice, demolition orders are always confirmed; the only benefit for the occupant lies in the delay in the execution of the order.

A number of applications concerning house demolitions were submitted to the High Court in 1990, including a petition submitted by the Association for Civil Rights in Israel (ACRI) on behalf of some residents of Bureij refugee camp in the Gaza Strip.¹⁶ On 20 September 1990, IDF reservist Amnon Pomerantz drove into Bureij refugee camp and ran into two children sitting on a donkey cart. He was attacked by a crowd of people, and his car was burned; he died of his injuries. The

¹³ This article allows a military commander to order:

the forfeiture of any house, structure or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these regulations involving violence or intimidation or any military court offence, and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or structure or anything growing on the land.

¹⁴ In one case, a demolition order was changed to a sealing order.

¹⁵ H.C. 358/88.

¹⁶ H.C. 4112/90.

camp was immediately placed under curfew. Four days later, on 24 September, the Area (Military) Commander of the Gaza Strip issued notices to a number of homeowners and shopkeepers informing them that their houses and/or shops were to be demolished; some received notices that they should vacate the premises by 7:00 pm that day.¹⁷

ACRI submitted an application for an *order nisi* from the Court to require the Area (Military) Commander of the Gaza Strip to show cause why he would not delay execution of the demolition orders until the occupants could consult a lawyer and appeal to the High Court. ACRI argued that: (a) the people whose houses and shops were to be demolished were not necessarily the same people who had participated in the killing referred to above, and (b) High Court Judgement No. 358/88 gives people the right to appeal demolition notices and to apply to the Court before execution of the order.

The High Court decided that the decision of H.C. 358/88 did not apply in this case because the Bureij properties were not being demolished for punitive reasons, but for security needs -- to widen the road in the camp in order to improve military security. There was thus no automatic requirement that the occupants should be able to contact a lawyer before the demolitions were carried out. The question was one of balancing the security needs of the army and the interests of the local population. The Court held that under the circumstances, the security needs of the army -- which necessitated the immediate demolition of the houses -- outweighed the right of the property owner to have the case argued in court before the order was carried out. The court pointed out that the occupants were told that they could apply to the civil administration for compensation or alternative accommodation.

This decision distinguishes between house demolitions where "such destruction is rendered absolutely necessary for military operations," authorized under Article 53 of the 1949 Fourth Geneva Convention and Article 23(g) of the 1907 Hague Regulations, and house demolitions for punitive and deterrent reasons, authorized under Regulation 119 of the 1945 DER. It fails to rationalize how house demolitions which are carried out because they are "absolutely necessary for military operations" are apparently authorized under Article 53 of the 1949 Fourth Geneva Convention, while house demolitions which do not fall into this category (and are thus "expressly prohibited" under the same Article 53) are also somehow lawful. If Article 53 is to be used to justify one type of demolition, this is a recognition that the article applies and must be respected; it cannot be applied in one situation, and conveniently ignored in another. Further, it is not at all clear why these houses and

¹⁷ For further information on this incident, see Chapter 16 of this report.

shops needed to be demolished so quickly that the families concerned could not even take the case to the High Court. This decision threatens to diminish the limited protection afforded by H.C. 358/88 to families whose houses are about to be demolished.

A request for an *order nisi* to stop execution of a house demolition order submitted by Ibrahim Muhammad 'Abdullah Shawahin of the village of Yatta (Hebron district) was likewise rejected.¹⁸ On 28 December 1989, Mr. Shawahin's family was given notice that the army intended to confiscate the house where he lived and demolish it, based on Article 119 of the 1945 DER. At the time the notice was issued, 38-year-old Ibrahim Shawahin had not even been arrested. He was arrested over two months later, on 8 March 1990. The order was issued on the basis of statements made by other people allegedly implicating Muhammad Shawahin in various offenses, including being the leader of a nationalist "strike force" that was allegedly involved in the killing of Palestinians suspected of collaborating with the Israeli authorities. Part of the evidence for the demolition order was secret. The house was demolished on 10 September 1990.

The Court rejected the application on four grounds. In particular, they held that the order could not be challenged on the general ground that house demolitions are ineffective as a method of deterrence because it is impossible to know how many other attacks would occur if there were no demolitions. Significantly, they also held that it was acceptable to judge the reasonableness of issuing the order on the basis not just of the information available to the Area (Military) Commander at the time he issued the order, but also on subsequent information received by him.

This case confirms the policy of the High Court in sanctioning house demolitions as a punitive and deterrent measure in blatant contravention of the clear prohibition on such actions in Article 53 of the 1949 Fourth Geneva Convention and under the 1907 Hague Regulations. It also reaffirms that it is not even necessary for a person to have been arrested before a demolition order is issued. Thus, not only can the punishment be carried out before trial, conviction, and sentence, but even before arrest and charge. Finally, to determine whether or not a decision was reasonable by referring to information which the decision-maker did not possess at the time the decision was made flouts basic principles of justice.

Night Curfew in Gaza -- In mid-March 1988, an ongoing night curfew -- from 10:00 pm and then 9:00 pm until 3:00 am -- was imposed over the entire Gaza Strip. This curfew was lifted on 17 February 1989. On 13 May 1989, the night curfew was

¹⁸ H.C. 2209/90.

reimposed -- this time from 8:00 pm until 4:00 am¹⁹ -- and it continued as of the end of 1990. The inconvenience and difficulties caused by the night curfew increased with its duration; a night curfew for one or two nights might not be a major inconvenience, a night curfew lasting for over three years is a serious disruption of daily life.

At a hearing on 19 August 1990, ACRI petitioned the High Court for an order to stop the Area (Military) Commander of the Gaza Strip from continuing to impose this curfew.²⁰ ACRI argued that (a) there was no justification for imposing continuous night curfew for such a long period of time; (b) it was unnecessary to impose continuous night curfew on all areas of the Gaza Strip; and (c) the measure appeared to be punitive, and thereby exceeded the authority of the Area (Military) Commander of the Gaza Strip.

The Court rejected the petition, stating that it accepted the IDF's argument that such a measure was necessary to ensure the security of the area and to maintain public order. The Court also ruled that it did not have sufficient cause to intervene in the decision of the Area (Military) Commander, and that it was not reasonable for it to specify areas where the curfew could be lifted. However, it recommended that the Area (Military) Commander should periodically review his decision and consider whether the curfew could be lifted in whole or in part.

An occupier is required to balance the security needs of the occupying forces with the welfare of the local population. To comply with this obligation, a curfew, which dramatically affects the lives of a large number of people, should be imposed only as an exceptional and temporary measure. The regular imposition of night curfew over the entire Gaza Strip, with a population of over 700,000 persons, appears to ignore this obligation.

Minors -- Military Order No. 1235, which was issued in 1988, authorizes the Area (Military) Commander to require parents of minors (12 years and under) alleged to have committed a security offense to pay a "guarantee" or else go to prison. In 1988, six lawyers and two minors challenged this order in a petition submitted to the Israeli High Court. Their challenge was based on a number of cogent grounds, the most important of which were: (a) Military Order No. 1235 violated the principle of

¹⁹ This is aside from the frequent 24-hour curfews which have been imposed on an area-wide or location-specific basis in both the Gaza Strip and West Bank. See Chapter 8 of this report for further discussion.

²⁰ H.C. 1113/90.

personal responsibility, i.e., that no one should be punished for an offense which s/he has not personally committed; (b) the issuance of the order was in contravention of the requirement that the occupier must strike a balance between security needs and the welfare of the local population; (c) Article 43 of the 1907 Hague Regulations gives the Area (Military) Commander authority to amend existing law only in very specific circumstances and that because these circumstances did not apply, Military Order No. 1235 was null and void; and (d) the wording of the order was extremely vague: the standard of proof was left undefined and no criminal intent (*mens rea*) was required on the part of the parent.

On 21 January 1991, the High Court issued a decision upholding the validity of the military order and rejecting all of the above points. It held that the order essentially imposes a legal duty on parents to take responsibility for the actions of their children, rather than punishing a parent for the acts of his/her child. They found that such a duty of care exists in various other jurisdictions and cited the legal situation in Arizona and California in the United States, as well as in Great Britain and Israel. In response to the argument based on Article 43 of the 1907 Hague Regulations, the Court held that the "balance" which an occupier is required to keep in occupied territory is that the "means of prevention must be in proportion to the size of the danger and the extent of the possibility of its occurring."²¹ Since stone-throwing by children under 12 years of age created a "mortal danger" to the IDF and other Israeli citizens in the Occupied Territories, the Area (Military) Commander had a duty to exercise his authority to restore and ensure public order and local security. The Court also maintained that Military Order No. 1235 was lawful as it is in the interests of the occupier to preserve its rule in occupied territories. Finally, the Court argued that the Area (Military) Commander's decision to impose the military order was reasonable as the burden placed on the parent was not excessive, and, further, the "guarantee" was not a punishment, but a means to "warn and deter."²²

This decision took two and a half years to be issued. This is an unreasonable length of time for a decision on any case to be issued, let alone one which, throughout the time the Court was considering its application, continued to have a significant impact on the daily lives of the Palestinian population.

Before commenting on the verdict, it is important to summarize how the order has been used in practice. Generally, when children under 12 are arrested for allegedly throwing stones or committing other offenses against the public order, their

²¹ H.C. 72/86.

²² *Ibid.*

parents report to the place where they are held to collect them. In exchange for releasing the minor, the identity card of the parent is often confiscated until the parent agrees to pay a sum usually ranging between NIS 500-1,500. The parent is handed a paper on which various details are written. These include the stipulation that the parent undertakes to do all that is required in order to prevent the son/daughter from taking part in any act which harms public security or public order for a one-year period and that, further, if the son/daughter does commit such an act, the monetary deposit will be forfeited. Also mentioned is the right to appeal the imposition of the guarantee and its amount. The parent is requested to sign the paper despite the fact that all these details are written in Hebrew, a language which most Palestinians do not read.

The decision of the High Court obfuscates the reality for Palestinians in the Occupied Territories. First, the imposition of an NIS 500 to 1,500 fine -- whether or not it is recoverable within one year -- is a severe economic hardship for most families. Second, the Court's attempt to show that other jurisdictions impose a duty on parents for the behavior of their minor children is disingenuous. The Children and Young Persons Act (1969) of Great Britain that was referred to by the Court in this context only applies to children who are over the age of criminal responsibility and who have already been tried and convicted for an offense. Additionally, under this act, the parent or guardian must consent to be held legally responsible for the child and does not pay a fine to the court if s/he does consent. Third, as far as al-Haq is aware, it is rare that a Palestinian parent is able to recover the money paid as a guarantee for his/her minor's behavior. Finally, al-Haq has documented cases where the order has apparently been used although all the evidence suggests that the minor did not commit any act against public order or security.

PART II

Violations

CHAPTER THREE

Use of Force

Introduction:

Israel's illegal use of force in the Occupied Palestinian Territories has been the subject of several in-depth reports by al-Haq and other local and international human rights organizations during the first three years of the uprising.¹ The purpose of this section is not to reiterate these reports, but rather to discuss the use of illegal force by the Israeli military authorities in 1990 with selected cases documented by al-Haq.

1990 was marked by incidents of unrestrained use of deadly force during concentrated periods of time, resulting in multiple Palestinian deaths and injuries. These incidents occurred amidst intervals of relative quiet; excessive force continued to be used during these intervals, but in a more limited fashion than in the previous two years. Thus, while some of the most violent incidents of the first three years of the uprising occurred during 1990, the overall number of Israeli-inflicted fatalities

¹ See, for example, Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), pp. 9-53; Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Territories, 1989* (Ramallah: Al-Haq, 1990), pp. 21-92; "The Use of Live Ammunition by Members of the Israeli Defence Force," Amnesty International, 17 June 1988; "Amnesty International Fears Killing of Palestinians By Israeli Forces 'Condoned and Even Encouraged' by Government," Amnesty International, 3 January 1990; Middle East Watch, *The Israeli Army and the Intifada, Policies that Contribute to the Killings* (New York: Human Rights Watch, 1990); Ronny Talmor, *The Use of Firearms by the Security Forces in the Occupied Territories* (Jerusalem: BTselem, 1990).

during the year was lower than in 1988 or 1989.²

As illustrated by the cases presented in this section, there was no change in the types of force utilized by the Israeli authorities during 1990. As during the previous two years of the uprising, Palestinians were subjected to the unnecessary and disproportionate use of gunfire, the abuse of standard methods of crowd control, and military brutality. Further, even with a reduction in the number of Palestinians killed, the casualty rate in 1990 was over nine times higher than during the 21 months preceding December 1987, when the uprising began.³ As repeatedly noted by al-Haq, these casualties are chiefly attributable to Israel's continued use of firearms against unarmed Palestinians, and the corresponding failure of the authorities to adopt standard non-lethal means of responding to civil unrest.

The unjustified resort to gunfire has occurred in the context of Israeli open-fire procedures permitting the use of excessive force, coupled with a persistent failure by the Israeli authorities to effectively deter illegal force through the impartial investigation and imposition of adequate penalties in cases of unlawful behavior by their personnel.⁴ Given this context, the use of excessive force in the Occupied Territories appears to occur with the sanction -- either official or unofficial -- of the government of Israel.

² The Israeli military authorities adopted some measures in 1990 which, together with an apparent decline in the frequency of demonstrations, seem to have contributed to lowering the number of monthly fatalities in the first three quarters of 1990. These measures included reducing patrols in some heavily populated areas and greater restraint by military personnel in engaging with demonstrators. However, according to a statement issued by the ICRC, civilian casualties escalated during the final four months of 1990. The ICRC expressed the opinion that, in part, this "escalation [was] attributable to the increasingly widespread use of live ammunition against civilians...." (ICRC, "Appeal for Respect for Civilians in Israel and the Occupied Territories," 8 January 1991).

³ According to al-Haq's documentation, 17 Palestinians were killed in the West Bank by Israeli military personnel between January 1986 and October 1987. See al-Haq press release, "Shooting by the Israeli Armed Forces," 19 October 1987.

⁴ For a detailed discussion of the Israeli military investigation system, see Al-Haq, *A Nation Under Siege*, pp. 547-595; Middle East Watch, *The Israeli Army and the Intifada*.

Statistics on Killings:

According to al-Haq's documentation, during 1990 a total of 158 Palestinians were killed in the Occupied Territories by the Israeli military authorities, their agents, and other individuals officially licensed to bear arms, including those who appear to be Israeli security personnel acting under civilian cover.⁵ The following table provides a breakdown of perpetrators:

Perpetrators of Killings in 1990

Perpetrator	Number Killed	Percentage
Soldiers	102	64.6
Border guards	24	15.2
Unknown*	18	11.4
Settlers	7	4.4
Collaborators	6	3.8
Prison guards	1	0.6
Total	158	100.0

* This category comprises persons in civilian clothes whose identity could not be confirmed. Thus, it includes Israeli civilians not resident in the Occupied Territories, plain-clothed or disguised security personnel, as well as those who appear to be West Bank and Gaza Strip settlers, but whose residency in the Occupied Territories could not be established.

The proportion of deaths attributable to the Israeli occupation forces -- whether soldiers or border guards -- dropped slightly from 86.7 percent in 1989 to 79.8 percent in 1990, whereas deaths attributable to unidentified armed persons in civilian clothing more than doubled, from 5.6 to 11.4 percent.⁶

As was the case during the previous two years of the uprising, shooting deaths predominated during 1990. The proportion of total shooting deaths (87.3

⁵ One of the 17 Palestinians killed in the al-Haram al-Sharif massacre on 8 October is not included in this number or the following tables because he lives in Israel, not in the Occupied Palestinian Territories.

⁶ Al-Haq, *A Nation Under Siege*, p. 23.

percent) -- irrespective of the kind of ammunition used -- did not vary significantly in comparison to 1989 (88.6 percent); similarly, the proportion of beating deaths remained constant at nearly four percent.⁷

Breakdown of Deaths in 1990*

Cause of Death	Number Killed	Percentage
Live/Plastic Bullets	128	81.0
Tear Gas**	8	5.1
Rubber-Coated Metal B.	7	4.4
Beatings	6	3.8
Rubber Bullets	3	1.9
Military Vehicle	3	1.9
Other	3	1.9
Total	158	100.0

* One of the deaths occurred in 1990 as a result of injuries sustained during 1988.

** Although tear gas manufacturers acknowledge that improper usage can cause death, tear gas inhalation remains controversial as a cause of death from a medical perspective. Examples of the consequences of the misuse of tear gas are presented in this chapter.

Twenty-one of the 158 persons killed in 1990 were female (13.3 percent) and 137 were male (86.7 percent); 106 (67.1 percent) were killed in the West Bank and 52 (33.9 percent) were killed in the Gaza Strip.⁸ These findings are specified in the following charts showing deaths by district in the West Bank and Gaza Strip.

⁷ *Ibid.*, p. 22.

⁸ An additional nine Palestinian workers from the Occupied Territories were killed inside Israel; seven were shot and killed at Rishon Letzion by an Israeli gunman, one was killed by an Israeli civilian in Tel Aviv, and another was killed by an Israeli civilian in Haifa. For more information on these killings, see Chapter 9 of this report.

Deaths By District: West Bank

District	Number Killed	Percentage
Jenin	18	11.4
Tulkarem	12	7.6
Nablus	18	11.4
Ramallah	12	7.6
Jerusalem	28	17.7
Bethlehem	7	4.4
Hebron	11	7.0
Total	106	67.1

Deaths By District: Gaza Strip

District	Number Killed	Percentage
Gaza City	23	14.6
Khan Yunis	10	6.3
Deir al-Balah	1	0.6
Rafah	18	11.4
Total	52	33.9

The ages of those killed during 1990 ranged from 26 days⁹ to 66 years, with the majority of deaths (66.4 percent) involving persons between the ages of 11 and 25.

⁹ Hamada 'Azzam Ghanem of Silwan (Jerusalem district) was 26 days old when he died on 28 May after inhaling tear gas. Five-year-old Wafaa 'Abd al-Hadi 'Ajaj of Deir Jareer (Ramallah district) was the next youngest person to be killed by Israeli forces; she died on 11 May 1990 after being hit by an Israeli military vehicle.

Ages of Palestinians Killed in 1990

Age	Number Killed	Percentage
0-10	6	3.8
11-16	28	17.7
17-18	28	17.7
19-25	49	31.0
26-35	20	12.7
36-50	13	8.2
50 plus	14	8.9
Total	158	100.0

Compared to 1989, there was a significant drop -- from 84 percent in 1989 to 66.4 percent in 1990 -- in the proportion of those killed in this majority age group (i.e. between the ages of 11 and 25), while the proportion of those killed who were 26 or older more than doubled from 14.0 to 29.8 percent.¹⁰ There was no significant change in the proportion of those killed who were under 10 years of age.¹¹

Major Incidents of Multiple Death and Injury:

Four major incidents of multiple Palestinian death and injury occurred during 1990, including the massacre on 8 October at al-Haram al-Sharif -- during which more Palestinians were killed than in any other single incident since the beginning of the uprising. These incidents share a number of features which have characterized Israel's use of force throughout much of the first three years of the uprising. Most notably, the incidents depict: (a) the indiscriminate and heavy use of gunfire upon demonstrations, funeral processions, and other mass gatherings; (b) the failure to issue verbal warnings or fire warning shots; and, (c) the extensive use of lethal force against individuals in situations where there was no demonstrable threat to the lives of Israeli military personnel or civilians, in violation of both

¹⁰ Al-Haq, *A Nation Under Siege*, p. 23.

¹¹ *Ibid.* In 1989, 2.4 percent of the total number of persons killed were under 10 years of age, while in 1990, 3.8 percent of the total were in this age range.

international standards and Israeli open-fire regulations.¹² These practices, although remarkable in terms of the scale to which they were used in single events during 1990, are not new; similar practices were apparent in numerous cases documented by al-Haq in 1988 and 1989. A summary of these incidents follows.

26 April – Israeli soldiers opened fire upon a religious procession, killing three Palestinians and injuring 214 others in the Jabalya refugee camp in the Gaza Strip.¹³ The procession, held in accordance with Muslim tradition to mark the occasion of the 'Id al-Fitr feast, was returning from the cemetery in the camp when soldiers fired tear gas into the crowd without warning. Stones were then thrown at the soldiers. Other soldiers as well as Border Police then arrived on the scene with a range of military equipment, including armored personnel carriers, helicopters, and a stone-throwing vehicle. During the confrontation, Israeli military personnel opened fire on the crowd with live ammunition, plastic bullets, and rubber-coated metal bullets. 'Ali Abu Sma'an, 'Awad Allah al-Mabhouh, and Khaled al-Aswad all died from live ammunition wounds. The military dropped large quantities of tear gas from helicopters on the crowd and on many parts of the camp. In addition, numerous persons were subjected to severe beatings.¹⁴

Jorgen Rosenthal, then director of al-Ahli Arab Hospital in Gaza City, where some of the wounded were treated, stated that on the morning of 26 April the hospital had "the highest number of casualties they have ever received in one morning."¹⁵ Of the 214 people injured, 108 were hit by live and plastic bullets, 67 received beating injuries, and 39 sustained wounds from rubber-coated metal

¹² Written Israeli open-fire regulations permit the use of deadly force against unarmed demonstrators in the Occupied Palestinian Territories when Israeli military personnel or Israeli civilians are "in mortal danger" ("Israeli Rules of Engagement," Part A, Section 1; published by the Israeli consulate offices in New York City, USA, in 1990, and republished by BTselem in Talmor, *The Use of Firearms*). Such force should be preceded by both a verbal warning and a warning shot. It is then to be used "as much as possible" provided that it is only directed at a specific person who presents a threat to life ("Israeli Rules of Engagement," Part A, Sec. 2(b)(7), 2(c)(3)).

¹³ Al-Haq and PHRIC, "Joint Al-Haq/PHRIC Statement Regarding Events in Jabalya Refugee Camp on 26 April 1990," 28 April 1990.

¹⁴ Al-Haq Affidavits No. 2609 and 2692.

¹⁵ Matthew Seriphs, "Riots Spread in Gaza," *Jerusalem Post*, 27 April 1990.

bullets.¹⁶ The injured included both males and females, ranging from 12 to 56 years of age. A further 27 persons were injured in continuing protests on 29 April.

According to the Officer in Charge (OC) of Southern Command, Matan Vilna'i, the Israeli military "expected [that] something of this kind would happen...."¹⁷ Despite these expectations, the military authorities failed to utilize water cannons or plastic shields, or to take other measures to avoid bloodshed in what was described by both Palestinian eyewitnesses and Israeli military personnel as one of "the most serious clashes this year" and among "the worst since the beginning of the uprising."¹⁸

20-27 May – Thirteen Palestinians were fatally shot, two were beaten to death, two died following inhalation of large quantities of tear gas, and approximately 2,000 were injured (roughly half by live ammunition), in protests throughout the Occupied Territories following the massacre of seven Palestinian workers in Rishon Letzion inside Israel.¹⁹ In the wake of the massacre, curfew was imposed on the entire Gaza Strip for eight days and on most of the West Bank for at least four days. During this period of widespread protest, Israeli military personnel used excessive force extensively against demonstrators, in the process of arresting people, and in a random and indiscriminate fashion against individual Palestinians. Following are just several of the examples documented by al-Haq:

* On 20 May, 19-year-old Wa'el al-Badrasawi was shot and killed during demonstrations while border guards were enforcing a curfew in Shati refugee camp in the Gaza Strip. Eyewitnesses reported that while announcing the curfew, border guards taunted and threatened Palestinians with explicit reference to the killings at Rishon Letzion. One eyewitness described this incident in a sworn statement taken by al-Haq: "I heard the soldiers announcing over a loudspeaker attached to one of the ... jeeps 'If you don't go inside, I will do the same as what was done in Rishon Letzion'.... Soldiers got out...and started chasing the youths, dispersed them and

¹⁶ Al-Haq and PHRIC, "Joint Statement."

¹⁷ Matthew Seriphs, "Jabalya 'Mob Sought Confrontation'," *Jerusalem Post*, 29 April 1990.

¹⁸ "Riots Spread to Gaza."

¹⁹ Al-Haq, "Update on the Events of 20-24 May 1990," 26 May 1990.

began shooting."²⁰ In the course of this incident, Wa'el al-Badrasawi was shot in the neck by a live bullet. He died in transport to al-Shifa' Hospital in the Gaza Strip.

* On 20 May, 48-year-old Ghaleb Hassan Judeh Zalloum was beaten to death by soldiers in the West Bank city of Hebron when he refused to remove a stone barricade in the road near his house for health reasons. At approximately 11:30 pm, soldiers came to the Zalloum home and ordered Mr. Zalloum, a diabetic who also suffers from arteriosclerosis, and his two sons, 'Adel and Rateb, to clear a stone roadblock from the road. When Mr. Zalloum's sons protested that he could not clear the barricades due to poor health, they were beaten. Then the soldiers began beating Mr. Zalloum, and continued to kick and beat him even after he collapsed onto the ground. Mrs. Zalloum called an ambulance which transported Mr. Zalloum to 'Aliya Hospital. Mr. Zalloum was pronounced dead shortly after he arrived at the hospital.²¹

* On 22 May, 18-year-old Ahmad Jamil Msabbah of the al-Rimal neighborhood in Gaza City was shot in the chest with live ammunition and killed when Israeli border guards opened fire in the Msabbah home during a house raid. The raid occurred during clashes between Palestinians and the Israeli military in the neighborhood. Ahmad's 53-year-old father was wounded in the right thigh, and his 22-year-old sister-in-law, who was five months pregnant, sustained multiple gunshot wounds in the chest and abdomen. Ahmad was shot after shouting in response to the shooting of his father.²²

* On 23 May, seven-year-old Mustafa 'Awad Mahmoud al-Fajem was shot and killed while he was playing outside his home in the village of Bani Suhaila in the Khan Yunis district of the Gaza Strip. Mustafa's home is adjacent to the main road which runs between Rafah and Gaza City. Eyewitnesses reported that there were no demonstrations or disturbances of any kind taking place when Mustafa was shot and killed. The entire area was under curfew and the streets were empty except for a small group of children who were playing near the street when a military patrol pulled up in an olive-colored military jeep with a white roof. According to sworn statements gathered by al-Haq from eyewitnesses, one of the soldiers screamed at the boys in a mixture of Arabic and Hebrew: "You fuckers, come and throw stones.... " What

²⁰ Al-Haq Affidavit No. 2779.

²¹ Al-Haq Fieldwork Report (unnumbered); also see PHRIC, "Human Rights Update: May 1990," p. 230.

²² Al-Haq Affidavit No. 2781.

appeared to be the same soldier then got out of the jeep, aimed his rifle at the boys, fired one shot, got back into the jeep, and drove off in the direction of Gaza City.²³ The bullet struck Mustafa in the head, inflicting a fatal wound.²⁴

8 October – Israeli Border Police killed 17 Palestinians and wounded at least 150 others at al-Haram al-Sharif, the Moslem holy site which includes al-Aqsa Mosque and the Dome of the Rock, located in the Old City of occupied East Jerusalem.²⁵ Al-Haq conducted an in-depth investigation including detailed interviews with over 50 eyewitnesses to the events at al-Haram al-Sharif. The results of this investigation indicate that:²⁶

- No attempt was made by Israeli law enforcement officials to coordinate with *Awqaf* officials to avoid clashes, restore calm, or in any way diffuse rising tensions that day. On the contrary, efforts to this effect by *Awqaf* officials on the morning of 8 October were rebuffed by Captain Shlomo Qatavi and others in command of the border guards and police on the scene.
- Water cannons and plastic riot shields were not used by law enforcement personnel.
- The first violent incident occurred between 10:30 and 10:50 am, when women in the area of the Dome of the Rock were tear-gassed by Israeli law enforcement personnel. Some of the Palestinian men gathered at al-Haram al-Sharif moved north towards the women, while others went west to al-Magharbeh Gate (Morocco Gate), where an estimated 15 to 20 border guards were stationed. Border guards opened fire on the approaching crowd, some of whom were throwing stones. Shortly thereafter, border guards took shelter behind the gate. During this period, approximately 20 persons sustained injuries (roughly 13 percent of the 150 people wounded on 8 October).

²³ Al-Haq Affidavits No. 2787 and 2788.

²⁴ Al-Haq Affidavit No. 2787.

²⁵ Al-Haq, "Reconstruction of Events (Revised), al-Haram al-Sharif, Jerusalem, Monday, 8 October 1990," 28 October 1990.

²⁶ Unless otherwise noted, all the information cited subsequently was published by al-Haq on 28 October 1990 in "Reconstruction of Events," pp. 3-7.

– The vast majority of casualties were inflicted by Israeli law enforcement personnel in two stages after the border guards positioned themselves behind the gate at approximately 10:50 am. The first of these stages lasted from approximately 10:50 to 11:20 am. During this period, the crowd was shot at from two different directions. Police stationed in the Mahkameh (court) building shot down at the crowd through grills (covering the windows). The crowd threw stones in the direction of the police. Border guards also shot both tear gas and live ammunition at the crowd through a hole in the gate. The crowd pelted the border guards with stones, some of which fell on the Western (Wailing) Wall Plaza.

– Border guards failed to issue verbal warnings to the crowd before opening fire, and similarly did not fire warning shots into the air. They simply shot directly at the crowd. Once the border guards began shooting, they continued to do so without restraint, at times spraying the crowd with automatic weapon fire. Several of the injured sustained more than one gunshot wound.

– Heavy and indiscriminate shooting continued during the second stage which began at approximately 11:20 am, when an estimated 40 to 50 border guards stormed back through al-Magharbeh Gate. They pursued the crowd, many of whom were seeking shelter in the mosques or attempting to escape. During this stage, witnesses reported that border guards severely beat a number of Palestinians, including those who had already been wounded, and conducted mass arrests.

– Efforts by both medical personnel and private individuals to aid the wounded were severely obstructed. Several persons, including a doctor and a nurse, were shot and wounded while attempting to assist the injured. Borders guards opened fire upon an ambulance, damaging it and simultaneously wounding a second nurse.

In sum, the facts indicate that on 8 October 1990, deadly force was utilized in an offensive fashion, rather than defensively in response to a life-threatening situation. Further, it cannot be claimed that the widespread use of lethal force was necessitated by threats to worshippers at the Western (Wailing) Wall. As noted by

²⁷ It is important to note that an arcade separated the crowd at al-Haram al-Sharif from the worshipers at the Western (Wailing) Wall. This structure is at least six meters wide and 12 meters high and consists of an arched wall connected to the Mahkameh building.

BTselem in their report on this incident: "[E]ffectively, when the Border Police opened fire, the Jewish worshipers at the Wailing Wall were no longer in danger -- they had been evacuated within minutes in a commendable operation."²⁸ Thus, as al-Haq noted in the report on its findings, "Israeli law enforcement personnel were wholly unjustified in resorting to the use of...lethal force."²⁹

Despite the clarity of the facts as confirmed by the findings of a number of independent human rights monitors, the Israeli authorities failed to take disciplinary action against those responsible. On the contrary, the commission of investigation appointed by the Israeli government to examine the events of 8 October stated that "[t]he use of live ammunition on the Temple Mount [al-Haram al-Sharif] under the prevailing conditions was justified...."³⁰ In an apparent contradiction, the commission also noted the "immediate need to develop alternatives to the use of live ammunition," and recommended that a second

separate, detailed investigation by an independent police officer appointed by the Commander of the Border Police be conducted into the initiative taken by one of the Border Police Platoon Commanders....³¹

These recommendations raise serious questions regarding the reliability of the commission's conclusion. If deadly force was warranted, why was a second investigation recommended? Moreover, if the findings are incomplete with respect

²⁸ BTselem, *Loss of Control: The Temple Mount Events - Preliminary Investigation*, 14 October 1990, p. 18.

²⁹ Al-Haq, "Reconstruction of Events," p. 7. This finding was shared by other local Palestinian and Israeli human rights organizations which conducted independent investigations. For example, PHRIC found that "the use of lethal force was entirely disproportionate and unwarranted" (PHRIC, "The Massacre of Palestinians at al-Haram al-Sharif, October 8 1990," 31 October 1990). BTselem noted that "[q]uestions are raised as to the degree of danger that confronted the security services, and thus as to their justification for the acute reaction" (BTselem, *Loss of Control*).

³⁰ Israeli Government Press Office, "Summary of the Report of the Commission of Investigation into the Events on the Temple Mount, October 8, 1990," 26 October 1990, p. 10.

³¹ *Ibid.*

to an "initiative" by a Border Police commander, how can the commission conclude that the use of lethal force was justified?

Such questions, coupled with the overwhelming evidence of the unrestrained, offensive use of gunfire against unarmed civilians, indicate not only a lack of impartiality on the part of the commission, but also an attempt to obfuscate the facts by sanctioning the use of live ammunition in general while simultaneously raising the suggestion of individual impropriety.

29 December – Four Palestinians were killed and approximately 590 others were injured in Rafah in the Gaza Strip.³² This incident began at approximately 2:45 pm, when agents of the Israeli military authorities in civilian dress³³ opened fire with live ammunition -- without warning and without any attempt to arrest -- upon two masked Palestinian youths as they were writing graffiti on walls. In addition to killing the two 19-year-old masked youths, Hisham Yunis Abu Harb and Fawzi Sa'id Musallam 'Issa, the 12-year-old daughter of one of the eyewitnesses was wounded in the hip by live ammunition. Protest broke out immediately following the shootings. In the course of the ensuing confrontations, an additional two Palestinian youths, 17-year-old Islam Muhammad Ahmad Harb Miqdad and 19-year-old Ossama Isma'il Yousef al-Balbisi, were shot and killed by live ammunition. A fifth person, 50-year-old Asmat 'Issa, who reportedly suffered from heart problems, collapsed following heavy tear gas inhalation and died shortly thereafter.

During the clashes, the Israeli military opened fire upon demonstrators with live ammunition, rubber-coated metal bullets, and tear gas. Military helicopters dropped both stones and tear gas upon the protesters. Of the estimated 590 injured, roughly 160 were wounded by live ammunition. Twenty of the wounded remained in hospitals in critical condition on 30 December 1990. While the Israeli military authorities had imposed curfew over most of the Gaza Strip beginning on 30 December, at least 18 other Palestinians were shot and wounded on 31 December in continuing demonstrations in two districts of Gaza City.

³² Al-Haq, "Illegal Israeli Military Open-Fire Orders Should be Rescinded," Press Release No. 37, 31 December 1990.

³³ According to the *Jerusalem Post*, Israeli military "sources" described these persons as "soldiers" and claimed that the masked youths were "carrying knives" and "refused an order to halt" ("Five Die as Troops Clash With Gangs in Gaza Strip," *Jerusalem Post*, 30 December 1990). This version of events is contradicted by eyewitness accounts of the killings, as noted in al-Haq's Press Release No. 37.

Notably, the Israeli press reported that this incident occurred after "Israel had begun reinforcing troops in the territories to prevent celebrations on...January 1," the anniversary of the founding of Fateh, the largest faction of the PLO.³⁴ However, despite foreknowledge of the possibility of clashes, Israel failed to equip its troops with the appropriate non-life-threatening means of crowd control. Israel's persistent failure to take such measures -- during the uprising or at any time since the occupation began in 1967 -- creates a pattern of negligent practice consistent enough to indicate a policy of inflicting unnecessary and unwarranted casualties on the Palestinian population in the Occupied Territories.

Opening Fire on Demonstrations:

Irrespective of repeated calls by international human rights and humanitarian organizations for the introduction of standard methods of non-lethal crowd control, such as plastic shields and water cannons, these means of responding to civil unrest have not been adopted by the Israeli authorities. Rather, firearms were heavily utilized in 1990, even in occupied East Jerusalem, where non-lethal techniques for handling disturbances had previously been employed. Indeed, gunfire was so heavily relied upon in situations of mass protest during 1990 as to prompt the ICRC to issue a rare public statement urgently appealing "to the Israeli authorities to put an end to the use of live ammunition against civilians."³⁵ In addition to the major incidents reviewed above, al-Haq documented numerous other cases involving the inappropriate and illegal use of gunfire against demonstrators and participants in funeral processions. These practices are illustrated below with several examples.

* On 27 January, one Palestinian died of multiple gunshot wounds after six Israeli border guards opened fire on a funeral procession in the village of Abu Dis in the Jerusalem district.

* On 7 February, one person was killed and 18 were injured in clashes between Palestinian demonstrators and Israeli troops in Rafah refugee camp in the Gaza Strip. Clashes continued through 10 February resulting in the injury of a total of approximately 133 Palestinians. According to the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), on 10 February alone, 37 were injured by

³⁴ "Five Die As Troops Clash with Gangs in the Gaza Strip."

³⁵ ICRC, "ICRC Appeal Following the Events in the Israeli-Occupied Territories," Press Release No. 1647, 9 October 1990.

live ammunition.³⁶

* On 26 April, one person was killed in the town of Qabatya (Jenin district) when Israeli forces opened fire on a march marking the 'Id al-Fitr feast.

* On 3 November, one person was killed and over 130 others were injured in Beit Hanoun (Gaza Strip) during confrontations with Israeli military personnel following the death of 'Abd al-'Ati al-Za'anin in Gaza Central Prison.

* On 29 December, 90 people were wounded in confrontations with Israeli military personnel in Khan Yunis refugee camp in the Gaza Strip.³⁷

Shooting of Bystanders:

During the first three years of the intifada, indiscriminate fire upon demonstrations repeatedly led to casualties amongst bystanders. As al-Haq noted in its 1989 annual report, *A Nation Under Siege*, the continuation of such incidents "indicate[s] a lack of self-control on the part of the military as well as a wanton disregard for human life."³⁸ Instead of addressing these incidents by taking appropriate disciplinary action against personnel involved, the Israeli military authorities have repeatedly offered justifications for the infliction of such casualties, often by attributing illegal actions to those wounded or killed even before an official investigation had been completed. The following case study provides one example of this pattern.

On 10 March 1990, 32-year-old Sufyan Abu Mayalla of Shu'fat refugee camp was shot to death while he was standing with others who had gathered to pay their condolences to the family of 19-year-old Mahmoud Abu Khalifa, who was shot and killed by border guards the previous day.³⁹ Youths threw stones and clashes broke out after police and border guards arrived in the area of the Abu Khalifa home. Israeli forces opened fire randomly and indiscriminately with live ammunition. Mr. Abu Mayalla, who was not a participant in the disturbances, was hit in the heart with live ammunition while he was speaking with other mourners. He died of his injuries

³⁶ UNRWA News No. 198, 14 February 1990.

³⁷ Al-Haq Press Release No. 37.

³⁸ Al-Haq, *A Nation Under Siege*, p. 51.

³⁹ Al-Haq Fieldwork Report (unnumbered); Al-Haq Affidavit No. 2537.

later that day.

Press reports published on 11 March cited police spokesperson Uzi Sandori as offering the following justification for the killing of Mr. Abu Mayalla: "[he] was shot and killed by a policeman firing a revolver after he attempted to attack police with a crowbar."⁴⁰ Four days later, the *Jerusalem Post* reported that "serious questions have arisen over the official police version of events...."⁴¹ Specifically, in an apparent contradiction to the earlier police statement, an eyewitness quoted in the same article noted that Mr. Abu Mayalla "was caught in the middle...and was in no way involved...."⁴² Further, on 15 March the *Jerusalem Post* noted that police spokespersons indicated that their investigation into the incident was not yet completed.⁴³ Thus, the initial police statement exonerating Israeli personnel and accusing Mr. Abu Mayalla of attacking the police was made prior to the completion of the official investigation. Finally, according to mid-April reports in the Hebrew press, the police investigation committee found that the use of live ammunition in the incident in which Mr. Abu Mayalla was killed had been unjustified.⁴⁴

The Illegal Use of Force Against Fleeing Suspects:

The illegality of Israeli open-fire procedures relating to the apprehension of suspects has been extensively reported by human rights and humanitarian organizations.⁴⁵ In brief, these procedures apply to masked youths, those who set up road barricades, and others suspected of a wide range of activities, including

⁴⁰ Robert Rees, "Violent Rioting in East Jerusalem -- Two Killed," *Jerusalem Post*, 11 March 1990.

⁴¹ Robert Rees, "Conflicting Testimony Over Shootings," *Jerusalem Post*, 15 March 1990.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Kol Ha'ir*, 13 April 1990.

⁴⁵ See for example, Al-Haq, *A Nation Under Siege*; Talmor, *The Use of Firearms*; Middle East Watch, *The Israeli Army and the Intifada*.

membership in various community organizations and "popular committees."⁴⁶ In practice, the definition of "suspect" is rendered even broader by the tendency of Israeli military personnel, regardless of the circumstances, to open fire upon a person who is fleeing and/or fails to stop when ordered to do so based on an inference of wrongdoing. The following cases are a few examples of such incidents during 1990.

* On 12 March, soldiers shot and wounded 'Abd al-Latif Ahmad Qaddoura Shiblaq, a 55-year-old semi-paralyzed Palestinian man, apparently because he failed to heed an order in Hebrew that he halt. This incident occurred at approximately 11:00 am in the al-Daraj neighborhood of Gaza City while Mr. Shiblaq was returning to his home. There were no demonstrations or disturbances in the area at the time. Mr. Shiblaq was shot in the back of the head with a single rubber-coated metal bullet by Israeli military personnel when he continued walking after hearing behind him what he described as "something that sounded like Hebrew,"⁴⁷ which was apparently an order to halt. He was hospitalized for three days in Gaza City's al-Ahli Arab Hospital for treatment of the resulting head injuries.

* On 20 July, 'Abd al-Nasser Ibrahim 'Abd al-Qader Nakhla, a 24-year-old laborer from Jalazoun refugee camp in the Ramallah district, sustained multiple rubber bullet and live ammunition injuries when soldiers opened fire upon him as he was running out of the courtyard of his home. Mr. Nakhla was sitting with four members of his family in the courtyard at approximately 6:30 pm when soldiers appeared on the roof of a neighboring house. According to eyewitness accounts, there were no disturbances in the area at the time. Upon seeing the soldiers, the male members of the family -- three of whom were in the courtyard -- scattered. Mr. Nakhla was running out of his courtyard away from the soldiers when he was hit by three rubber

⁴⁶ The term "popular committees" describes a wide range of grassroots and service-oriented committees in the Occupied Territories that were set up in villages, camps, and neighborhoods after the start of the uprising in order to provide vital services to the Palestinian population and in some cases, to carry out instructions of the local Palestinian leadership. They are considered illegal by the Israeli military authorities. Other non-violent activities, including painting graffiti on walls, distributing political leaflets, and symbolic speech (such as raising the Palestinian flag) have also been considered evidence of membership in an illegal organization. Pursuant to Part C (5) of the "Israeli Rules of Engagement" (as published by the Israeli Consulate in New York in 1990), "membership in an illegal organization or participating in its activities" is one category of cases to which the "Apprehension of Suspects" procedures apply (Talmor, *The Use of Firearms*, p. 11).

⁴⁷ Al-Haq Affidavit No. 2533.

bullets in the right side of his back, and one live bullet which passed through his right buttock. The soldiers did not warn Mr. Nakhla or ask him to halt before opening fire, nor was any attempt made to arrest him.⁴⁸

* At approximately 4:30 pm on 8 October, 21-year-old Mahmoud 'Ali Ahmad Jaber of Beit Illo village (Ramallah district) was shot to death in the neighboring village of Deir 'Ammar by three Israeli soldiers who repeatedly shot with live ammunition at a group of fleeing youths, following a demonstration in the adjacent Deir 'Ammar refugee camp.⁴⁹ According to eyewitness accounts, no warning shots were fired and no verbal warnings were given.

Sniper-Fire Against Stone-Throwers:

On 11 December 1990, the Israeli military began posting snipers on various major roads and intersections in the occupied West Bank in what was reported as a "new offensive against stone-throwing" launched by Israeli Defense Minister Moshe Arens.⁵⁰ Although a clear violation of fundamental international laws and standards governing the use of lethal force, this policy appeared to conform to the conditions for the use of lethal force against stone-throwers articulated by written Israeli open-fire regulations, as published by the Israeli consulate in New York.⁵¹ The "apprehension of suspects" procedures set forth by these regulations permit the use of gunfire against stone-throwers "when stone-throwing constitutes a real and immediate danger...[which] is deemed to exist when stones are thrown at a moving vehicle with the intention of hitting it..."⁵² These regulations are manifestly illegal since they permit the use of deadly force in circumstances where it is neither necessary nor proportionate. That such force is disproportionate is particularly clear when one notes that window grates and other forms of shields which effectively protect vehicles from stone-throwing are available and indeed are attached to many Israeli vehicles travelling through the Occupied Territories.

⁴⁸ Al-Haq Affidavit No. 2753.

⁴⁹ Al-Haq Affidavit No. 2931.

⁵⁰ "13-Year-Old Girl Shot Dead During Stone-Throwing Clash," *Jerusalem Post*, 13 December 1990.

⁵¹ "Israeli Rules of Engagement"; Talmor, *The Use of Firearms*, pp. 9-14.

⁵² *Ibid.*, p. 11.

The use of sniper fire against stone-throwers has been condemned by human rights organizations and by several governments, including the government of the United States. Richard Boucher, the US State Department Deputy Spokesperson, reported to the press that the US had raised its objections with Israeli officials, noting that "the use of force [should be] proportionate to the action it is intended to prevent."⁵³

The Misuse of Non-Lethal Means of Crowd Control:

While plastic shields and water cannons have not become part of Israel's crowd control methods in the Occupied Palestinian Territories, other nominally non-lethal methods such as tear gas and rubber bullets have been utilized. Rubber bullets, particularly rubber-coated metal balls, have repeatedly caused serious injury or death, particularly when fired from a range of 30 meters or less.⁵⁴ Examples of such injury or death in 1990 are noted in various other parts of this chapter; an additional example is summarized here.

At approximately 9:30 am on 5 June, 11-year-old Ahmad Salama Mahmoud Salama of 'Askar refugee camp in the Nablus district was shot in the back of the head with a rubber-coated metal bullet. According to eyewitness accounts, he was running down a side street towards the main street in the camp with a group of boys when an army patrol (which was behind the children, further down the side street) opened fire with rubber-coated metal bullets, hitting Ahmad in the back of the head.⁵⁵ He was pronounced dead upon arrival at al-Ittihad al-Nisa'i Hospital in Nablus.

Tear gas can also be fatal when misused. As noted in al-Haq's previous annual reports, two types of tear gas -- CN and CS -- have been used in the Occupied Territories. The Federal Laboratories of Saltsburg, Pennsylvania (USA), manufacture both types of gas. They acknowledge, both in warnings included in a handbook on usage, and in clear print on tear gas canisters:

if not used properly...CAN INDEED CAUSE DEATH.... UNDER NO

⁵³ Allison Kaplan, "US: No Sniping at Rock-Throwers," *Jerusalem Post*, 18 December 1990.

⁵⁴ For a fuller discussion of rubber bullets and their effects, see Al-Haq, *A Nation Under Siege*, pp. 42-43.

⁵⁵ Al-Haq Affidavit No. 2706.

CIRCUMSTANCES SHOULD GRENADES CARTRIDGES OR PROJECTILES DESIGNED FOR USE IN RIOTS BE USED IN CONFINED AREAS AS SERIOUS INJURY MAY RESULT..."⁵⁶
(emphasis in original).

Al-Haq documented numerous cases of the improper use of tear gas by the Israeli military authorities during the first three years of the intifada. In a number of these cases, persons have died shortly after inhaling concentrated quantities of tear gas shot or thrown into confined areas.⁵⁷ Further, there is a particularly strong correlation between exposure at close range to CS gas and respiratory damage or death, especially for infants, the elderly, the sick, and those already suffering from respiratory ailments.⁵⁸

The following are examples of deaths or serious injury that occurred after tear gas inhalation during 1990.

* On 17 May, 46-year-old Muhammad Fathi Yunis 'Abd al-Mughanni Abu Zeina of Hebron died shortly after inhaling large quantities of tear gas when at least three tear gas canisters thrown by soldiers landed near him while he was shopping in the Bab al-Zawiya area of Hebron City. He was admitted to 'Aliya Hospital in Hebron almost immediately following his exposure, and died shortly thereafter.⁵⁹

* On 22 May, seven-year-old Mahmoud Ibrahim al-Zaqzouq of the 'Askar refugee camp (Nablus district) suffered respiratory damage after soldiers shot a tear gas canister into his house; tear gas was also shot into at least five other homes in the immediate vicinity. According to the child's mother, Mrs. Safa al-Zaqzouq, Mahmoud, who is an asthmatic, suffered from severe chest pains, continuous coughing, and repeated vomiting for a full 24 hours following his initial exposure to the tear gas. He was treated at al-Ittihad al-Nisa'i Hospital in Nablus on 23 May, and remained on

⁵⁶ Federal Laboratories handbook (untitled and undated), distributed by Federal Laboratories.

⁵⁷ For examples of death in 1989 following extensive exposure to tear gas, see Al-Haq, *A Nation Under Siege*, pp. 41-42.

⁵⁸ *Ibid.*, p. 41.

⁵⁹ Al-Haq Affidavit No. 2777.

medication for respiratory illness until at least 30 May.⁶⁰

* On 18 October, 60-year-old Khadijeh Muhammad Mustafa Mughrabi of New 'Askar refugee camp (Nablus district), who suffered from asthma and an irregular heartbeat, died after inhaling concentrated quantities of tear gas; soldiers threw tear gas canisters in front of her house following a raid on her home in which one of her sons and two of her grandsons were arrested.⁶¹

Summary Execution:

Al-Haq is particularly concerned about the increasing incidents of summary executions carried out by Israeli personnel in 1990. Amnesty International defines summary (or extra-judicial) execution as:

unlawful and deliberate killings of persons by reason of their real or imputed political beliefs or activities, religion, or other conscientiously held beliefs, ethnic origin, sex, color or language, carried out by order of a government or with its complicity.⁶²

According to Al-Haq, summary execution constitutes a form of willful killing. Pursuant to Article 147 of the 1949 Fourth Geneva Convention, willful killing is a grave breach of the Convention, and therefore constitutes a war crime as defined by the Convention.⁶³

⁶⁰ Al-Haq Affidavit No. 2775.

⁶¹ Al-Haq Fieldwork Report (unnumbered).

⁶² Amnesty International, *Political Killings by Governments* (London: Amnesty International, 1983), p. 5. For a further discussion of willful killings, see Al-Haq, *A Nation Under Siege*, pp. 60-62.

⁶³ The Commentary to the Convention does not provide a specific definition of willful killing, but simply notes that it must involve an intent to cause death and "would appear to cover cases where death occurs through a fault of omission," adding that "the omission must have been wilful and there must have been an intention to cause death by it" (Jean S. Pictet (ed.), *Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1959), p. 597).

A definition of willful killing can, however, be derived through reference to

The case of Mustafa 'Ali Tal Shrakeh provides an example of summary execution by Israeli military and intelligence personnel during 1990. Al-Haq conducted an in-depth investigation into this killing and published its findings on 11 April 1990. These findings were updated on 14 April 1990, when new information came to al-Haq's attention. At the time of this incident, al-Haq expressed its grave concern regarding "documented evidence of a growing number of cases of willful killing in the last two years," and noted that "[s]uch acts are becoming a matter of policy."⁶⁴

– At approximately 12:20 pm on 5 April, Mustafa Shrakeh, a 16-year-old junior high school student from Jalazoun refugee camp (Ramallah district), was fatally shot in the back of the head by a single rubber-coated metal bullet. The bullet was fired from a distance of no more than 20 meters by a man in an Israeli military uniform who was stationed on top of a building in downtown Ramallah. No other shots were fired.

– Approximately 10 minutes before the shooting took place, two persons in civilian dress got out of a blue Ford Escort (which had been driven through Ramallah's central square accompanied by two military vehicles -- one in front of it and the second one behind it). One of these persons was fair-skinned, with black hair, of medium height, and wore sunglasses. Eyewitnesses identified him as "Captain Maher,"⁶⁵ the Israeli General Security Services (GSS or Shin Bet) officer assigned to Jalazoun refugee camp.

fundamental legal principles, generally reflected in the penal codes of various states. Specifically, in order to be considered "wilful," a killing must be both intentional and unlawful. An unlawful killing by state authorities or their agents is one which results from either unnecessary or disproportionate use of force; an intentional killing is one which is deliberate as opposed to reckless or negligent in nature. In this context, "deliberation" is defined by *Black's Law Dictionary* as "a weighing in the mind of consequences of course of conduct, as distinguished from acting upon a sudden impulse without exercise of reasoning powers" (Henry Campbell Black, M.A., *Black's Law Dictionary, Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 5th ed. (Minneapolis-St. Paul: West Publishing Co., 1979), p. 384). Whether or not a killing was deliberate is generally determined by courts through an examination of the facts of each case.

⁶⁴ Al-Haq, "Willful Killing: The Case of Mustafa Shrakeh," *Alert*, 11 April 1990.

⁶⁵ Israeli officials in the Occupied Territories regularly assume pseudonyms.

- These two persons proceeded on foot, accompanied by soldiers, to the Qandah Building, which is located approximately 20 meters from where the vehicles were parked and across the street from the Zabaneh supermarket.⁶⁶ During this period, Mustafa Shrakeh was seen walking from al-Mughtarebeen Square in the direction of the central square of Ramallah. There were no demonstrations or disturbances in the area at the time.
- At approximately 12:15 pm, the two persons in civilian clothes entered the top floor of the Qandah Building and ordered all persons out of their offices and into the corridor of the building.
- Roughly five minutes later, at 12:20 pm, passers-by heard a single shot. No other shots were heard. Seconds later, eyewitnesses saw a young man face down on the sidewalk, with blood flowing profusely from the back of his head.
- During this time, persons evacuated from their offices into the halls of the Qandah Building overheard conversations between the soldiers that referred to the second person in plain clothes as "Captain Coby." They reported that after they heard a shot, a soldier came forward and informed "Coby" and "Maher" in Hebrew: "b'rosh shelo" ("in his head"). Eyewitnesses reported seeing a soldier and two other armed men open the windows overlooking the street and look down upon the scene of the incident.
- No attempt was made to arrest Mustafa Shrakeh; nor did soldiers ask him to halt or issue any warning. At the time he was shot, Mustafa Shrakeh was walking along the sidewalk in front of the Zabaneh supermarket. He was not participating in any activity which could be described as disturbing the peace, much less as life-threatening.
- Passers-by took Mustafa Shrakeh to Ramallah Government Hospital. He died shortly after his arrival.
- Medical reports confirmed that a single rubber-coated metal bullet entered the back of Mustafa's head and caused his death.
- Following the shooting, soldiers ordered shops in the area closed and evacuated the street. None of the Palestinian eyewitnesses were questioned

⁶⁶ Israeli soldiers are routinely posted on the roof of the Qandah Building.

regarding what they had observed or overheard.

— On 12 April, the Israeli press reported a statement by a military spokesperson acknowledging that Mustafa Shrakeh "was known to the security forces as a participant in disturbances."⁶⁷ According to the press, this statement was made in response to eyewitness testimony contradicting the official Israeli allegation that "the youth hurled stones at an IDF force."⁶⁸ It is important to note that before this time, the authorities withheld the information that Mustafa Shrakeh was known to the security forces.

The following are case studies outlining three other killings that occurred during 1990 that appear to be cases of summary execution.

* On 22 March, 28-year-old Nasser 'Abd al-Wahad Abu Majid al-Qan'ir and 25-year-old 'Ammar Haris 'Abd al-Razzaq Abu Ghadeib were shot to death with live ammunition on a street in Nablus by persons in civilian dress who identified themselves as members of the Israeli military within hearing distance of eyewitnesses.⁶⁹ Mr. al-Qan'ir and Mr. Abu Ghadeib, both from Nablus, had been wanted for questioning by the Israeli authorities in connection with the interrogation and killing of Palestinians collaborating with the Israeli military and intelligence authorities. The armed men in civilian dress immediately opened fire upon the two Palestinians. Immediately following the shooting, large numbers of uniformed soldiers appeared on the scene. Neither of the men were armed at the time of the shooting and there were no disturbances reported in the area.

* On 10 August, 23-year-old Basel Mahmoud Faris Hamarsha was shot and killed during an Israeli military raid on his family's home in the village of Ya'bad.⁷⁰ Mr. Hamarsha had been wanted by the military authorities since August 1988 and had spent the two years since that time in hiding, coming out only occasionally to visit his family. During one of these visits, four Israeli soldiers entered the Hamarsha home; two of them went directly to the roof, where Basel was at the time. Persons downstairs heard one shot being fired. Immediately following the gunshot, the

⁶⁷ Joel Greenberg, "Al-Haq: Youth Slain 'Willfully'," *Jerusalem Post*, 12 April 1990.

⁶⁸ *Jerusalem Post*, 6 April 1990.

⁶⁹ Al-Haq Affidavit No. 2560.

⁷⁰ Al-Haq Affidavit No. 2560.

soldiers came down from the roof and all four left the house. Basel Hamarsha died of wounds inflicted by a single rubber bullet which entered the left side of his head.

Al-Haq also considers military brutality where the deliberate and unlawful use of deadly force results in the death of the individual concerned to be willful killing. The killing of 65-year-old 'Abd al-Karim Muhammad Abu Nimer, outlined below, provides one such example.

At approximately 4:30 pm on 14 October, Mr. Abu Nimer of Khan Yunis refugee camp in the Gaza Strip was shot dead when he attempted to intervene with border guards who were beating his 14-year-old son during a raid on his home. Mr. Abu Nimer's 23-year-old son, 'Odeh 'Abd al-Karim Muhammad Abu Nimer, witnessed the incident -- which occurred on the roof of the Abu Nimer home -- from atop a nearby tree which he had climbed in order to be able to watch as the soldiers were approaching his home. The following description of the incident is excerpted from Mr. 'Odeh Abu Nimer's (translated) sworn statement, which was taken by al-Haq:

Three border guards climbed up onto the roof of the house where my brother was tending pigeons we kept in a pigeon coop on the roof.... One of them hit my brother on his head with the butt of a rifle, then said, 'Why are you standing on the roof? Is it so that you can throw stones at us you butt-fucker?' My brother answered, 'I am feeding the pigeons and I don't throw stones.' Then I saw the border guards start kicking my brother, and saw two of my sisters, aged 17 and 18, try to climb up to the roof to help my brother. I heard a border guard shout at one of my sisters 'Get down, you daughter of a whore, or I'll shoot you.'

During this time, I started calling for my father.... My father immediately climbed up the ladder...to the roof. Then I saw him grab hold of my brother Muhammad and say to the border guard, 'Release him! He did not do anything.' But the border guard insisted on keeping hold of Muhammad. Then I saw the border guard try to pull my brother away from my father. The border guard said 'Let him go or I'll shoot you!' My father responded, 'Shoot, I won't leave my son in your hands.' Immediately, I heard the sound of a shot being fired. Then I heard my sisters screaming.... I did not hear my father's voice.... I pulled myself up to the top of the tree...[and] saw my father lying on the roof bleeding. Then I saw the soldier kick him and my father fell off the roof to the ground.

The soldier immediately began shooting in an unrestrained

fashion; he shot a whole round of bullets at my father's chest as he was lying on the ground.... I then saw the three border guards run from the house to the street where the other border guards were waiting, calling out 'He is dead, he is dead,' and laughing. They disappeared from sight almost immediately....⁷¹

Mr. Abu Nimer died immediately. No arrest was made by the border guards, and at no time were their lives in danger. In al-Haq's view, it is extremely unlikely that Israeli personnel would have used such deliberate and clearly unnecessary force against an unarmed 65-year-old who was not Palestinian (or of Arab descent). The case thus appears to involve the unlawful and deliberate killing of a person for reasons of origin, and therefore constitutes a form of summary execution as defined at the beginning of this section. This view is reinforced by the fact that, to the best of al-Haq's knowledge, appropriate disciplinary action was never taken against the Israeli personnel involved in this or any of the killings presented in this section.

As a grave breach of the 1949 Fourth Geneva Convention, willful killing should be investigated by states party to the Convention. Those responsible for ordering or committing such breaches are subject to prosecution in the national courts of any state party which has enacted enabling legislation.⁷² Al-Haq has repeatedly brought this responsibility to the attention of High Contracting Parties to the Convention and noted that, given Israel's demonstrated failure to abide by fundamental international law and standards, the "continued failure of the international community to compel Israel to abide by international law undermines the safety and security of Palestinians in the Occupied Territories."⁷³

Military Brutality:

Military brutality against Palestinians, including beatings and other forms of assault, continued to be an issue of serious concern during 1990. Such brutality was directed at a variety of persons including: individuals who were apparently randomly selected; persons in the vicinity of disturbances; and those holding green identity

⁷¹ Al-Haq Affidavit No. 2892.

⁷² Article 146, 1949 Fourth Geneva Convention.

⁷³ Al-Haq, "Reconstruction of Events," p. 9.

cards.⁷⁴ The following are representative examples of military brutality in 1990.

* On 4 March at approximately 8:00 pm, in an apparent case of random beating, Israeli soldiers assaulted 17-year-old Jamal Sa'adat Muhammad al-Jarbou'a, a secondary student from the Ramallah village of Bitounya, while he was walking home after evening prayers. A patrol of three Israeli soldiers stopped Jamal and asked him where he had been. When Jamal responded that he was returning from evening prayers, a soldier accused him of lying and of throwing stones; his denials were ignored. He was then grabbed and held by one soldier while a second began clubbing him on the head, face, and right leg. The soldier who had questioned Jamal also joined in, punching and kicking him. Passersby and people living in the neighborhood heard Jamal screaming and intervened. Shortly thereafter, the soldiers released Jamal. His nose was fractured during the beating and he sustained extensive facial contusions.⁷⁵

* On 11 September at approximately 2:50 pm, six Israeli soldiers severely beat Anis 'Abd al-Rahman l'qelan Abu Shamala of Bureij refugee camp, a 27-year-old student at the Islamic University in Gaza City. Mr. Abu Shamala was beaten while inside the al-Kabir Mosque, which is located in Bureij refugee camp, following disturbances in the area of the mosque. Mr. Abu Shamala was beaten continuously with clubs on the head, legs, and other parts of his body for at least four minutes. In the course of the beating, soldiers broke Mr. Abu Shamala's jaw and his right eardrum. UNRWA personnel intervened and took Mr. Abu Shamala to an UNRWA health clinic. He was then transferred to al-Shifa' Hospital in Gaza City where his jaw was wired shut and he was hospitalized for four days.⁷⁶

* On 19 October at approximately 9:00 am, soldiers stopped a private car carrying 28-year-old Hassan Saleh 'Ali Ayoub of 'Askar refugee camp at a military checkpoint on the road to Tamoun village in the Jenin area. When they discovered that Mr. Ayoub carried a green identity card, they ordered him out of the car and punched him in the face and chest and ordered the car he had been riding in to continue. One soldier drew a long line on the road and ordered Mr. Ayoub to pile five rows of

⁷⁴ Green identity cards get their name from the color of their jackets. Holders of such cards are not permitted to enter Israel or annexed East Jerusalem. A green identity card is usually valid for six months and is renewable. For background information on green identity cards, see Al-Haq, *A Nation Under Siege*, pp. 328-330.

⁷⁵ Al-Haq Affidavit No. 2485.

⁷⁶ Al-Haq Affidavit No. 2905.

stones along the line. Mr. Ayoub was held at the checkpoint all day and most of the evening. During the course of the day, he was repeatedly slapped and punched in the face, and punched and kicked in the chest and abdomen. When at one point he refused to continue piling stones, his head was banged against a wall. He was finally permitted to return home at 11:30 pm that evening.⁷⁷

Casualties Caused By Exploding Objects:

Al-Haq documented a number of cases of injury caused by exploding objects during 1990. In the majority of these cases, the objects were found on the ground and exploded while being played with, handled, or inadvertently disturbed. Most of these cases occurred in rural areas. In a few documented cases, incendiary objects were thrown by Israeli military personnel and, in one case, apparently left by soldiers in a home in a Gaza refugee camp. Representative examples of such cases in 1990 are provided below.

* On 7 March, three-year-old Muhammad Abu Hilu of Bureij refugee camp in the Gaza Strip was burned and cut when an object he had apparently been playing with in one of the rooms of his house exploded. According to Muhammad's mother, Mrs. Nawal Abu Hilu, their home had been searched by soldiers at approximately 10:00 pm on 6 March. At roughly 7:00 am the following morning, while she was in the courtyard of her house with her mother-in-law, she heard an explosion. She ran into her house in the direction of the sound and saw "heavy white smoke throughout the room...[I] heard my son Muhammad...screaming ...blood was dripping from his right hand and from his face." Muhammad was treated at al-Ahli Arab Hospital in Gaza City. The hair on the front of his head and his eyelashes had been burned off; he required three stitches in his chin and two in his right hand.⁷⁸

* On 19 July at approximately 9:00 am, Zahi Zuhdi Ibrahim 'Otallah, a 19-year-old shepherd from the village of 'Aqraba in the Nablus district, was badly burned when an object exploded as he was gathering twigs to make tea while his sheep were grazing in a pasture approximately 15 kilometers east of the village. Something in the pile of twigs made a strange sound just before the pile exploded and began shooting out flames. Zahi 'Otallah's left leg, left arm, and face caught on fire and burned for approximately two minutes. He was treated for severe burns at al-Ittihad

⁷⁷ Al-Haq Affidavit No. 2940.

⁷⁸ Al-Haq Affidavit No. 2489.

al-Nisa'i Hospital in Nablus and was still receiving burn treatment on 1 August.⁷⁹

* On 3 August, 23-year-old Khaled Muhammad Daraghma, a shepherd from the village of Toubas in the Nablus district, received first and second degree burns when a small object he found in a pasture east of Toubas exploded in his hands. Mr. Daraghma was grazing his sheep in the area of Yirza when he found a small object wrapped in shiny paper. The object was an estimated 10 centimeters long and three centimeters wide. As he tried to remove the wrapper, the object burst into flames. His hands, arms, abdomen, chest, and face caught on fire. Another shepherd tried to put out the fire with his jacket. According to an eyewitness, this took approximately one minute. Mr. Daraghma was hospitalized in al-Ittihad al-Nisa'i Hospital in Nablus for treatment for first and second degree burns on his entire upper body and remained in the hospital for at least 19 days.⁸⁰

International Legal Standards:

The right to life and the right to be free from bodily injury are firmly established by international law, which sets the parameters for legitimate action by a military occupant. International customary and conventional law, together with international norms regulating the exercise of police powers, form the standards by which Israel's use of force in the Occupied Territories must be evaluated.

Customary international law, specifically Article 46 of the 1907 Hague Regulations, stipulates that "the lives of persons...must be respected."⁸¹ This general protection is further detailed by Article 27 of the 1949 Fourth Geneva Convention:

Protected persons are entitled, in all circumstances, to respect for their persons...[and] shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats

⁷⁹ Al-Haq Affidavit No. 2764.

⁸⁰ Al-Haq Affidavit No. 2816.

⁸¹ The 1907 Hague Regulations are recognized as part of the body of customary international law and have been accepted as such by Israel. See Esther Cohen, *Human Rights in the Israeli-Occupied Territories, 1967-1982* (Manchester: Melland Schill Fund, 1985), pp. 58-59. According to Cohen, the Hague Regulations were first recognized by the Israeli High Court as customary law in the 1948 case *Attorney-General v. Sylvester*.

thereof....

Further, Article 147 defines "wilfully causing great suffering or serious injury to body or health" and "wilful killing" as grave breaches of the Convention.

The application of these general standards to the use of force in situations of civil unrest is facilitated by reference to international norms regulating the exercise of law enforcement powers. The most basic of these norms are the principles of proportionality and necessity. These principles, widely considered to be customary international law, are codified by the 1979 United Nations Code of Conduct for Law Enforcement Officials, which applies to the use of force by "all those who exercise police powers."⁸² Article 3 of the Code states:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.⁸³

As illustrated above, Israel has persistently failed to exercise its law enforcement powers in conformity with these fundamental standards. The number and severity of casualties inflicted upon the civilian population of the Occupied Territories during the third year of the uprising must be cause for widespread concern. Such casualties raise serious questions regarding the persistent use of illegal force by the Israeli authorities, particularly in light of Israel's continued failure to adopt standard non-lethal methods of crowd control. This failure has been compounded by the glaring absence of an appropriate Israeli system of investigations and deterrents, even for those actions which constitute grave breaches of the Fourth Geneva Convention. Given these circumstances, it is essential that third party states discharge their obligation, articulated by the Fourth Geneva Convention, to ensure that, at the very least, Israel observes minimum humanitarian standards pertaining to the treatment of civilians in occupied territories.

⁸² Article 1, *United Nations Code of Conduct for Law Enforcement Officials*, adopted by UN General Assembly Resolution 34/169 (Doc. A/34/36, 1979).

⁸³ *Ibid.*, Article 3.

CHAPTER FOUR

Settler Violence

Introduction:

During 1990, settler violence continued to be a common feature of everyday life in the Occupied Palestinian Territories, as documented by dozens of affidavits and fieldwork reports gathered by al-Haq. The violence took a variety of forms, including the use of lethal weapons, which have led to Palestinian deaths and injuries, other types of physical assault, and the vandalism and destruction of Palestinian property. Due to the larger number of settlements in the West Bank, settler attacks have been much more frequent there. The large number of incidents of settler violence in 1990 documented by al-Haq, although not complete, indicates that this phenomenon was widespread. According to al-Haq's documentation, settler violence in 1990 followed a pattern similar to that of 1989, peaking during the late spring and early summer.

In al-Haq's view, settler violence is an inevitable result of the inherent conflict that occurs when Palestinian land and resources are seized and then illegally settled by Israeli Jews with their government's legal, financial, and military support. These policies violate international legal standards, including the 1907 Hague Regulations and the 1949 Fourth Geneva Convention. According to Article 43 of the Hague Regulations, an occupying power has a positive obligation to protect the civilian population of an occupied territory and ensure "public order and safety." As such, the Israeli occupying authorities have an obligation to prevent settler attacks against Palestinians, in addition to finding the perpetrators of such violence through proper investigation procedures and bringing them to justice in accordance with the penal codes in force on the eve of the occupation.

It is evident from al-Haq's documentation that the Israeli military authorities have neither prevented settler attacks on the Palestinian community, nor effectively intervened to stop such attacks in most situations. In fact, the Israeli military authorities have largely condoned settler violence and property appropriation.

Indeed, Israeli soldiers and border guards have not only often failed to take action to stop settler attacks against Palestinians, but have, on occasion, even participated in these attacks. Proper investigation into settler violence has rarely been initiated. In cases where settler violence does not involve the killing of Palestinians, official investigation and judicial proceedings are virtually non-existent; in incidents involving the killing of Palestinians, judicial proceedings are slow and the charges lenient. Moreover, the Israeli military authorities have effectively removed settler violence from the jurisdiction of local courts by expanding the jurisdiction of Israeli courts to include Jewish settlers residing in the Occupied Territories.¹

Killings and Injuries:

Al-Haq's documentation indicates that at least seven Palestinians were killed by Jewish settlers during 1990, five with live ammunition. This brings to 32 the total number of Palestinians killed by settlers since the beginning of the Palestinian uprising in December 1987.² In addition, the perpetrators of another 19 killings of Palestinians in 1990 have yet to be identified. In these latter cases, the killings were carried out by armed individuals in the Occupied Territories who may have been soldiers, settlers, or collaborators.³

Israeli officials claim that Israeli regulations governing the use of firearms by settlers allow their use only in self-defense. Correspondingly, Jewish settlers have often claimed that they resorted to using lethal weapons against Palestinians only in self-defense and when their vehicles were stoned while passing through Palestinian residential areas. However, al-Haq has documented a number of cases where settlers have shot and killed Palestinians in incidents which could not be classified as self-defensive; settlers opened live fire on Palestinians and shot randomly even when no damage or injury had occurred to their property or person as a result of stone-throwing. In other incidents documented by al-Haq, Palestinians have been shot and killed without any provocation whatsoever.

¹ For more information on this point, see Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990), pp. 126-127.

² Al-Haq Database Report, January 1990.

³ According to BTselem, the Israeli Information Center for Human Rights in the Occupied Territories, five settlers were killed by Palestinians in 1990. See *Al-Bayader al-Siyasi* (Arabic), Vol. 429, 15 December 1990, p. 18.

The following are some examples of incidents in which settlers killed or injured Palestinians:

- * On 24 March, at approximately 1:30 pm, six-year-old Tarek Mustafa al-Halabi from the village of Rujib (Nablus district) was shot and injured in the head by two settlers from the nearby settlement of Tel Haim when they approached the village fields where farmers were working and opened random live fire in all directions without provocation.⁴
- * On 13 May, 14-year-old Sameeh 'Ahed Yousef Abu al-Sheikh of Qalqilya was shot in the stomach and neck by a passing settler while walking home from school; he died two days later. The settler began shooting in all directions when his car was allegedly subjected to stone-throwing from the direction opposite to where Sameeh was walking.⁵
- * On 6 August, 27-year-old 'Aziza Salem Muhammad of Hebron was shot twice in the head when approximately six settlers shot at the car in which she was riding as it was passing the Jewish settlement of Qiryat Arba. Mrs. Muhammad was killed and the driver of the car, Mr. Najeh 'Omar Jaber, was injured.⁶
- * On 6 November, 65-year-old Mariam Suleiman Rashid 'Eweis of al-Libban (Nablus district) was shot in the heart and neck by a settler while working on the family's agricultural land in the early morning. Mrs. 'Eweis died before reaching al-Ittihad al-Nisa'i Hospital in Nablus.⁷
- * On 12 December, 13-year-old Ahlam Ibrahim of Bidya (Tulkarem district) was shot in the head and killed by a settler while on her way to visit relatives.⁸

Organized Attacks and Vandalism:

The most common incidents of settler violence appear to be planned,

⁴ Al-Haq Affidavit No. 2527.

⁵ Al-Haq Questionnaire No. 1928/90.

⁶ Al-Haq Questionnaire No. 187/90.

⁷ Al-Haq Questionnaire No. 1971/90.

⁸ Al-Haq Questionnaire No. 56/91.

organized attacks and raids against Palestinians and their property perpetrated by groups of settlers. Field data and dozens of affidavits gathered by al-Haq indicate that these attacks are more severe and larger in scope than spontaneous incidents of settler violence. During these attacks, settlers customarily divide themselves into small patrols which work in coordination to terrorize the Palestinian community. These raids typically involve the firing of live ammunition, beatings, stone-throwing, crop-burning, vandalization of property, and multiple forms of psychological intimidation. In the face of these attacks, Palestinians are not only denied adequate means to defend themselves, but enjoy little protection from the Israeli military authorities.

The following are examples of some of these organized incidents of settler violence against Palestinians:

- * On 14 January, settlers perpetrated extensive destruction of two stores belonging to Mr. Najr Sader in the city of Hebron.⁹
- * On 7 February, the Khaled Ibn 'Abd al-'Aziz School in the city of Hebron was raided and attacked by a group of four settlers. Two settlers forced two school employees out of the school and beat them on their heads and all parts of the body with weapons; they also opened fire randomly on the school grounds. The school principal and teachers standing nearby were threatened with weapons and were prevented from aiding the two employees. When soldiers in a passing military patrol entered the school in response to the gunfire, three of the settlers escaped, kidnapping a child in the process. One of the settlers was arrested. As is typical in these situations, instead of attempting to capture the remaining settlers, soldiers began beating one of the employees previously beaten by the settlers. The kidnapped child was not returned until later in the day.¹⁰
- * On 18 April, in the city of Hebron, settlers destroyed a cement fence (25 meters in length and 10 meters high) belonging to the al-Sharabati and Abu Mardia families.¹¹
- * On 3 May, at approximately 11:00 pm, the village of al-Jania (Ramallah district) was attacked by settlers from the nearby settlements of Tel Mond (located 500

⁹ Al-Haq Affidavit No. 2594.

¹⁰ See Al-Haq Affidavits No. 2423 and 2424.

¹¹ Al-Haq Affidavit No. 2594.

meters from the village), and Dolev (located two kilometers from the village). Armed with guns, whips, knives, crowbars, and axes, the settlers attacked the village in an organized fashion, terrorizing its inhabitants and damaging homes and property. The settlers destroyed window shields and water storage tanks, burned crops, and beat village residents.

Among those beaten during the raid was Sa'id As'ad Sam'an, a 21-year-old resident of the village who was awakened by the sounds of villagers screaming and calling for help. When Mr. Sam'an went out toward the village center, he was assaulted by three settlers who beat him on his neck and back with their weapons. The settlers continued beating Mr. Sam'an even after he fell to the ground. When villagers came to his aid, they found him alone and unconscious.¹² Soldiers located in a nearby military post did not intervene on behalf of the Palestinian inhabitants in order to end the settler attack and only entered the village after the settlers had departed.¹³

* On 6 May, at approximately 11:00 pm, a 17-year-old Hebron resident witnessed a car with Israeli license plates¹⁴ driving from the direction of the Jewish settlement of Qiryat Arba with four passengers; the car stopped in a Hebron neighborhood and three settlers got out and set fire to three automobiles belonging to Palestinian residents.¹⁵

* On 3 June, settlers attacked the village of Taqqou' (Hebron district) and killed 25 heads of sheep and cattle.¹⁶

¹² Al-Haq Affidavit No. 2579.

¹³ Al-Haq Fieldwork Information Sheet No. 94/90.

¹⁴ Israeli license plates are distinguished from Palestinian plates in the Occupied Territories (except East Jerusalem) in that they are yellow in color. The vehicles of Palestinian residents of the West Bank (excluding East Jerusalem) are blue with orange (village) or white (city or town) coloring on the left side of the plate; Palestinians from the Gaza Strip have white license plates. In addition, all Palestinian license plates in the Occupied Territories (except East Jerusalem) have a Hebrew letter on the left side of the plate which indicates the district they live in.

¹⁵ Al-Haq Affidavit No. 2593.

¹⁶ Al-Haq Affidavit No. 2699.

* On 14 June, settlers burned 50 grapevines in the village of Sour Baher (Jerusalem district).¹⁷

* On 29 July, settlers from the settlement of Tel Hadasha uprooted 350 olive trees belonging to villagers from Biddo in the Ramallah area. Settlers also destroyed six acres of village land planted with vegetables belonging to Mr. Muhammad 'Abd al-Qader Mansour.¹⁸

* On 23 August, at approximately 9:00 pm, a group of settlers attacked Palestinian homes in Beit Hanina (Jerusalem district). The settlers raided homes and beat residents, and also smashed the windows of a number of homes. During this attack, the home of Ragheb Suleiman was raided and all his family members were beaten, including his children and pregnant wife. Mr. Suleiman was dragged from his house, beaten, and handcuffed. He was not released until Israeli police arrived on the scene later in the evening.¹⁹

Military-Settler Collaboration:

Settler violence against Palestinians and their property often takes place with the direct or indirect cooperation of the Israeli military authorities; Israeli soldiers and border guards not only fail to take prompt action to prevent settler attacks, but at times help settlers carry out these attacks. The failure of the military authorities to properly investigate and prosecute settler violence against Palestinians further encourages such violence.

For example, on 5 July 1990, a settler bus passing through the village of Khirbet Bani Hareth (Ramallah district) stopped after allegedly being stoned and 25 settlers got off the bus and began beating any Palestinian they found in their path. Expecting protection from Israeli soldiers, some villagers approached a nearby military patrol for help. However, the military patrol, which was parked just 20 meters away from the settlers' bus, did not intervene. Instead, soldiers in the military patrol threatened to shoot the villagers if they did not leave the area. Given free reign, the settlers dragged five children from the village into their bus and drove off toward

¹⁷ Al-Haq Affidavit No. 2714.

¹⁸ Al-Haq Fieldwork Report No. 184/90. For more information on similar incidents in other locations, see Al-Haq Fieldwork Reports No. 81/90 and 183/90; also see Al-Haq Affidavits No. 2598, 2699, 2714, and 2795.

¹⁹ Al-Haq Affidavit No. 2822.

Ramallah with the military patrol following. The children were taken to the police station in Ramallah and placed under arrest. The police collected a fine of 1,000 NIS (approximately US \$500) from the parents of each child before releasing them.²⁰

²⁰ Al-Haq Affidavits No. 2736 and 2738.

CHAPTER FIVE

Overview of Restrictions on Economic Development

Introduction:

Under Article 43 of the 1907 Hague Regulations, Israel, as an occupying power, has a duty to "restore and ensure public order and safety" in the Occupied Palestinian Territories, i.e. to guarantee both the welfare of the local population and the security of its own forces. However, since 1967, Israel has pursued a number of policies and measures which have negatively affected the economy of the West Bank and Gaza Strip, the most important of which are: (a) the subordination of Palestinian economic interests to Israeli political and economic interests, as indicated by Israeli policies toward Palestinian land development and external trade; (b) the grossly inefficient administration of economic activities through a centralized military bureaucracy, especially through the use of permits; (c) the pursuance of revenue maximizing fiscal policies (ostensibly in order to pay for bureaucracy and services) without sufficient regard for their effect on Palestinian economic activity; and (d) measures and policies carried out on the pretext of security without regard to their effect on the Palestinian economy.

Israeli Land Administration Policies:

Israel's policy of subordinating Palestinian commercial and economic interests to those of its own nationals, a policy which falls outside the bounds of international law, is most evident in its administration of land in the Occupied Territories. As detailed in Chapter 6, the civil administration's planning policies in the West Bank clearly subordinate Palestinian access to their land to that of Jewish settlers. Rather than using mechanisms such as public acquisition of land, development plans, and restrictions on land subdivision to enhance the West Bank's economic efficiency and productivity, the civil administration has abused Jordanian planning law in order to facilitate an official Israeli policy of land confiscation for the establishment of Jewish settlements. Other measures are linked to this policy. For example, restrictions on Palestinian residency rights facilitate the confiscation of land

under Israeli "absentee" landlord regulations, which determine land to be eligible for confiscation if the legal owner is an "absentee;" preventing farmers from irrigating their crops (through the imposition of curfews or prohibiting the digging of wells) facilitates the confiscation of land on the pretext that it is uncultivated and has therefore reverted to the State of Israel.

Restrictions on land use not only affect farmers' ability to cultivate land, but often prevent the building of industrial, agricultural, and residential structures as well. During 1990, al-Haq documented a number of demolitions of buildings used for agricultural and light industrial purposes. On 16 May, for example, the iron and asbestos animal pens of the *mukhtar* (village head) of Ras 'Atiya village (Tulkarem district) were destroyed for lack of a permit.¹

Israeli Policies Toward Palestinian Trade:

Israel's policy towards Palestinian external trade is also indicative of an essentially exploitative policy. Until October 1988, Israel required all Palestinian agricultural exporters from the Occupied Territories to export their goods through the Israeli monopoly Agrexco. It was only after the European Community (EC) exerted intense pressure that Israeli agreed to permit direct Palestinian exports in accordance with standing EC legislation and agreements. However, during 1989, the few Palestinians who attempted to avail themselves of the newly-won direct export option experienced harassment from the authorities in the form of excessive "security" checks leading to delays at Israeli ports as well as destruction of their goods through mishandling. During 1990, under close international monitoring, these harassments seemed to have lessened.

Trade between Israel and the Occupied Territories is regulated by the civil administration in accordance with Israeli commercial interest in minimizing competition from the Occupied Territories. Palestinian products from the West Bank have consistently been restricted from entry to the Israeli market while no such restrictions exist for goods moving in the opposite direction. In 1987, the Occupied Territories' trade deficit with Israel was approximately US\$700 million.

¹ See Chapter 6 for a more detailed discussion of Israeli land policy and its repercussions on Palestinian economic development.

Centralized Control of Palestinian Economic Activity:

Another major constraint on the development of the Palestinian economy is the extent of military control over economic activity and the sheer inefficiency which characterizes it. The civil administration regulates a range of economic and other activities in the Occupied Territories² through the issuance of permits. Rather than facilitating development, the civil administration represents a major obstacle to economic development in the Occupied Territories due to its inefficient processing of these permit applications. This inefficiency stems from a number of factors, including the highly centralized nature of the permit system and the lack of clarity concerning the procedures required for many permit applications.

The municipalities in the Occupied Territories, which are operated by Palestinians and were for a period led by democratically elected Palestinian mayors, are now completely subordinated to the Israeli civil administration, which is actually controlled by Israeli military officials. Although the municipalities have thus been brought under Israeli control, many of the functions related to local Palestinian economic activity have been removed from their jurisdiction to be administered directly by the civil administration, apparently in order to further ensure conformity with Israeli policy. While the occupying authorities are entitled to take measures in order to safeguard legitimate security concerns, this must be balanced against the interests of the local population, whose welfare the authorities are equally bound to safeguard.

The cost sustained by the economies of the West Bank and Gaza Strip as a result of the civil administration's inefficiency has yet to be quantified. However, in 1990 one West Bank factory alone -- an electrodes factory (publicly registered) in Hebron -- employed a clerk full-time, at a cost of US\$500 per month, to engage in the ongoing process of seeking the permits necessary for the continued functioning of the company from the Israeli authorities. These permits included: a permit from the Ministry of Trade and Industry to import iron as well as several other raw materials; a permit for each company truck every time it travels to Jordan, which is several times weekly, carrying the company's products; a permit to send a car to

² The following are only a number of the Palestinian activities requiring permits, which are not only expensive, but also difficult to obtain from the Israeli authorities: building a home or business, expanding a home or business, developing private property, travelling out of the Occupied Territories, travelling to or working in East Jerusalem or Israel, moving during curfew, digging a well on private property, deepening a well on private property, and exporting and importing products from and to the Occupied Territories.

Gaza; permits for the managing director to travel to the Gaza Strip, Jordan, and through Tel Aviv airport on business; and a permit to receive customers' payments from abroad.

In addition to the time and expense involved in obtaining permits related directly to the functioning of the factory, each and every manager and employee in the factory will be obliged to spend prodigious quantities of time, money, and effort in obtaining a range of other permits in order to license their cars, apply for family reunification for other family members, register newborns, travel abroad, build an extension to their house, etc. All of this time and effort could be better spent on more productive activities and thus constitutes part of the opportunity cost of living under Israeli occupation.

Permits for Land Planning and Agricultural Cooperatives:

The cost of applying for permits is increased by the failure of the authorities to respond rapidly, if at all, to some types of applications. The most serious example of this involves land use planning. Since the 1967 occupation, permission to subdivide land³ in the West Bank (which is frequently a necessary prelude to its development) has been denied by the Israeli authorities in the vast majority of cases. The situation in the last few years has further deteriorated to the point where no such application has even been replied to, as far as al-Haq is aware. The Jordanian Planning Law of 1966 provides that an application for a building permit may be refused for a maximum of one year if the refusal is due to the absence of a detailed plan; if such a plan is not provided by the landowner within one year, the local planning authorities are then obliged to prepare one for the applicant. To refuse an application to subdivide land on the grounds of a conflict with state development plans might trigger the requirement that alternate plans be prepared by the planning authorities within one year. Thus, the Israeli authorities' failure to respond to applications serves the dual purpose of preventing subdivision of land while sidestepping the responsibility to prepare plans.

Cooperatives in the Gaza Strip face similar problems. Seven licensed agricultural cooperatives were operating in Gaza during 1990. In January 1990, a further three cooperatives applied to the civil administration for licenses pursuant to the 1933 Law of Cooperative Societies. To date, none of these applications have received a response.

³ The subdivision of land is the division of land owned by one entity/person into more than one parcel of different ownership.

Publication of Procedures and Laws:

Lack of clarity concerning procedures and laws has also served Israeli economic interests at Palestinian expense. Particularly serious is the authorities' failure, almost certainly willful in many cases, to publish key laws and documents. The value-added tax law, for instance, was introduced in 1976 but only published in 1985, after sustained pressure from al-Haq and others. The Jordanian income tax law has been transformed by dozens of amendments, and yet the civil administration has never issued an up-to-date version of the amended law, despite repeated requests by accountants. Likewise, the British Mandate plans and regulations on which the civil administration relies in order to block Palestinian plans for land development are not published, contrary to Jordanian law. Moreover, military orders, regulations, etc., which are published, are frequently sent to lawyers and accountants late, inadequately translated, and often difficult to read due to poor photocopying.

Israeli Taxation Policies in the Occupied Territories:

As noted in the introduction to this chapter, a major constraint on economic development in the Occupied Territories is the economically inhibiting nature of the Israeli authorities' tax policies. The civil administration is to a large extent supported by tax revenues collected from Palestinians in the Occupied Territories. Although the authorities claim that some of the civil administration's money comes directly from the Israeli government, it is impossible to verify this in the absence of a published budget, as required by local law. Despite this lack of published information, it is clear, as explained in Chapter 7, that the civil administration's budget does not include revenue accruing to the Israeli government through the imposition of indirect taxes on imports to the Occupied Territories. This revenue, which is collected from Palestinians in the Occupied Territories and spent only inside Israel, is probably almost double the operating budget of the Gaza Strip municipalities.

The failure of the military government in the Occupied Territories to consider the potential of fiscal policy as a means for encouraging the efficient allocation of scarce resources (by encouraging investment, new companies, and sound land use policies, for example) and its simultaneous pursuit of revenue-maximizing policies undoubtedly compromise prospects for Palestinian economic development.

"Security" Measures Hampering Palestinian Economic Development:

The Israeli military's implementation of "security" measures, many of which constitute collective punishment, have served to further damage the Palestinian economy in the Occupied Territories.

One of the most damaging of these measures is the continued use of punitive curfews in many parts of the West Bank and Gaza Strip. Work days lost to curfews generally result in losses that are not reclaimable since factories operating at efficient levels of output cannot substantially increase the labor or machinery used to compensate for days lost without incurring prohibitive costs. Factories in Nablus have suffered particularly severe repercussions in this respect; managers recorded a 65 percent decline in production during 1990, as compared with the period before the intifada, requiring them to lay off 35 percent of their work force. Agricultural and marketing activities, like industry, were severely disrupted by prolonged curfews in 1990.

Another major "security"-related obstacle to economic development is the continued restriction on receiving payments from abroad to a maximum of 400 Jordanian dinars per person every two months. The receipt of larger sums of money from abroad requires a permit from the military authorities, giving the occupation authorities the power to control and restrict development that requires high inputs of capital.⁴

Families also suffer significant economic losses due to the widespread destruction of property during military operations, for which owners are unable to claim compensation. During 1990, al-Haq documented at least nine instances in which over 30 fruit or olive trees were uprooted, as well as dozens of instances in which lesser numbers were affected. These uprootings followed alleged instances of stone-throwing from the cover of these trees or were undertaken in order to clear areas on either side of settlement roads under construction. In addition, an estimated US\$3.75 million worth of houses were lost through destruction or sealing on the pretext of security. Al-Haq also documented repeated examples of crop destruction during Israeli military training exercises in agricultural areas of the West Bank.

The fishing industry in Gaza is a further example of how "security" measures have adversely affected the economy. As of January 1990, fishermen in the Gaza Strip have been required by the Gaza civil administration to wait every morning for the arrival of an Israeli officer to supervise their entry into the sea. While officially the officer is required to arrive by 6:00 am, the fishermen were regularly kept waiting until as late as 9:00 am before the designated officer arrived.

⁴ Israeli Military Order No. 973, as amended. This is particularly important because the Israeli authorities do not allow Palestinian banks to operate in the Occupied Territories and most Palestinians do not use Israeli banks. As a result, most large sums of money must come from outside the Occupied Territories.

Israeli Lawlessness and Palestinian Economic Development:

Finally, economic development in the Occupied Territories has been seriously obstructed by the prevailing atmosphere of lawlessness and human rights violations. In addition to the militarization of taxation, contract enforcement, etc., the arrest and detention of an approximate one-fifth of all Palestinian males between the ages of 14 and 55 during the intifada, the innumerable injuries -- many of a permanent nature -- caused by the military's use of force, the closure of educational institutions, and the overall sense of arbitrary government, have all negatively affected the economic potential of the Occupied Territories, albeit in a manner which is hard to quantify.

CHAPTER SIX

Land Use and Planning in the West Bank

Introduction:

As an occupying authority, the Israeli civil administration in the Occupied Palestinian Territories is obliged to carry out the functions of the displaced government while striving to uphold the laws in force on the eve of the occupation. With respect to land use, this includes the duty to ensure the stimulation and control of residential, industrial, and agricultural development for the benefit of the local population, as had been provided for under Jordanian law.

However, the Israeli authorities have imposed multiple restrictions on Palestinians' use of their land and resources. During 1988, more houses in the Occupied Territories (excluding East Jerusalem) were demolished by military bulldozers for lack of a building permit than permits were issued for new development. By contrast, during the same period building permits that were granted to Jewish settlers outnumbered those granted to Palestinians by a factor of 50 per capita. In 1990, approximately 145 Palestinian houses were demolished for lack of a building permit. Attempts to build on land in order to accommodate a growing population and provide for industrial and agricultural growth have thus been obstructed by a clear political strategy of restricting Palestinian development at all costs, while at the same time promoting the colonization of the West Bank and Gaza Strip by building and expanding Jewish settlements. This policy has resulted in the seizure of well over 60 percent of the total area of the Occupied Territories thus far.¹

Faced with the impending destruction of their home on "planning grounds," Palestinians from the Occupied Territories have often called on al-Haq to intervene

¹ For a further discussion of recent Israeli land acquisition and settlement in the Occupied Territories, see al-Haq, "Israeli Land Acquisition and Settlement in the Occupied Territories," *Human Rights Focus*, 20 August 1991.

with the Israeli authorities on their behalf. However, interventions based on principles of law and sound planning practices have consistently foundered in the face of the Israeli authorities' discriminatory land development policies. Similarly, Palestinians whose land has been marked out for acquisition by the Israeli military authorities in order to construct settlements or settlement roads have been unable to successfully challenge the seizure of their land in Israeli courts.

Confronted with the repression of Palestinian development on such a scale, and unable to challenge the planning policies of the military authorities through the official Israeli channels, al-Haq, in 1989, commissioned Dr. Anthony Coon of the Centre for Planning at Strathclyde University, Scotland, to thoroughly examine the issue of land use planning in the occupied West Bank. Dr. Coon made repeated visits to the West Bank and interviewed dozens of professionals and lay persons adversely affected by the issue of planning. Despite repeated attempts, he failed to obtain any response from the Planning Department at Bet El² to his requests for interviews and/or information. Some of the results of Mr. Coon's report, which constitutes the most exhaustive study available on land use planning in the West Bank to date, are summarized below.³

Centralization of Land Planning Issues:

One of the key changes in the administration and practice of planning achieved by military orders has been the centralization of planning decisions in the hands of the Israeli military authorities. Whereas under the 1966 Jordanian Planning Law ample provision was made for local participation, Israeli military orders have drastically altered this situation in two major respects. First, powers previously vested in planning authorities designated by Jordanian law have been vested in nominees of the military commander of the West Bank. Thus, local village commissions and district planning commissions, which were designed to be responsive to local needs under Jordanian law, have been abolished and their powers taken over by the Israeli Higher Planning Council. Secondly, additional power has been given to the Higher Planning Council (which is answerable only to the military commander) to: (1) amend, cancel, or disregard any plan or permit; (2)

² Bet El, which is located in the Ramallah district near the Jewish settlement of Bet El, is the West Bank headquarters of the Israeli civil administration.

³ For further discussion, see Anthony Coon, *Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank* (England: Dartmouth Publishing Company), scheduled to be published in March 1992.

assume the powers of any other planning authority; and (3) issue any permit or dispense with the requirement for any permit.⁴ The overall effect of military orders has been, as the Coon report states, to "render the law most impotent as a means of delivering sound, consistent, informed and fair planning decisions."

Lack of a Coherent Planning Strategy for Palestinian Development:

A second major failing of the planning system in the West Bank addressed in the Coon study is the lack of a coherent strategy for development and change. Coon observes that

potential developers are denied both the opportunities and the guidance which they would normally look for in a development plan, and the planning authorities lack an adequate basis on which to discriminate between proposals which support or conflict with agreed policies on the use of land.

Coon adds that

these shortcomings relate only to the opportunities for development by Palestinians. They arise principally because of institutional deficiencies and because of the priority given by the Israeli authorities to Jewish colonisation of the West Bank.

Given the lack of a coherent planning strategy, the sole function performed by the Israeli planning authorities in the West Bank is controlling and restricting Palestinian development -- as opposed to planning for it -- while facilitating the establishment of Jewish settlements. The civil administration restricts the development of land that remains under Palestinian control by impeding the subdivision of land and refusing permits on the grounds of unpublished government development plans.

Restrictions on Subdivision of Land:

According to standard planning practice, density of development within particular development zones is often controlled through the mechanism of limiting subdivision of land; i.e. planning authorities may restrict the extent to which an area of land may be divided into plots and sold to other developers. In the West Bank, the military authorities have usually denied applications for subdivision on the

⁴ Military Order No. 418.

grounds that the larger plot of land is not formally registered at all or registered incorrectly in the name of the owner seeking the subdivision. Ironically, a 1968 Israeli military order forbidding all further registration of land -- at a time when only one-third of all private land had been registered under the Jordanian government -- is largely responsible for the problem of incomplete land registration.

Israeli Planning Practices:

In those cases where subdivision of land is not an obstacle to development, the Israeli authorities have successfully restricted Palestinian use of their land by abusing the mechanism of development plans. Contrary to normal planning practice throughout the world -- whereby development plans are intended to help stimulate development in an efficient and harmonious manner -- in the West Bank, development plans have effectively been used to repress development. Planning law envisages the preparation of plans at varying levels of detail (including regional, outline, detailed, and parcellation plans) in order to describe the whereabouts and layout of new towns, public projects, business areas, and roads. Contrary to Jordanian law, under which local authorities have considerable input in the formulation of plans, preparation of plans outside the municipalities has become the exclusive preserve of the Israeli Central Planning Department of the civil administration in the Occupied Territories. By the same token, the Higher Planning Council has virtually absolute control over the approval of development plans. Access to these bodies is exceedingly difficult for Palestinians: the Planning Department has been moved to the Jewish settlement of Ma'ale Adumim (near East Jerusalem in the West Bank).

Having wrested control of the preparation and approval of plans from local authorities, the civil administration refused to prepare or approve any plans at all for villages until 1983. In 1983, and again in 1985 and 1989, the civil administration commissioned Israeli planners to prepare plans for several hundred villages. These plans, completed without consulting Palestinians, essentially serve to constrict villages to tightly drawn boundaries rather than to designate appropriate zones for development. Within the municipalities, very few outline plans prepared by local authorities, with the exception of the Nablus municipality, have been approved by the military authorities.

The RJ5 and S15 "Development" Plans:

Since the 1980s, the civil administration planning authorities have relied on outdated regional plans prepared under the British Mandate as a basis for deciding (and rejecting) the overwhelming majority of applications for construction in the West Bank. These plans, known as RJ5 and S15, which cover the southern and northern

parts of the West Bank respectively, were never intended to serve as the basis for deciding development applications. Rather, they were intended to indicate the broad zones with which other, more detailed plans, should conform. The plans were never used as the basis for deciding planning applications during the Jordanian period, nor were they used as such during the first 13 years of the Israeli occupation.

It appears that photocopied versions of the plans were "rediscovered" in the early 1980s. Although they are not publicly available, they are the most frequently used basis for the refusal of building permits and the demolition of "illegal" construction. Thus, Palestinian developers, who are required to prepare detailed plans in support of building applications which demonstrate that their plans conform with broader regional plans, are effectively forced to work in the dark.

Although these regional plans designate much of the West Bank as "agricultural land," a wide variety of building is permitted on such land under Jordanian planning law, including farmers' homes and industrial projects, as well as buildings for specifically agricultural use. Despite this, the term "agricultural land" has been interpreted by the Israeli occupation authorities in a manner allowing the refusal of Palestinian applications for such construction on the grounds that they violate the RJ5 and/or S15 plan(s).

While RJ5 and S15 have been used to stifle and demolish Palestinian development in the West Bank, they have posed no obstacle to the establishment of Jewish settlements even though neither RJ5 nor S15 allow for such construction. Two exceptions to this are the construction of a ring of settlements around Jerusalem and the settlement road plan for the West Bank, which have been officially adopted as "amendments" to RJ5 and S15.

Construction Permits:

As a result of the obscure, restrictive, and indeed highly politicized nature of Israeli planning policy in the West Bank, only a small number of construction permits are actually issued. Of an estimated 4,000 permits required annually to meet housing demand, an average of only 350 were granted annually between 1986 and 1990. The majority of these applications were refused on the grounds that they did not conform with development plans (usually unapproved or unpublished). When issued, permits are valid only for a 12-month period, during which all building must be completed.

CHAPTER SEVEN

Taxation

Introduction:

Under the 1907 Hague Regulations, an occupying power has license to collect taxes, provided this is done in accordance with the law and for the purpose of ensuring "*l'ordre et la vie publics*" ("public order and safety"¹). Implicit in the latter is the requirement that all revenue collected by the occupying power should be returned to the occupied territory for the purpose of ensuring this public order and safety. Contrary to these requirements, the military government in the Occupied Territories has forced Palestinians to pay taxes under the following conditions: a) failure to publish a budget since 1967, contrary to local law; b) systematic expropriation or concealment of the surplus generated by tax revenue, including revenue from taxes paid by Palestinians in the Occupied Territories on goods imported from abroad and revenue from income tax earned by those Palestinians working inside Israel; c) the abolition of basic elements of due process in the assessment and collection of taxes, including the abolition of the entire system of tax appeal courts, and the granting of full army powers of arrest, search, and seizure to tax officials; d) violence and intimidation, which render the process of tax collection akin to plunder; and e) the failure to publish military orders or excessive delay in publication.

Military Directives Aimed at Palestinian Tax Resistance:

Palestinians have repeatedly protested the invalidity and illegality of tax collection carried out under the above conditions. During the intifada, these protests have taken the form of an organized, collective refusal to recognize tax demands held to be *ultra vires* (null and void). In response, the Israeli authorities issued new

¹ This is the official English translation of Article 43 of the 1907 Hague Regulations.

military directives in 1988 and 1989 -- which remained in effect in 1990. These directives can be summarized as follows:

- * the imposition of a new annual levy on cars averaging US\$450 per vehicle;
- * the non-issuance of vital business, travel, and other permits until clearance has been obtained from all tax authorities, even where the required permit has no connection with the taxes;
- * the extensive introduction of administrative fines for tax offenses;
- * the explicit sanctioning of force to quell any resistance to tax collection;
- * the abolition of the need for last warnings, notification, etc., before confiscating property in such cases where the tax collection officer deems this to be necessary. In other cases, last notification of tax debtors may be no more than an announcement in the local newspapers;
- * the introduction of new and stringent bookkeeping requirements for income tax which make no exception for vendors, no matter how small their income.

Purposes of Israeli Taxation Policies:

In the context of less developed economies such as that of the Occupied Territories, taxation is potentially an effective means of mobilizing scarce local resources in the direction of productive economic activities. However, taxation policy toward Palestinians in the Occupied Territories appears to serve three purposes (not necessarily in the order presented): a) raising revenue in order to maintain the minimal level of services provided by the civil administration; b) funding civil administration activities which usually do not benefit the local population (for example the system of applications and permits); and c) maintaining the dependency of the Palestinian economy on the Israeli economy.

As a rule, tax revenue is linked to the level of gross national product. As Palestinian economic activity has slowed (for reasons outlined in Chapter 5) and Israel has incurred additional costs through its increased military and intelligence presence during the intifada, the Israeli government has sought to compensate by raising revenue through fees, fines, taxes and other measures -- usually unrelated to economic activity or ability to pay.

In 1976, Military Order No. 658 imposed Israeli value-added tax (VAT) on imports and the sale of all goods (except fresh fruit and vegetables) and services in the Occupied Territories. The VAT, which is designed to benefit the Israeli economy, violates the 1907 Hague Regulations' premise that an occupied territory must be administered, with limited exception, for the good of the local (i.e. Palestinian) population. During 1990, the tax authorities regularly revised VAT assessments for previous years and demanded payment -- for up to five-year periods -- in one

assessment. In Hebron, for example, a number of businesses making office furniture, shoes, etc., were given tax demands relating to the previous four years. Under Israeli VAT law, such demands are permitted in the West Bank, even though previous assessments for the years under review were approved and finalized by the authorities themselves.² Moreover, all of the Hebron businesses targeted by Israeli tax officials produced goods which directly competed with Israeli goods in the Israeli market.

Taxation of Palestinian Agricultural Cooperatives:

The authorities continued to tax non-profit service cooperatives which offer services at low or no cost to members. For example, production and distribution cooperatives were recently made subject to VAT on services provided to their members (e.g. pasteurization, veterinary services, etc.) despite the fact that the prices charged for services were usually only enough to cover costs and establishment of the cooperative was designed in order that all cooperative members would be able to afford these services by achieving an economy of scale among themselves.³ The Poultry Cooperative in Tulkarem, which had US\$5,000 of feed confiscated for non-payment of VAT, is one of many such cases. In another case, the Jericho Livestock Cooperative, a group of about 150 Palestinian Bedouin farmers, was unable to register cars and tractors for use by the cooperative until members had registered with the VAT department.

Taxation of Palestinian Export:

Within the export sector, several businesses which import raw material from Europe have been prevented from doing so or otherwise harassed by the tax authorities. In one case, a West Bank factory owner exporting goods to Europe was prevented from reclaiming the VAT that had been paid on imported raw materials, although such repayments are clearly provided for under Israeli law. The sum was finally set off against future payments, but without allowances for inflation or changes in exchange rates to prevent currency losses. In another case, a business manufacturing high-quality clothing for export to Europe and the US was prevented from obtaining an import license for raw materials since the income tax and VAT departments of the civil administration claimed that temporary loans to the company and other items were subject to taxation; clearance for the unrelated issue of the

² Article 89 of the 1985 VAT regulations.

³ See "Organization of Accounts - Amendment No. 4," 1988, of the 1963 Excise on Local Products Law.

import permit was thus refused.

Israeli Tax Assessment and Auditing:

During 1990, the military government continued to encourage a bargaining approach in tax collection whereby the authorities routinely demanded taxes equivalent to 10 times the sum for which they would finally settle. Such an approach, consistently applied, creates an expectation among taxpayers that they will be over-assessed and encourages the concealment of income and turnover. In Ramallah, accountants reported that during 1990, Israeli assessments of company profits and turnover were consistently far in excess of real profits and turnover. Currently, according to local accountants, even in cases where company accounts have been properly kept, these are routinely dismissed as fabrications by tax officials.

Local accountants acknowledge that there is a need to improve the standard of auditing in the Occupied Territories. To this end, in October 1986, a group of accountants drew up a set of standards and regulations, based on accounting conventions in other countries. This was presented to the Israeli authorities, together with a list of qualified accountants who had been elected by their colleagues as the board of a proposed accountants' association. Among the objectives of the proposed association was "raising the standards of the auditing profession," as well as "development and improvement of accounting knowledge." In a response dated December 1986, the West Bank Legal Advisor's office (of the military authorities) rejected the accountants' proposal on the grounds that there was no legal basis for their proposal.

The complex auditing procedures required under Israeli tax law demand, at the very least, an accounting profession able to maintain professional auditing standards. Outlawing the formation of a professional body designed to maintain auditing standards does not, in al-Haq's view, contribute towards the elimination of errors in bookkeeping, for which merchants are regularly penalized.

Case Study of a Gaza Company:

Reyashi Commercial and Industrial Company, one of the most technologically advanced factories in the Gaza Strip, has been virtually destroyed by the tax authorities. The company, which manufactures air compressors, car starter batteries, and plastics, is owned and managed by Dr. Saleh Reyashi, who received his Ph.D. in petro-electronics from Osaka University, Japan.

In February 1988, a force of 50 soldiers raided Dr. Reyashi's factory and confiscated goods, including the company computer, which contained the company's

accounts. The computer was not registered on a list of goods confiscated which the authorities later provided. The company was raided twice more during 1988. During 1989, Dr. Reyashi appealed to the Military Objections Committee several times with regards to the confiscated goods. The court held that the company computer had indeed been confiscated without registration by the tax authorities. Dr. Reyashi was again targeted by the military authorities during 1990, when he was served tax requests for the period 1986-1990 totalling approximately US\$2.5 million.

Dr. Reyashi's company was also subjected to the violence and intimidation that characterized Israeli attempts to enforce the payment of taxes throughout the intifada. During the second raid on Dr. Reyashi's factory in 1988, soldiers broke the arm of Dr. Reyashi's wife, Hayat Reyashi, and injured his daughter by kicking her in the knee. When Dr. Reyashi attempted to complain to the police, he was told to complain to the tax authorities directly. The tax authorities refused to hear his complaint. During a subsequent raid in 1990, Dr. Reyashi's identity card was confiscated by the authorities, contrary to standing military orders. This case of identity card confiscation to enforce tax payment is one of many complaints al-Haq received in 1990, despite the existence of military orders outlawing the practice.

Necessity for Fiscal Reform:

In al-Haq's view, a thorough reform of the fiscal system of the Occupied Territories is an absolute prerequisite for the fulfillment by the Israeli authorities of their obligations under international law. Necessary preconditions for the restoration of fiscal law and order in the Occupied Territories include the publication of budgets for the Occupied Territories; the publication of the total amount of money annually collected as income tax from Palestinians working in Israel and how this money is allocated; restoration of basic due process; and repayment to the Occupied Territories of indirect taxes paid by Palestinians on Israeli and other foreign goods. The elimination of the invidious practice of bargaining over tax assessments, the reduction of the administratively inefficient and therefore costly collection of taxes from the poorer sections of society, and the encouragement of economic initiative through fiscal means are also prerequisite to a taxation policy designed to ensure the economic welfare of Palestinians in the Occupied Territories, as required by international law.

Finally, the administrative competence and integrity of the tax officials in charge is the basis of any successful system of taxation. Palestinian accountants consistently repeat allegations of incompetence and corruption among Israeli tax officials in the Occupied Territories. Several have reported physical mistreatment of their persons. Thus, an overhaul of the military bureaucracy responsible for tax collection is also an urgent priority.

CHAPTER EIGHT

Restrictions on Movement

Introduction:

Consistent with policies pursued during 1988 and 1989, the Israeli authorities continued to restrict the movement of Palestinians by imposing area-wide, round-the-clock curfews; location-specific curfews; night curfews; and declaring certain regions closed to Palestinian entrance or exit.¹ Restrictions on movement have severely affected many aspects of Palestinian life. Moreover, as indicated in the examples presented in this chapter, these restrictions are frequently accompanied by abuses of authority, including verbal assaults, beatings, and the destruction of property.

Article 43 of the 1907 Hague Regulations requires the Israeli occupation authorities to balance their security needs against the legitimate rights of the population to carry on normal life. Security measures such as curfews and closure of areas must therefore be circumscribed so as to infringe as little as possible on the protected rights of the population living under occupation. Information and documentation compiled by al-Haq clearly show that, contrary to the claims of the Israeli authorities, most cases of movement restriction -- especially when one considers their scope and length of time imposed -- cannot be justified on security grounds. Rather, the documentation indicates that, for the most part, the Israeli authorities resort to measures that restrict the movement of Palestinians as a form of collective economic and social punishment.

Curfews:

Based on information released by the Palestine Human Rights Information

¹ The closure of areas is usually enforced by military checkpoints on the boundaries of an area.

Center (PHRIC), the total number of curfew days² imposed by the military authorities in 1990 (2,489) decreased relative to 1989 (2,801). At the same time, the figures indicate an increase in the imposition of curfews in the West Bank, with a total of 1,579 days in 1990 as compared with 1,215 in 1989. In addition, the imposition of curfews in the Gaza Strip decreased significantly, with 910 days in 1990 as compared to 1,586 in 1989.

According to al-Haq's documentation, the residents of Tulkarem refugee camp were subjected to the highest number of curfew days, totaling 74 in 1990.³ The longest continuous curfew of the year was imposed on the Deheisheh refugee camp in the aftermath of the al-Haram al-Sharif massacre in October and lasted 21 days.

There were eight separate occasions in 1990 when most, if not all, of the Occupied Territories (excluding East Jerusalem) were placed under 24-hour curfews. These blanket curfews were usually imposed by the Israeli authorities around days of national and cultural significance for the Palestinian population, including 1 January (the anniversary of the founding of Fateh)⁴; 30 March (Land Day); 16 April (anniversary of the assassination of Palestinian leader Abu Jihad); 15 November (Declaration of the state of Palestine); and 9 December (anniversary of the intifada).

In addition, a large number of location-specific curfews were imposed on 20 May, in the wake of the massacre of seven Palestinian workers and the injuring of scores of others at Rishon Letzion; and on 8 October, when 17 Palestinians were killed in the al-Haram al-Sharif massacre. On these occasions, curfews ranged from 16 to 20 consecutive days in some areas and affected 700,000 to 1,200,000 Palestinians.⁵

Night Curfew:

Night curfew is a practice that was reinstituted on a large scale in 1988 by

² A curfew day refers to one curfew per location per day.

³ Compiled from Al-Haq Incident Sheets No. 707/90 and 708/90.

⁴ Also the anniversary of the first military operation (in 1965) against Israel since 1948. Known in Arabic as the "Day of the Launching of the Palestinian Revolution."

⁵ During consecutive curfew days, the Israeli authorities briefly lift the curfew every three days (approximately) to allow the purchasing of food.

the Israeli military authorities and refers to curfews imposed from dusk until dawn. Its use as a form of collective punishment continued during 1990, especially in the Gaza Strip, where night curfew was imposed during most of the year.⁶ Numerous towns, villages and refugee camps in the West Bank were also subjected to night curfew for varying lengths of time. For example, the Israeli authorities imposed a night curfew on the village of 'Ein Yabroud in the Ramallah area from 1 May through 1 July after an Israeli settler's vehicle was stoned while passing through the main square of the village. Night curfew was reimposed on the village later in the year and continued through the end of 1990. In addition, except for the month of Ramadan, extended night curfew was imposed on the Deheisheh refugee camp from 1 October 1989 through 13 September 1990. Night curfew was also imposed on Jenin and the Jenin refugee camp from 11 August 1989 through 27 March 1990.

Closure of Areas:

Particular areas are sometimes declared closed by the Israeli authorities and movement of Palestinians into and out of the area is severely restricted by barricades and military checkpoints. From 24 until 28 October, for example, Israel and East Jerusalem were closed to all Palestinians with West Bank and Gaza Strip identity cards after a Palestinian stabbed four Israelis in West Jerusalem;⁷ this closure was particularly difficult for Palestinians who travel daily to work inside Israel. The Gaza Strip was also declared closed to Palestinian entrance or exit on 21 February, and 9, 15 and 16 December. In addition, both the Gaza Strip and the West Bank (with the exception of East Jerusalem) were declared closed on the Jewish holidays of Pesach (Passover), 8 April; Independence Day (15 May); and Yom Kippur (Day of Atonement), 3 November.

The authorities also declared specific refugee camps, towns and villages closed on a number of occasions. Jerusalem, for example, was closed to Palestinians from the Occupied Territories on many Fridays in an attempt to discourage worshippers from praying at the al-Aqsa Mosque, the third holiest site in Islam. In addition, Ramallah and al-Bireh were declared closed by the authorities on numerous Saturdays; this policy was implemented by setting up military checkpoints and barricades, which effectively prevented people from entering or leaving the two towns. Other areas affected by this policy included Beit Furik (Nablus district), which was closed for 50 days and put under curfew for 12 days beginning on 10 March;

⁶ For further details on the night curfew in the Gaza Strip, please see Chapter Two of this report.

⁷ Two of the four people stabbed died.

Jabaa' (Jenin district), which was closed from 1 through 13 January and 27 January through 4 February;⁸ and Hebron and its surrounding villages, which were declared closed on 12 January and 27 November.

Effects of Movement Restrictions on Palestinian Society:

The Israeli authorities' practice of closing areas and imposing curfew during 1990 -- particularly area-wide curfews and extended curfews or closures -- have severely disrupted the public life of the Palestinian community in the Occupied Territories. The effects of movement restrictions on access to school, work, medical care, and places of worship are discussed further in Chapters 8, 9, 12, and 14 of this report. Closure of areas and location-specific curfews usually affect more than the area targeted for such measures because most districts, towns, camps, and villages in the Occupied Territories are dependent upon each other geographically and commercially.

On an economic level, heavy losses were inflicted on the agricultural, fishing, and livestock sectors of the Palestinian economy during 1990. For instance, every time the Gaza Strip was declared a closed military area, approximately 1,100 fishermen were prevented from going to work.⁹ Limited access between districts, cities, and villages led to heavy losses for the agricultural sector, which depends on the timely harvesting and marketing of perishable products. For example, the residents of al-Khader village, in the Bethlehem district, were unable to harvest or market their fruit crop when a curfew was imposed between 18 and 27 June after a stone-throwing incident occurred in the area.¹⁰ In the village of Nahhalin, also in the Bethlehem area, farmers watched their crops wither and spoil when the military authorities declared the village a closed area, imposed a curfew, and forbade them from irrigating their agricultural land between 22 May and 4 June. In the village of 'Ein Yabroud (Ramallah district), thousands of poultry and some cattle perished during the 10-day curfew between 4 and 14 February because farmers were not allowed to feed their livestock.¹¹

Israeli restrictions on movement are regularly accompanied by army brutality,

⁸ Al-Haq Fieldwork Information Report No. 31/90.

⁹ Al-Haq Fieldwork Report No. 42/90.

¹⁰ Al-Haq Incident Sheet No. 595/90.

¹¹ Al-Haq Affidavits No. 2631 and 2663 and Fieldwork Report No. 55/90.

arbitrary arrest, and other measures which serve to exacerbate the already difficult conditions of curfew. Four examples of incidents which occurred during curfew and/or closure of areas are presented below. Three cases occurred during the 12 days of curfew and 50 days of closure imposed on the village of Beit Furik (Nablus district), which began on 10 March and was used to facilitate Israeli tax raids.¹² The fourth case occurred in the village of Ni'lin (Ramallah district).

* On 13 March, after three days of curfew in Beit Furik, 24-year-old Rima Yousef Saleh Heleil had run out of bread; she left her house to bake bread in the family's nearby *taboon* oven (an outdoor brick-like oven). On her way back, six soldiers stopped her and asked why she had broken the curfew. She explained that her children needed bread and she had a 40-day-old infant waiting for her in the house. While her crying children looked on, she was ordered to put the bread down and was arrested. She was driven to the military checkpoint in the village. Approximately two hours later, her husband approached the checkpoint with their infant in his arms and asked for his wife's release. The soldiers refused to release her until he agreed to be arrested in her place. He was not released until five hours later.¹³

* On 14 March, the fourth day of curfew in Beit Furik, 75-year-old Najiah Ahmad Sa'adeh Hanani left her home and headed toward her son Hamdi's house in order to borrow some bread. A military jeep raced up to her as she was leaving her home and the soldiers refused to allow her to go back into her house when she attempted to do so. They confiscated her identity card and ordered her into the jeep. When she refused, they began beating her on the head with their rifle butts and forced her into the vehicle. Two of her sons, 55-year-old Hamdi and 42-year-old Kamal, ran after the jeep to ask for her release. However, they too were arrested, tied to the jeep, and dragged to the military checkpoint at the entrance of the village. After beating Najiah for the second time, the soldiers beat her sons and transferred them to an army truck. The soldiers then attempted to load Najiah herself onto the vehicle. When she resisted, she was beaten until she lost consciousness. Upon regaining consciousness, the soldiers ordered Najiah to drink some water, asked if she needed a doctor, and released her. Two days later, each of her sons was fined NIS 600 and released.¹⁴

¹² Al-Haq Fieldwork Report No. 87/90.

¹³ Al-Haq Affidavit No. 2657.

¹⁴ Al-Haq Affidavits No. 2665, 2668, and 2669.

* On 21 March, the last day of the curfew,¹⁵ a group of women managed to escape Beit Furik and reach the nearby town of Nablus, where they bought vegetables, meat, and dry milk for the village, which was by this time facing an acute food shortage. Upon attempting to re-enter the village, they were stopped by soldiers manning the checkpoint and ordered to hand over the food. One soldier then poured gasoline over the confiscated food and set it on fire. The women's pleas for permission to at least bring in the dried milk were to no avail and it was destroyed with the rest of the purchases. The soldiers then confiscated the women's identity cards and informed them that they could be reclaimed in a few hours.¹⁶

* On 16 March at midnight, soldiers and tax collection officials descended upon the village of Ni'lin and immediately imposed a curfew which was to last for two days. Some soldiers then began randomly firing their weapons in the direction of homes in the village; Haj Khalil Sa'adat al-Khawaja was one of the villagers who had live ammunition fired into his home.¹⁷ Sixteen villagers were physically assaulted by soldiers, including Sa'id Salim al-Khawaja, Hussam To'mallah, Mo'awyah Sa'adat, and Sumaya Sa'id.¹⁸ Two villagers, Khalil 'Abd al-Rahman Sourour and Salah Muhammad al-Khawaja, were hospitalized with plastic bullet wounds.¹⁹ During the two days of curfew, soldiers prevented many people from reaching the mosque to pray. Those who did manage to enter the mosque were physically and verbally assaulted by soldiers on their way out of the mosque.

In addition to the general atmosphere of terror created by the soldiers in Ni'lin, they also inflicted large-scale property damage on the village. For example, soldiers entered several homes forcibly, breaking furniture and smashing dishes on the floor. Fahmi 'Abd al-Majeed Nasser's front door was broken down by soldiers when he refused to paint over nationalist slogans painted on the walls of his neighborhood. The authorities also used a military tractor to destroy a whole dunum of olive trees and a well belonging to Mansour 'Ali Mansour. Twenty cars belonging

¹⁵ Palestinians are rarely informed in advance of the time and date on which a curfew will be lifted; the villagers of Beit Furik therefore had no idea that the curfew would finally be lifted the next day.

¹⁶ Al-Haq Fieldwork Information Report No. 87/90.

¹⁷ Al-Haq Fieldwork Report No. 60/90.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

to people in the village were confiscated and only returned after five car owners were forced to pay a fine of NIS 1,000 each.²⁰

²⁰ *Ibid.*

CHAPTER NINE

Human Rights Violations Against Workers

Introduction:

The violations of workers' rights documented by al-Haq during 1990 fall into two basic categories: those affecting the rights of Palestinians working in Israel and those affecting the rights of the trade union movement in the Occupied Territories. These violations are not new; rather they reflect the general pattern of violations of Palestinian workers' rights committed by Israeli authorities and civilians since the 1967 occupation.¹

Workers in Israel:

During 1990, the Israeli government intensified its efforts to replace Palestinian workers from the Occupied Territories with Israeli workers, particularly new immigrants from the Soviet Union. The International Labour Office estimates that 108,500 Palestinians worked in Israel during 1990; of these, approximately 70,000 workers did not have permits to do so from the Israeli authorities.² According to the documentation compiled by al-Haq, many of the workers replaced with new immigrants were legally registered, but were nonetheless dismissed without proper notification and compensation.

¹ For background on these issues, see Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), pp. 318-319; also see Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990), pp. 410-414, pp. 437-441.

² Paragraph 41 of the International Labour Office's *Report of the Director-General: Appendices* (Vol. 2) (ILO: Geneva 1991).

In addition, workers were restricted or prevented from reporting to work in Israel on a number of occasions, particularly following Palestinian attacks against Israelis. For example, on 24 October, after a Palestinian stabbed several Israelis in Jerusalem,³ workers were ordered back to the Occupied Territories and prohibited from returning to work until 28 October. Curfews and the military closure of areas also prevented workers from reaching Israel. As outlined in Chapter 8 of this report, the entire Gaza Strip was placed under curfew and/or declared a closed military zone on 21 February, and 9, 15, and 16 December, again effectively restricting worker access into East Jerusalem and Israel.

More importantly, at the end of October, Israeli Defense Minister Moshe Arens announced that 20,000 Palestinians would be issued green identification cards rendering them unable to enter Israel or annexed East Jerusalem. The majority of those issued green cards were Palestinians working in Israel. This restriction on workers' access to their work place in Israel resulted in the loss of jobs for several thousand Palestinians.⁴ Moreover, police began raiding work places inside Israel searching for workers without permits to work in Israel.⁵ Unregistered workers were arrested and their employers were fined.⁶

³ For further information on this incident, see Chapter 3 and Chapter 14 in this report.

⁴ Al-Haq Questionnaire No. 723/90. On 5 November 1990, *Al-Quds* Arabic daily newspaper reported in an article entitled "Green Cards and Red Lines" that 3,000 workers had lost their jobs by virtue of this measure. This was confirmed in paragraph 41 of the 1991 ILO's *Report of the Director-General*.

⁵ Pursuant to a 1972 unnumbered Israeli Military Order titled "General Exit Permit," Palestinians from the Occupied Territories must have permits to work in Israel and annexed East Jerusalem. Nonetheless, approximately 60 percent of Palestinians who work inside Israel do not have such permission. The application for such a permit is usually denied arbitrarily by the Israeli authorities. In addition, many workers do not apply for a work permit through the Employment Office on principle because although taxes are deducted from their paychecks, they do not receive the full benefits which accrue to Israeli citizens (who pay the same taxes). These workers are not protected by the law, and suffer systematic discrimination by their employers. In addition, they have to endure work conditions that are in many cases far below international standards as reflected in different ILO conventions.

⁶ "Raid Nets 31 Illegally Employed Palestinians," *Jerusalem Post*, 1 November 1990.

In 1990, al-Haq also documented a number of cases in which workers from the Gaza Strip were prevented from re-entering Gaza in the evening. On 2 October, for instance, approximately 40 workers who were returning from their jobs in Israel shortly after the regular night curfew was imposed were not allowed to re-enter the Gaza Strip.⁷ Some of the workers were beaten by the soldiers at the military checkpoint at the Gaza Strip border and all were obliged to spend the night in the open air on the Israeli side of the checkpoint because they could neither enter the curfewed Gaza Strip nor return to Israel where Palestinians are forbidden to spend the night without official permission.⁸

In addition to the violations cited above, al-Haq also documented several cases of attacks on Palestinian workers by Israeli civilians in 1990. In one case, on 4 February, at approximately 3:00 pm, a worker from the Gaza Strip was severely beaten by five Israeli civilians in Tel Aviv while he was on his way to a bus station. The worker lost consciousness and had to be hospitalized in Tel Aviv. Further, by the time he regained consciousness at the hospital, at approximately 9:00 pm, the worker realized that his identity card and approximately US\$175 that he was carrying with him when he was attacked were missing. He was released from the hospital at 1:00 am. When he arrived at the Gaza Strip border checkpoint at approximately 2:00 am, Israeli soldiers prevented him from entering Gaza until 3:00 am.⁹

The most serious attack on Palestinian workers occurred on 20 May, when an Israeli civilian killed seven Palestinian workers and wounded several others in what became known as the Rishon Letzion massacre. The following is an outline of the incident as compiled from four affidavits taken by al-Haq fieldworkers from eyewitnesses:¹⁰ At approximately 6:00 am, a man in military trousers and a black shirt and carrying a machine-gun was seen standing at the main road near the

⁷ During most of 1990, a curfew was imposed over the Gaza Strip from 8:00 pm every evening until dawn. Sometimes, due to traffic jams or inability to find transportation, workers arrived shortly after the imposition of the night curfew.

⁸ Al-Haq Affidavit No. 2890. According to the Israeli Military Order entitled "General Exit Permit" of 1972, Palestinians from the Occupied Territories are not allowed to stay in Israel between 1:00 and 5:00 am.

⁹ Al-Haq Affidavit No. 2419.

¹⁰ For further information about the Rishon Letzion massacre, see al-Haq Affidavits No. 2768, 2769, 2770, and 2790.

Rishon Letzion industrial area.¹¹ The man was later identified as Ami Popper. He began stopping Palestinian workers who were arriving from different parts of the Occupied Territories to wait for contractors or their employers to take them to work.¹² Popper ordered the approximately 20 workers to sit on the ground in three lines¹³ and then proceeded to open live fire upon them. He continued shooting for approximately two minutes. He then left the area in a Gaza car belonging to one of the workers.¹⁴

Trade Unions in the Occupied Territories:

During 1990, al-Haq continued to document cases of violations against Palestinian trade union rights by the Israeli military authorities. Foremost among these violations were raids on trade union offices, which typically involved the searching of offices and the confiscation of union files, documents, books, food, money, and clothing. All the raids documented by al-Haq involved the use of force and the subsequent destruction of union property.

On 4 April, for example, eyewitnesses observed approximately 35 soldiers raid the offices of the Ni'lin village (Ramallah district) branch of the Union of Service Workers and the Self-Employed. No one was in the office at the time. The soldiers vandalized the offices and damaged union property. Trade union documents and other materials were confiscated. The damage caused by the raid, including the value of the confiscated materials, amounted to US\$3,000.¹⁵ These raids may also involve the arrest and detention of union leaders and members. On 16 August, for example, soldiers raided a Ramallah union office and detained approximately 30

¹¹ Palestinian workers often gather in certain locations inside Israel in order to wait for contractors or employers to pick them up for work. One of these areas is adjacent to Rishon Letzion near Tel Aviv.

¹² Most of the workers gathered in these sites do not work legally through the employment offices.

¹³ The workers later reported that they followed the instructions of the assailant because they thought he was a soldier as he was in semi-uniform and carrying a weapon.

¹⁴ See Appendix I at the end of Chapter 9 for a translation of Al-Haq Affidavit No. 2770.

¹⁵ Al-Haq Affidavit No. 2574.

union members.¹⁶

Al-Haq intervened with the Israeli authorities on behalf of Palestinian unions in three such raids during 1990. In these interventions, al-Haq stated that it viewed these raids as violations of local as well as international law. In particular, al-Haq views the confiscation of union files as a violation of Article 82 of Jordanian Labour Law No. 21 of 1960. This article gives labor inspectors the right to review union files inside union offices only, and forbids the removal of files from union offices by inspectors. In addition, the confiscation of trade union materials violates Israeli Military Order No. 378, which allows confiscation of materials only in instances of suspicion by the authorities that these materials were used or about to be used for committing a security offense; the authorities did not state such grounds in any of the three cases. Furthermore, the forcible entry into union offices and destruction of property cannot be justified as the union documents could have been viewed by the proper authorities at any time.

With regards to international law, Article 3(2) of the International Labour Organisation's Convention 87: Freedom of Association and Protection of the Right to Organise states that "[t]he public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof." Moreover, the ILO Freedom of Association Committee has ruled that "the detention of union leaders for activities connected with the exercise of their trade union activities constitutes a violation of the principle of freedom of association."¹⁷ The organization has on several occasions referred specifically to violations of trade union rights, interference in trade union activities, and repressive measures used against trade unionists in the Occupied Territories. For example, the International Labour Organisation stated that "[o]ver the years...evidence has shown that, in the territories, the trade unions have been subjected to excessive and unwarranted harassment by the [Israeli] security forces."¹⁸

¹⁶ Al-Haq Affidavits No. 2806 and 2873.

¹⁷ International Labour Organisation, *218th Report of the Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, Case No. 1129, paragraph 477.

¹⁸ International Labour Office, *Report of the Director-General*, paragraph 110.

APPENDIX I
Translation of Sworn Affidavit No. 2770
Taken By Al-Haq

I the undersigned, Yahya Mousa Muhammad Soa'ied, holder of identification card no. 905540225, 30 years of age, a worker residing in Rafah, Gaza Strip, having been told to state the truth or be subject to criminal liability, hereby state under oath as follows:

At around 3:30 am, [on 20 May 1990] I left Rafah where I live and went to Rishon Letzion in Israel; I have been working through the city's transport station for approximately 10 years.¹⁹ After I arrived in the city, I went to the place where I sleep, which is not far from the station where Arab workers gather. I left my bag and clothes [at the place] and went to the station. I waited for a few minutes for an employer to arrive. At approximately 6:05 am, I saw a man wearing soldier's trousers and a black sweater and holding a rifle, approaching from the citrus grove near the place where the workers were gathered. I saw him cross the street and head towards us. When he reached us I heard him calling the workers. He called me and my brother Ziyad, who works through the station as well. He then asked us to sit in lines. We sat in three lines. At the same time, I saw a Peugeot car, model 504, which had Gaza license plates, driving near the station. I then saw the armed man order the car to stop by waving his hand. The car stopped. Then I heard the soldier ask the workers who were in the car to get out of it. They were four workers and the driver. Then he asked the driver to bring the car closer to him and keep the motor running. He also ordered the workers to join us. He then ordered us to sit closer to each other. We obeyed all that he told us to do since we are used to having policemen and border guards coming to the station and asking us for our identification cards. I then heard that person tell us in Hebrew, [a language] which I understand very well: "Do you know why I brought you here?" Before we could answer him, he opened fire continuously. He emptied three cartridges while shooting at us. Without thinking I threw myself on the ground and the bullets did not hit me. Then I saw the soldier [*sic*] get into the 504 Peugeot and drive it away. After that, I stood up to see a terrible scene. Blood was covering the area and injured people were lying on the ground. I searched for my brother, who had been sitting in the first line while I had been sitting in the third line since he [the assailant] had made us sit according to height. I found my brother a body without movement, and he was wounded all over his body, especially in the pelvic area. I turned to the street to

¹⁹ Many Palestinian workers do not have fixed employment in Israel. Rather, they stand in the transport stations of the major industrial towns in Israel every morning to wait for contractors or employers to pick them up in order to work.

stop a vehicle. Israeli cars were passing, but none of them stopped despite our efforts to get help. After that, a car with Gaza license plates passed. I stopped it and took my brother in it to a Kopat Holim clinic in Rishon Letzion. There, they told me he was dead. They transferred him to Tel Hashomer Hospital, where they again told me he was dead and that they could do nothing. I tried to take his body, but they refused to give it to me. They transferred it to the police station in Rehavot and then to Abu Kabir [Forensic Institute]. There, they told me that I would receive the body through the civil administration in Rafah. I should mention here that policemen are usually in the area where workers gather [the scene of the shooting], however, they were not there that day.

In accordance with all of the above, I hereby sign on this date of 27 May 1990.

(Signature)

Name available for publication

CHAPTER TEN

Human Rights Violations Against Women

Introduction:

Although international humanitarian law provides special and preferential protection for women, the Israeli authorities continue to subject Palestinian women in the Occupied West Bank and Gaza Strip to human rights violations. In more than one of its provisions, the 1949 Fourth Geneva Convention provides women with protection related to their dignity, physical safety, pregnancy, and childbirth. Israeli practices, however, have on numerous occasions violated these international standards. Moreover, violations of the rights of Palestinian women have commonly been perpetrated without regard to age or health condition.

The most significant human rights violations to which women were subjected at the hands of the Israeli authorities during 1990 include: (a) the illegal and indiscriminate use of lethal weapons resulting in deaths and injuries; (b) physical assaults during military raids on Palestinian homes; (c) the abuse of non-lethal weapons such as tear gas, resulting in suffocation, miscarriages, and other health problems;¹ (d) the denial of family reunification permits for female non-residents of the Occupied Territories married to Palestinian residents; (e) arbitrary arrest; (f) interrogation and torture (during which obscenities and threats of rape are common); and (g) sexual harassment either during military raids on homes or from soldiers stationed at lookout posts on the roofs of Palestinian homes.²

¹ See al-Haq Affidavits No. 2709, 2635, 2508, 2507, and 2754.

² Sexual harassment here refers to soldiers using obscene language, exposing themselves to women, and/or urinating on them. As is the case in most other societies, Palestinian women subjected to attempted rape or rape are, due to social ramifications, often ashamed and/or afraid to give the detailed evidence required for documentation. As a result, al-Haq was not able to document any such cases

This chapter is not intended to be a comprehensive discussion of Israeli human rights violations against Palestinian women in the Occupied Territories during 1990. Rather, it is a discussion of the first four categories of violations -- the use of lethal force, physical assaults, misuse of tear gas, and denial of family reunification permits -- with a presentation of pertinent examples documented by al-Haq fieldworkers.

Killings of Palestinian Women:

During 1990, 21 Palestinian women or girls were killed by the Israeli authorities;³ this is 13.3 percent of the total number of Palestinians killed during 1990. Of those killed, 11 died as a result of live ammunition; 4 as a result of tear gas; 2 as a result of rubber bullets; 2 due to beatings; 1 as a result of plastic bullets; and 1 as a result of other means.

Palestinian Women Killed in 1990

Category	Number	Percentage
Live Ammunition	11	52.4
Tear Gas	4	19.0
Rubber Bullets	2	9.5
Beating	2	9.5
Plastic Bullets	1	4.8
Other	1	4.8
Total	21	100.0

According to al-Haq's documentation, very few women were shot to death while engaging in direct protest. As was the case in 1988 and 1989, when women were engaged in direct confrontations with soldiers (i.e. during demonstrations or protests), soldiers resorted to the excessive use of lethal force in situations which were clearly not life-threatening. In other incidents, soldiers indiscriminately opened fire on bystanders and/or passers-by in areas where confrontations were taking

despite the fact that available information suggests that such violations occurred.

³ Seven were from the Gaza Strip and 14 from the West Bank.

place. Of the 21 females killed during 1990 by the Israeli military authorities, 42.8 percent were above 40 years of age and 14.2 percent were under the age of 10.

Deaths and Injuries as a Result of Israeli Use of Lethal Weapons:

During 1990, Israeli soldiers continued to resort to live ammunition, rubber bullets, and plastic bullets, resulting in deaths and injuries among women. Most killings and injuries of women occurred when women were passing through areas where protests were taking place.

Several cases in which Palestinian women were injured or killed in 1990 are summarized below:

- * On 10 May, 18-year-old Wardashan Salem al-Kafarna was injured when she was shot in the head with live ammunition from a distance of four meters while passing by the cemetery of Beit Hanoun village in the Gaza Strip. She lost consciousness and was transferred to al-Ahli Hospital in Gaza. The bullet fractured her skull.⁴
- * On 21 May, 55-year-old Safiya Suleiman Jarghoun of Khan Yunis was fatally shot when she and other women living in the neighborhood attempted to rescue Palestinian youths who were being severely beaten by soldiers. Upon the arrival of military reinforcements, the women fled in all directions; Mrs. Jarghoun's daughter-in-law saw her running towards a narrow side-street and heard gunshots. Two hours later, Mrs. Jarghoun was found dead with three bullets in her heart; she had been shot from the back.⁵
- * On 24 May, 26-year-old Nawal Muhammad Wadi of Jabalya refugee camp was shot with rubber bullets in the right eye while attending to her 14-month-old daughter Maysoon inside her home. Ms. Wadi lost her right eye as a result of the shooting.⁶
- * On 25 June, 29-year-old Hiyam Mas'oud Khalil, a mother of 10, was shot in the head with live ammunition while walking down a street near her house in the

⁴ Al-Haq Affidavit No. 2681. For more documentation on women shot and injured, see al-Haq Affidavits No. 2562, 2867, 2633, 2343, and 2439.

⁵ For more information, see al-Haq Affidavit No. 2789 and al-Haq Questionnaire No. 90/1868. For details of similar incidents, see al-Haq Affidavits No. 2784, 2446, 2447, 2379, 2783, and 2531.

⁶ Al-Haq Affidavit No. 2732.

Tulkarem refugee camp. Ms. Khalil was immediately taken to Tulkarem Hospital and shortly thereafter transferred to Maqqased Hospital in Jerusalem, where she died on the same day.⁷

Deaths and Injuries as a Result of Beatings:

As was the case during the first two years of the uprising, Palestinian women, including the elderly, ill, and pregnant, were subjected to brutal treatment by soldiers during 1990. This occurred most often while women were in the process of protecting male members of their families from physical assault and/or arbitrary arrests during military raids on their homes. Al-Haq recorded dozens of affidavits documenting such assaults.

Five of the cases documented by al-Haq in which women lost their lives or were injured as a result of severe beating by Israeli soldiers are summarized below:

* On 11 December 1989, 70-year-old 'Aziyya Mahmoud 'Oweidat was severely beaten by Israeli soldiers who raided her home in al-Shiyukh village (Hebron district). Soldiers continuously beat the elderly woman on the chest with a whip, pushed her against a wall, and beat her on the head. Mrs. 'Oweidat had been beaten twice previously by Israeli soldiers during at least seven other military raids on her home. She continued to suffer physical pain from the 11 December beating throughout the following week and visited a doctor on 19 December. Mrs. 'Oweidat was transferred to 'Aliya Hospital on 21 December, where she died on the same day.⁸

* On 23 February 1990, 60-year-old Bahiyya Khalil al-Skafi of al-Shuja'iyya neighborhood in Gaza City was severely beaten on the chest and legs with a whip when soldiers entered her home chasing her seven-year-old grandson who had run inside when he saw the soldiers. Mrs. al-Skafi lost consciousness and suffered a broken leg as a result of the severe beating; she was treated at al-Ahli Hospital in Gaza.⁹

⁷ Al-Haq Affidavit No. 2760.

⁸ Al-Haq Affidavit No. 2596.

⁹ Al-Haq Affidavit No. 2486. For information on similar incidents, see al-Haq Affidavits No. 2318, 2743, 2695, 2772, 2776, 2711, 2539, 2482, 2349, 2330, 2636, and 2852.

* On 18 March 1990, 75-year-old Sirriyyeh Muhammad Salameh of al-Maghazi refugee camp in the Gaza Strip was beaten by soldiers on the right hand and breast while trying to rescue her 15-year-old neighbor Muhammad al-Fadili. When she pleaded with the soldiers to stop beating the boy, they threw Mrs. Salameh to the ground, breaking her right arm.¹⁰

* On 21 March 1990, 75-year-old Zaynab Da'oud al-Assar of Nuseirat refugee camp in the Gaza Strip was severely beaten on the face, head, and breast by soldiers who raided her home to arrest her 16-year-old grandson, Hani Muhammad al-Assar. She was taken to the UNRWA medical facility in the camp, where she died after approximately two hours.¹¹

* On 21 May 1990, 55-year-old Rasmiya 'Ali 'Atallah of al-Rimal in Gaza City was beaten to death by soldiers during a raid on her home. Two soldiers clubbed her on the head, neck, and shoulders, beating her to the ground because she attempted to protect her 26-year-old son, Ibrahim Subhi 'Atallah, from arrest. She was taken to al-Ahli Hospital in Gaza where she died the same evening.¹²

Palestinian women were also brutalized while pregnant. For example, in mid-December 1989, 26-year-old Rima Zeid Zayed of al-Taybeh village (Ramallah district) was in her ninth month of pregnancy when soldiers stationed on the roof of her home came in to arrest her husband and began beating her on the stomach. Mrs. Zayed suffered severe pain but did not miscarry.¹³

In a similar incident, on 2 March 1990, 20-year-old Thurayya Muhammad 'Abd al-Rahman of Bureij refugee camp in the Gaza Strip was severely beaten by soldiers who raided her home looking for youths alleged to have thrown stones. Mrs. 'Abd al-Rahman, who was three months pregnant, was beaten on the face, stomach, breast, and back despite the fact that she informed the soldiers that there were no youths in her home. Mrs. 'Abd al-Rahman lost consciousness as a result of the beating. After approximately five hours, she suffered from severe bleeding and

¹⁰ Al-Haq Affidavit No. 2540.

¹¹ Al-Haq Affidavit No. 2531.

¹² Al-Haq Affidavits No. 2784 and 2783. See also al-Haq Questionnaire No. 90/1888.

¹³ Al-Haq Affidavit No. 2645.

miscarried her child at al-Shifa' Hospital in Gaza.¹⁴

Misuse of Tear Gas and Miscarriages:

Al-Haq's documentation indicates the continued use of tear gas grenades in densely populated areas and inside confined spaces by Israeli soldiers during 1990. Reports by physicians have shown that excessive exposure to tear gas constitutes a potentially lethal health hazard, especially in confined spaces.¹⁵ The inhalation of tear gas in large amounts has proven to be especially lethal when the person exposed to the gas suffers from respiratory or heart problems. Women, children, and the elderly, who are most often in homes, have been the main victims of tear gas misuse.¹⁶ In addition, the harmful effects of tear gas are exacerbated, and therefore have taken a larger toll, in the densely populated Gaza Strip, where most residents live in over-crowded refugee camps.

Al-Haq documented four cases of female deaths as a result of tear gas inhalation throughout the year. Tear gas inhalation was thus second only to live ammunition as a cause of female death in 1990, as was the case during the first two years of the uprising. Miscarriages and stillbirths, however, have been the most common types of health complications suffered by women as a result of tear gas inhalation.¹⁷ In all cases of miscarriage documented by al-Haq, women reported that they had been exposed to tear gas several hours to several days prior to the miscarriage. According to the documentation, most of these women had no medical

¹⁴ Al-Haq Affidavit No. 2488. Also see al-Haq Affidavits No. 2632 and 2754.

¹⁵ Physicians for Human Rights, *The Casualties of Conflict: Medical Care and Human Rights in the West Bank and Gaza Strip* (Boston: Physicians for Human Rights, 1988), p. 18.

¹⁶ See al-Haq Affidavits No. 2635, 2507, 2508, and 2754.

¹⁷ From a medical point of view, it is generally difficult to unequivocally prove that a miscarriage or stillbirth occurred as a direct result of the physical effects of tear gas exposure; this is due to the possibility of other contributing factors. For example, there is a dramatic increase in tension and stress levels when tear gas is being used. Evidence nonetheless suggests that exposure to tear gas, especially in intensive quantities and limited spatial areas, has contributed to miscarriages among Palestinian women in the Occupied Territories. For details, see Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990), p. 510.

problems or complications in pregnancies prior to their intensive exposure to tear gas.

The following are only two examples of miscarriages following tear gas inhalation that occurred in 1990; both cases occurred in Gaza Strip refugee camps:

* On 13 March at approximately 4:00 pm, 26-year-old Nuha Sabri 'Abd al-Hamid of Bureij refugee camp was in the courtyard of her home with her four children when large quantities of tear gas were fired inside the camp in response to a demonstration. Before Mrs. 'Abd al-Hamid, who was three months pregnant, was able to gather her children into the house and close all the doors and windows, she inhaled tear gas. Two hours after the incident, she felt dizzy and began to suffer severe cramps in her lower abdomen. At midnight, the pain increased and she began to bleed. Since the camp was under a night curfew, she was afraid to risk leaving her home for medical attention. At approximately 7:30 the next morning, Mrs. 'Abd al-Hamid's bleeding became more acute and she sought treatment at the UNRWA clinic in the camp. She was examined and then transferred to al-Shifa' Hospital in Gaza, where she spontaneously aborted the fetus.¹⁸

* On 9 June, 23-year-old 'Azizza Saleh 'Abd al-Karim al-Masri of al-Maghazi refugee camp, who was four months pregnant, suffered a miscarriage several hours after inhaling tear gas. This was Mrs. al-Masri's second spontaneous abortion following tear gas exposure; in June 1989, she miscarried after three months of pregnancy as a result of tear gas inhalation.¹⁹

Women Denied Family Reunification:

Thousands of women living in the Occupied Territories with their husbands are routinely denied the right to residency status by the Israeli authorities; as non-residents, they can only enter the country and live with their spouses as "visitors." While most of these women are themselves Palestinian and many have been married to resident Palestinians for years, their applications for family reunification -- which, if approved, give them residency status as well -- are consistently refused.²⁰

¹⁸ Al-Haq Affidavit No. 2508.

¹⁹ Al-Haq Affidavit No. 2709.

²⁰ In most cases, these women do not have the Israeli-issued identity card signifying residency status because they grew up outside of the Occupied Territories. For further information on the issue of family reunification in the Occupied Territories,

The visitor's permits which allow these women to enter the Occupied Territories are valid for one month and renewable for an additional two months. When the permits expire, the women have two options: they can leave the country and stay abroad for three months before reapplying to return home via another visitor's permit or remain "illegally" by overstaying their visitor's permits.

Families who choose the first option incur considerable expense because they are effectively required to maintain two households and non-resident wives are prevented from engaging in regular employment. If families choose the second option, which hundreds do, the women may be forcibly expelled at any time. In the spring and summer of 1989, for example, approximately 250 women and their children²¹ were rounded up by Israeli military and intelligence authorities at night, given minutes to pack their belongings, forced to pay for the taxi ride to the Allenby Bridge across the Jordan River, and then expelled to Jordan.²² Some of the women expelled were prevented from re-entering the Occupied Territories with their children on new visitor's permits after spending the obligatory three-month period in Jordan.

The Association for Civil Rights in Israel (ACRI) filed a petition in the Israeli High Court of Justice asking that the women either be granted permission for family reunification, or be allowed entry on a visitor's permit without being required to leave after a three-month period. Before a decision could be made by the High Court, the Attorney-General's office presented written and oral statements to the Court and the public assuring that these women (as well as other women married to residents and their children) would be allowed to return to the Occupied Territories with new visitor's permits. These permits were to be renewable every six months without requiring the applicant to leave the country.

However, the Attorney-General's stated policy was only partially put into

see Chapter 11 of this report. See also, Al-Haq, Occasional Paper No. 8, *The Right to Unite: the Family Reunification Question in the Occupied Palestinian Territories -- Law and Practice* (Ramallah: Al-Haq, 1990); and *Application Denied: Separated Palestinian Families Tell Their Stories* (Ramallah: Al-Haq, 1990).

²¹ Subsequent to Military Order No. 1208 of September 1987, even if a child is born in the Occupied Territories, he or she is not considered a permanent resident unless the mother is registered as a resident and therefore carries an identity card.

²² For more information, see *A Nation Under Siege*, pp. 523-526.

practice. For example, al-Haq interviewed 15 women from one village who were expelled and who returned after June 1990. They were able to renew their visitor's permits once and for a period of one month only. In addition to the administrative obstacles placed before men who attempted to renew their wives' visitor's permits, many families found it difficult to pay the NIS 300 fee charged for each renewal.

CHAPTER ELEVEN

Family Reunification

Introduction:

Hundreds of thousands of Palestinians from the West Bank and Gaza Strip fled and became refugees in neighboring Arab countries during the 1967 Arab-Israeli war. Thousands of Palestinian families have since been separated by Israeli military orders and regulations that limited Palestinian "residents" of the Occupied Territories to those included in the Israeli census conducted soon after the 1967 occupation. The Israeli authorities then introduced a "family reunification" procedure which would allow families that had been separated by the war to live together in the Occupied Territories. Since 1984, however, Israeli government policy has been to approve only the "minimum possible number" of applications for family reunification by Palestinians resident in the Occupied Palestinian Territories.¹ This policy imposes a heavy emotional and financial burden on tens of thousands of Palestinians in the Occupied Territories.

In mid-1990 al-Haq initiated a major international campaign aimed at persuading the Israeli authorities to alter this policy, and bring their actions into conformity with international legal standards.² In drawing attention to this issue,

¹ Israeli H.C. Decision No. 106/86, *Al-Safiri v. The Head of the Civil Administration of the Gaza District* (unpublished).

² Before launching the campaign, al-Haq fieldworkers interviewed over 1,600 Palestinian residents of the West Bank and Gaza Strip who had been denied family reunification. This information was entered into al-Haq's database, and is now available for groups or individuals who wish to work on one case in particular. The information gathered during this period formed the basis of three al-Haq publications. The first, *Know Your Rights: Israeli Policy on Family Reunification* (Ramallah: Al-Haq, 1990), in Arabic only, is designed to inform the local community of its rights under

al-Haq sought to publicize a policy of which the international community is largely unaware, but which appears to be part of a wider Israeli effort to alter the demographic make-up of the Occupied Territories. This effort manifests itself in two ways: a range of repressive measures which are calculated to encourage Palestinians in the Occupied Territories to seek employment and residence outside; and the encouragement of Israelis to settle in the Occupied Territories (through the use of financial and other incentives).

The policy of approving only the "minimum possible number" of applications for family reunification is inherently connected to Israeli policies concerning the residency rights of Palestinians. First, according to the current family reunification policy, the spouse of a Palestinian lawfully resident in the Occupied Territories is refused permission to live as a permanent resident with his/her spouse, save in "exceptional circumstances"; thus, the only way such a family can live together securely is to live outside the Occupied Territories. Second, recent military orders have decreed that permanent residence will be denied to the child of a father who is lawfully resident in the Occupied Territories if the mother is a non-resident; this is the case even if the child is born inside the Occupied Territories. Third, even those who have the right of permanent residence can lose it due to arbitrarily imposed regulations concerning the length of time a Palestinian can stay abroad. Thus, spouses with residency status who choose to live abroad to be with their marriage partners and children are in danger of losing their right to residence.

Historical Background:

Following the 1967 Israeli occupation of the West Bank and Gaza Strip, the Israeli authorities held a census; all Palestinians outside the country at that time subsequently lost their right to return to their homeland. Registration in the census was established as a prerequisite for obtaining an identity card, and the right of residence in the Occupied Territories then became dependent on having an identity card (or having the right to attain one upon reaching the age of 16). Approximately a quarter of the Palestinian population living in the Occupied Territories before the outbreak of the war thus lost their right to return.

local and international law as regards family reunification. The second, *The Right To Unite: The Family Reunification Question in the Occupied Territories - Law and Practice*, (Ramallah: Al-Haq, 1990), is a legal analysis -- from an international law perspective -- of Israeli policy towards family reunification applications since 1967. The third publication, *Application Denied: Separated Palestinian Families Tell Their Stories* (Ramallah: Al-Haq, 1990), is a collection of 15 interviews with Palestinian families.

After the war, the Israeli authorities introduced the "family reunification" procedure, whereby Palestinians in the Occupied Territories with identity cards who had been separated from other family members as a result of the war could apply to be reunited with their family in their homeland.

Those Palestinians who do not have identity cards are only allowed into the Occupied Territories on "visitor's permits," which are usually granted for a one-month period and can be renewed for a total of three consecutive months. At the end of this period, the "visitor" must leave the Occupied Territories and is often required to remain abroad for three months before being allowed to return for another "visit," which is not automatically granted. Families are thus compelled to: (a) move outside the Occupied Territories so that the family can stay together; or (b) depend on visitor's permits granted by the Israeli authorities (which are often denied arbitrarily); or (c) stay illegally in the Occupied Territories and risk deportation.

At the end of 1983, the Israeli authorities' increasingly restrictive treatment of family reunification applications from Palestinians in the Occupied Territories evolved into a stated policy. According to Israeli officials, this was due to

the change in the original character and purposes of the phenomena of requests for family reunification, and its becoming a complex problem with security and political implications.³

The new policy was stated by the Attorney-General's office as follows:

only in *exceptional and extremely special cases*, for humanitarian or administrative reasons, are requests for family reunification granted....The very fact that the people in question are couples cannot, in and of itself, render a request exceptional and special in the said manner⁴ (emphasis added).

As a result, since the beginning of 1984 the prospects for Palestinians seeking family reunification have become even more difficult. Most applications are refused outright. In some cases, pressure is placed on the applicant to collaborate with the authorities in exchange for the approval of his/her application.

³ Israeli H.C. Decision No. 1979/90, Statement by the Attorney-General, paragraph 9.

⁴ *Ibid.*

Official statistics for the number of applications submitted, approved, rejected, or not processed have never been published by the Israeli authorities.⁵ West Bank municipal officials have recently estimated that the number of Palestinians repatriated after 1967 on family reunification grounds was between 35,000 and 40,000.⁶ It appears that these figures include family reunification between residents of East Jerusalem and residents of the remainder of the West Bank and Gaza Strip.⁷ In 1990, a total of 326 applications were approved, according to the US State Department's *Country Report on Human Rights Practices for 1990*. Al-Haq's research indicates that the annual number of successful applications has remained at approximately 200 to 300 in the past several years.⁸

⁵ In 1986 and 1990, al-Haq formally requested such statistics but received no response. On 6 November 1990, in reply to a question by MK Yossi Sarid during a Knesset session, former Defense Minister Yitzhak Rabin stated that 85,163 applications for family reunification were submitted between 1967 and 1987. Of this number, he stated that information was available on only 38,415 applications, of which 12,814 (33.3 percent) had been approved. Rabin added that 695 applications were approved out of 3,266 (21 percent) submitted between 1987 and 1989. The lack of more detailed published information on this issue makes it difficult to determine the accuracy of these statistics.

⁶ PHRIC, "Family Rights of Palestinians," (briefing paper), 1991, p.3.

⁷ This is because the Israeli government considers East Jerusalem, which was illegally annexed in 1967, part of Israel.

⁸ Al-Haq's research indicates that in 1989, 32 percent of the combined applications in the West Bank and Gaza Strip were successful; a much higher percentage of the successful cases were from the Gaza Strip (62.9 percent as compared with 23.7 percent in the West Bank); fewer applications were submitted in the Gaza Strip (305 as compared with 1,053 for the West Bank). While only partial statistics are available for 1990 because the total number of applications submitted is not known, it appears that applicants from the Gaza Strip continued to have a higher success rate than applicants from the West Bank (71.6 percent as compared to 41 percent). (These figures include cases where people have lost their rights to residency for technical or bureaucratic reasons, and as a result of arbitrarily imposed conditions.) Al-Haq's interviews reveals that many applicants did not bother to apply more than once because of the expense and difficulties faced in completing an application.

Recent Developments:

The problems related to family reunification have been compounded by the introduction of new Israeli military orders. Pursuant to Military Order No. 1208, issued in September 1987, Palestinians born in the Occupied Territories to a father who is lawfully resident there are not entitled to residence. Only if the mother is resident does the child gain the right to an identity card, irrespective of the place of birth. Estimates based on al-Haq's fieldwork put the number of children now deprived of the right to residency at approximately double that prior to the period when this order became effective.

In 1989, the problem of family reunification for Palestinians briefly attracted worldwide attention when the Israeli authorities expelled approximately 250 women who had overstayed their visitor's permits from the West Bank. In 1990, after a petition submitted to the Israeli High Court of Justice by ACRI, the Attorney-General's office gave written and verbal commitments to allow the 250 women and other wives and children of male residents of the Occupied Territories to return. People in these categories were to be allowed into the Occupied Territories on visitor's permits which would not normally be valid for more than three months. When the permits expired they were to be renewable on request with no requirement for the women and children to leave the country. Further, the permits themselves were to be reduced in cost from approximately NIS 360 to NIS 150.⁹

This agreement effectively silenced the mounting public criticism of the Israeli authorities' expulsion of the women, but failed to address the underlying and more essential problem -- the denial of these women's *right* to live together with their husbands and children in their homeland. The offer of what amounts to "permanent tourist visas" denies this right altogether; it also places a financial burden on the family due to the ongoing cost of renewing the visitor's permit at regular intervals, and relegates the status of the women and children to continued uncertainty. Furthermore, the agreement specifically excludes non-resident men seeking family reunification.

According to al-Haq's information, it appeared that the women expelled were allowed back into the Occupied Territories. However, in the first months after the High Court case, it appeared that instructions had either not been given to local civil administration offices as to how to deal with requests for visitor's permits, or no effort had been made to bring the practice into line with the new policy. Al-Haq's fieldwork indicates that inconsistency in the issuing of visitor's permits continued throughout

⁹ One New Israeli Shekel equals approximately US\$0.40.

1990. Sometimes permits were issued for one month, sometimes for three months. The cost varied, but was often the same for a one-month or three-month renewal. ACRI sent a letter to the Israeli authorities in July 1990 seeking to clarify the status of this new class of "permanent visitor" in relation to matters like health insurance and government education. No satisfactory response to the questions raised was received.

Al-Haq Research Results:

The results of a major survey conducted by al-Haq in 1990, comprising interviews with over 1,600 families who had been denied family reunification, showed that 75 percent of the applications concerned spouses who wanted to live together in their homeland.¹⁰ A further 7 percent of the cases concerned Palestinians who travelled abroad, usually to work or study, left their identity card with the authorities at the point of departure, as is required, and subsequently lost the right to regain it, and thus their right to return.¹¹ Most of the other cases documented by al-Haq concerned parents who applied for their children to be allowed to come to live with them in the Occupied Territories.

The problems caused by the current Israeli policy on Palestinian family reunification applications directly affect the daily lives of many thousands of Palestinians living in the Occupied Territories and abroad. Three major points regarding the effects of this policy emerged from al-Haq's survey.

First, there is great uncertainty for families who have applied for family reunification, as they have to spend many months waiting to hear the result of their application. This uncertainty is exacerbated by: (a) the apparently arbitrary nature of the procedure (no criteria are made known to the applicant, thereby preventing an assessment of the likelihood of an application succeeding); (b) the absence of any hearing at which the applicant and/or family lawyer can substantiate the case; (c) the failure of the Israeli authorities to provide reasons for the rejection of an

¹⁰ A non-resident spouse of a Palestinian resident of the Occupied Territories must apply for family reunification in order to gain an identity card, and thus the right of permanent residence. The majority of these cases involve women of Palestinian origin who have been denied their right to residence.

¹¹ The Israeli authorities place an upper limit on the time -- usually one to six years -- a Palestinian may stay abroad before s/he loses the right to residency.

application in virtually every case;¹² and (d) the absence of any appeal procedures against the rejection of an application.

Second, the policy places a considerable economic burden on affected families. For example, in many cases, families are obliged to maintain two households. Moreover, applications for both family reunification and for visitor's permits are costly for the average Palestinian family; an application for family reunification costs approximately NIS 300 and a visitor's permit costs approximately NIS 140.

Third, considerable emotional distress is caused by the separation of family members and the threat of deportation of a wife (as is usually the case) or child(ren) who do not have permanent residency.

Role of the Israeli High Court:

Numerous family reunification cases have been submitted to the Israeli High Court of Justice since 1983. However, as with other cases examined by the Court relating to the Occupied Territories, the merits of the case are not examined. Instead, the Court will only intervene if there is reason to believe that the decision was not made on the basis of approved procedures.

The High Court has previously held that

[f]amily reunification is not a granted right. Granting such a request is, as stated, a special act of compassion on the part of the authorities, supported by humanitarian considerations.¹³

In particular, the Court noted in another case that the IDF commander of the West Bank

has a duty...to attach importance to the security, political, economic and general significance of the phenomenon [family reunification]

¹² According to al-Haq's sample of 1,600 families, in 97 percent of the cases no reasons were given for the denial of the application.

¹³ The Israeli H.C. Decision No. 209/86, *Al-Atrash v. the Head of the Civil Administration* (unpublished), mentioned in H.C. 1979/90, Statement of the Attorney-General, paragraph 17(d).

and its consequences.¹⁴

In practice, therefore, the High Court has upheld the position of the Israeli government that family reunification can be denied as a matter of policy in the great majority of cases for reasons which extend beyond security considerations. Furthermore, the criteria by which the IDF military commander determines whether or not an application falls into the vague and ill-defined categories outlined above (security, political, economic...) have never been published.

In a remarkable statement written to the International Commission of Jurists by the Israeli Ministry of Foreign Affairs on 2 January 1991, in response to a request for clarification on this issue, Amos Gabrieli of the office of the legal advisor stated that

there exist no guidelines or regulations which determine the criteria for granting or denial of family reunification.

Applicable Legal Standards:

International humanitarian and human rights law provides that family rights must be protected and that the family unit is entitled to protection by the state. For example, Article 27 of the 1949 Fourth Geneva Convention states that

protected persons are entitled, in all circumstances, to respect for their persons, their honour, [and] *their family rights...* (emphasis added).

Israel has argued that under international law it has no legal obligation to accept requests for family reunification. Further, it argues that a family need not be separated as a result of this policy because the whole family can move and live outside the Occupied Territories. The official commentary to the 1949 Fourth Geneva Convention makes it clear that the family unit that is to be protected consists of the basic unit of spouses and their children; without being allowed to live together as a unit, there can be no enjoyment of other family rights. Since Palestinian civilians living in the Occupied Territories have the right, under international law, to remain there, they are entitled to enjoy all their rights in the Occupied Territories, including the right of the family unit to be protected. This cannot be fulfilled unless the family unit as defined above is permitted to live together. Without this fundamental right,

¹⁴ The Israeli H.C. Decision No. 13/86, 58.86, *Shahin et al. v. The Commander of Judea and Samaria, et al.*

the concept of other family rights is rendered virtually meaningless.

Israel also claims that to allow family reunification as a "right" and not simply a privilege would constitute a threat to its security. Thus, instead of screening cases individually and assessing the security implications of allowing each individual who applies to be granted family reunification, there is a general policy to deny applications except in "exceptional" cases. In practice, it is clear that security reasons relating to the individual applicant are rarely the reason for refusing the application; the majority of applicants who are refused family reunification are subsequently permitted to enter as visitors for consecutive periods of one to three months.

In al-Haq's view, general references to "security" cannot justify current Israeli policy. In particular, the use of political and other considerations to justify this policy is contrary to the fundamental principles governing an occupation, namely, that an occupier can take certain measures only in two circumstances: (a) for reasons of military necessity; and (b) in the interests of the local population. Above all, the rules governing occupation are premised on the fact that an occupation is a temporary state of affairs; an occupier is therefore prohibited from taking measures which have a far-reaching demographic impact.

CHAPTER TWELVE

Medical Care

Introduction:

This chapter will attempt to give a brief account of some Israeli violations of medical human rights in the occupied West Bank and Gaza Strip during 1990. Israeli military personnel have beaten the wounded, delayed ambulances transporting the injured, mistreated doctors and other health care personnel, raided medical facilities such as hospitals and clinics, and restricted the operation and development of Palestinian health services. These Israeli practices constitute a clear violation of international humanitarian norms, which accord special protection to health facilities, medical personnel, and the sick and wounded.¹

The chapter begins with an examination of violations which occur immediately after an individual is wounded, usually as a result of Israeli army action. It then discusses subsequent abuses which take place while the injured are provided with medical aid or while being carried to the nearest health facility. The chapter goes on to review obstruction of medical care for Palestinians during curfew, and, finally, violations of medical neutrality through the harassment of medical personnel, military raids on clinics and hospitals, and the use of tear gas inside health facilities. The purpose of this review is to illustrate systematic patterns of abuse through selected examples rather than to provide a comprehensive list of all violations during the year.

Obstruction of Medical Care:

Obstructing access to medical care and mistreating the wounded constitute

¹ These international norms, which will be referred to later in the text, are included in the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, and the 1907 Hague Regulations.

clear violations of Article 16 of the 1949 Fourth Geneva Convention, which accords the wounded and sick "particular protection and respect."² However, the Israeli military authorities have on many occasions obstructed access to immediate medical aid for the injured by a) preventing medical personnel and ambulances from reaching injured persons and providing aid, and b) obstructing vehicles and ambulances carrying the wounded.

The following are examples of such cases documented by al-Haq in 1990:

- * On 7 April, at approximately 11:30 am, confrontations took place between Palestinian youths and Israeli soldiers in Gaza City. A youth who was running from Firas Market towards Palestine Square was injured in his right thigh and fell to the ground. He was immediately surrounded by eight soldiers. When an ambulance car operated by the Charitable Society in Gaza approached, Israeli soldiers in the area did not allow the driver to pick up the injured youth, but ordered him to turn back. The ambulance driver backed up and tried to reach the location from a different direction. When the ambulance reached the scene approximately 15 minutes later, the driver was finally permitted by the soldiers to transport the wounded youth to al-Shifa' Hospital in Gaza.³
- * On 2 August, an UNRWA vehicle transporting a 14-year-old injured boy was stopped in Rafah City by about 12 soldiers. The injured boy, who had been wounded in his left leg during confrontations that day, was dragged out of the car by a soldier. As the UNRWA employee, 33-year-old Muhammad Sidqi Mahdi, tried to prevent the soldiers from arresting the boy, he was beaten by a soldier on his back, waist, and other parts of his body. Meanwhile, the injured boy was bleeding heavily. After 10 minutes of negotiations, UNRWA personnel managed to persuade the soldiers not to arrest the injured boy and were able to transfer him to the UNRWA clinic in Rafah in order to provide him with the necessary medical care.⁴
- * On 18 November, 21-year-old Ahmad Hussein Subuh of al-Far'a refugee camp was wounded in his right knee. He was given first aid at the UNRWA camp clinic, then put in an UNRWA ambulance to be transferred to al-Ittihad al-Nisa'i Hospital in

² Article 16 of the 1949 Fourth Geneva Convention states: "The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect...."

³ Al-Haq Affidavit No. 2615.

⁴ Al-Haq Affidavit No. 2808.

Nablus. On its way to the hospital, Israeli soldiers stopped and searched the ambulance, and ordered the driver to drive to al-Far'a Prison. The ambulance was impounded for an hour while Mr. Subuh was kept in custody. Although the prison doctor checked Mr. Subuh and affirmed that he needed an operation, the wounded man was surrounded by soldiers, cursed at, kicked, and beaten on the chest. After two hours of mistreatment and delay, Mr. Subuh was released and taken to a hospital for treatment.⁵

Access to medical care was also obstructed by military personnel during the al-Haram al-Sharif massacre of 8 October, when Border Police indiscriminately opened fire on Muslim worshipers in the al-Aqsa Mosque compound, killing 17 Palestinians and injuring more than 150 others.⁶ Ambulances carrying the wounded were stopped, searched, and delayed for various periods of time. Medical personnel and others attempting to aid the critically injured were shot at, as well as the wounded themselves. Eyewitnesses affirmed that private cars and ambulances were also shot at while transporting the wounded.

The following are a few examples of the violations of medical human rights which occurred on 8 October 1990:

* Mr. Sultan Muhammad Hafeth Abu Ghazala, a 29-year-old resident of Jerusalem, affirmed in a sworn affidavit given to al-Haq on 10 October that an ambulance from Augusta Victoria Hospital was delayed three different times while transferring Mr. Nidal Abu Sheikha and other injured Palestinians to Maqassed Hospital in Jerusalem. The first time police ordered the ambulance driver to turn off the vehicle's engine and proceeded to search it. Mr. Abu Ghazala, who had helped carry the wounded to the ambulance, managed to stay inside the ambulance. The ambulance was stopped once more and delayed for 10 minutes by soldiers who abused both the patients and medical personnel in the vehicle. Meanwhile, Mr. Abu Sheikha was bleeding heavily. The ambulance was stopped again on the crossroad leading to Maqassed Hospital. Border Police, who were blocking the road to the hospital, ordered the ambulance driver to transfer the wounded to Augusta Victoria Hospital instead of Maqassed despite the fact that Mr. Abu Sheikha was critically injured and required hospitalization at the latter, where more specialized care is available. When Mr. Abu Sheikha was examined at Augusta Victoria, physicians recommended his immediate

⁵ Al-Haq Affidavit No. 3023.

⁶ For more details on the incident, see Chapter Three of this report.

transfer to Maqassed.⁷

* During the al-Haram al-Sharif events, 17-year-old Tarek Farouk Ghosha of Jerusalem was denied immediate access to medical care after being shot in the back. Mr. Ghosha stated in his sworn affidavit that he was shot while attempting to carry a critically injured youth. When two other youths immediately rushed towards Mr. Ghosha to aid him, one of them was shot and the other one was not able to reach him due to the ongoing heavy shooting at the location. Three soldiers surrounded Mr. Ghosha and continued shooting at others who were trying to provide aid. One youth who was standing close to the injured was severely beaten by soldiers when he attempted to call an ambulance parked nearby. The soldiers also prevented the ambulance driver from approaching the wounded. After 45 minutes of delay, the ambulance driver was finally allowed to aid Mr. Ghosha. Carrying Mr. Ghosha and eight other wounded youths to Maqassed Hospital, however, the ambulance was again delayed when the vehicle was stopped and searched by soldiers standing at one of the entrances to the Old City.⁸

* In another incident on the same day, 43-year-old Muhammad 'Omar Sarah of Jerusalem was shot in his shoulder from behind while helping others carry a critically injured youth who had been shot in the head.⁹

* Twenty-five-year-old Muhammad Hassan Abu Rayalla of Gaza, who works as a nurse at Maqassed Hospital in Jerusalem, was shot in the waist while providing medical aid to the wounded. Concerned that there might be persons who needed medical attention, Mr. Abu Rayalla had been in the al-Aqsa clinic since 8:00 that morning so as to be able to provide medical care if needed. When violence against Palestinians escalated at approximately 11:00 am, Mr. Abu Rayalla was in the clinic and aided three injured youths and dozens of persons who had fainted after inhaling tear gas, which was fired in large quantities at the worshipers. Later, Mr. Abu Rayalla heard that there were two injured youths near Qubbet al-Sakhra (the Dome of the Rock). He immediately took his first aid equipment and ran to help them. While providing necessary aid to one of the wounded, a bullet hit Mr. Abu Rayalla from behind. He was immediately transferred to Maqassed Hospital.¹⁰

⁷ Al-Haq Affidavits No. 2919 and 2948.

⁸ Al-Haq Affidavit No. 2961.

⁹ Al-Haq Affidavit No. 2922.

¹⁰ Al-Haq Affidavit No. 2925.

Medical Care During Curfew:

The Israeli military authorities have on many occasions obstructed access to medical care by Palestinian civilians when their towns, villages, and/or their refugee camps were under curfew. As a matter of practice, people requiring medical services or hospitalization during curfew are not guaranteed access to health care and must attempt to obtain aid at the risk of serious harassment or injury by patrolling Israeli military personnel, particularly when instructions given to soldiers permit them to open fire on persons who violate curfew. As a result, many prefer to delay seeking medical services whenever possible rather than take the risk of being seen or stopped by soldiers.

As will be illustrated in the examples below, in cases of emergency, when individuals are obliged to risk violating a curfew, these individuals often spend critical time arguing with soldiers in order to convince them that the case is serious and demands immediate medical attention. If this obstacle is overcome, the individual usually faces a series of other difficulties. For example, in most instances when curfew is imposed, pharmacies are also closed, and in many cases medical personnel are restricted to their homes. Even when doctors possess curfew passes, they are often stopped at checkpoints, delayed, and in some instances prevented from reaching the critically ill. Ambulances also need special permits to be allowed access to areas under curfew. Even these ambulances are, on many occasions, stopped, searched, and themselves delayed before being allowed into or outside an area under curfew.

The following are examples of the obstruction of medical services during curfew:

- * On 22 September, at approximately 9:00 am, 50-year-old Rasmia Mahmoud Zaqout, a resident of Bureij refugee camp in Gaza, accompanied her cousin Inshirah, who wanted to take her sick baby to the UNRWA camp clinic on the third day of a 24-hour curfew. Inshirah, who resides in Egypt, was visiting her relatives in the Gaza Strip. Her nine-month-old baby, Muhammad, was suffering from a severe case of diarrhea and continuous vomiting. On their way to the clinic, the women were stopped by a military patrol. Mrs. Zaqout explained to the soldiers that the child was sick and that they were taking him to the clinic. Instead of allowing them to proceed, two soldiers started beating the two women on the head, stomach, back, and various other parts of the body. The soldiers then ordered the two women to return home. The child, who continued to suffer from severe diarrhea and vomiting for the following 24 hours, was finally allowed access to medical care when the curfew was

lifted for approximately two hours the following day.¹¹

* On 22 July, obstruction of access to medical care during a curfew contributed to the death of a child. According to a detailed al-Haq report, 20-year-old Mrs. Suheila Mahmoud Mansour of the Bureij refugee camp violated a curfew at approximately 7:00 am that day in order to attempt to take her ill child to the camp's UNRWA clinic. The child had been born with serious breathing problems, which demanded immediate treatment and at times hospitalization. During this first attempt to reach the clinic, Mrs. Mansour was stopped by eight soldiers and ordered to return home. When she explained that she was taking her sick child to the clinic, she was subjected to obscene language and the soldiers insisted that she return home. Two hours later, at approximately 9:00 am, Mrs. Mansour managed to reach the clinic without being seen or stopped by soldiers.

In the afternoon, at approximately 4:00 pm, the child again developed serious breathing problems. Mrs. Mansour tried to take him to the clinic, but was again stopped by soldiers, who ordered her to return home. At approximately 6:00 pm, the child's condition deteriorated further and Mrs. Mansour violated the curfew again in order to reach the clinic; she was able to do so without being seen or stopped by soldiers. When her son was examined at the clinic, his case appeared to be critical and demanded hospitalization. Since the camp was under curfew, the ambulance which usually parks close to the clinic was not there. It took an hour and a half for the ambulance to reach the camp after it was called because it was stopped and delayed by soldiers for approximately an hour at the main entrance of the camp. The child reached the hospital at approximately 8:00 pm. The child's condition deteriorated further and he died that same evening.¹²

Violations of Medical Neutrality:

Violations of medical neutrality continued to take place in 1990. As noted above, the Israeli military authorities have an obligation under international law to "respect and protect" the wounded, medical personnel, and health facilities.¹³ Article 18 of the 1949 Fourth Geneva Convention specifically states:

¹¹ Al-Haq Affidavit No. 2911.

¹² Al-Haq Field Work Report 287/90.

¹³ This is particularly emphasized in Articles 16-20 of the 1949 Fourth Geneva Convention.

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.¹⁴

However, data gathered by al-Haq, shows that Israeli military personnel have on repeated occasions violated the right to medical neutrality. These violations have taken the form of violent attacks on hospitals to search and/or arrest the wounded, military raids on medical clinics, and the illegal use of tear gas in both clinics and hospitals. Heavy military presence in and around hospitals has also been documented. On some occasions, main roads leading to hospitals have been blocked and military checkpoints set up, thereby preventing the free and quick movement of ambulances; this is the case, for example, for all main roads leading to al-Ahli and al-Shifa' Hospitals in Gaza on Saturdays. It usually takes an ambulance an hour or more to reach these hospital on such days.¹⁵

The following are some examples of military raids and attacks on clinics and hospitals during 1990:

* On Tuesday 12 June, a large number of tear gas grenades were fired around and inside an UNRWA clinic in Gaza (known as the "Swedish Clinic") for no apparent reason; no confrontation had been taking place in the area. Since Tuesdays are allocated by the clinic for mother-and-child health care, most casualties were among women and children. When the gas spread inside the clinic, patients panicked and pushed their way out in all directions, resulting in many cases of women losing consciousness. For example, 45-year-old Bakeza Jawada fainted and fell to the ground during the panic; with other women pushing their way out of the clinic, Mrs. Jawada was trampled underfoot, suffering a broken rib.¹⁶ A nurse at the clinic affirmed that 10 women lost consciousness due to tear gas inhalation, while at least three pregnant women miscarried.¹⁷ More than 70 children (70 percent less than a year old, and 50 percent less than six months old) were transferred to al-Nasr

¹⁴ Article 18 of the 1949 Fourth Geneva Convention.

¹⁵ Al-Haq Report No. 112/90.

¹⁶ Al-Haq Affidavit No. 2716.

¹⁷ Al-Haq Affidavit No. 2717.

Hospital for medical treatment; 20 of them required hospitalization.¹⁸

* On 6 August, Israeli soldiers raided Muhammad 'Ali al-Muhtaseb Children's Hospital in Gaza in an attempt to obtain the body of a woman who had been killed by Israeli soldiers and brought to the hospital earlier that day. By the time the soldiers entered the hospital, the body had already been removed from the site. The soldiers searched the hospital, questioned the person in charge of the hospital, and vandalized medical equipment in the emergency room during their search.¹⁹

* On 29 August, tear gas was fired towards and around Maqassed Hospital in East Jerusalem. The tear gas spread into the emergency unit of the hospital, disrupting the work of the unit for approximately three hours. The ward was evacuated and the doctor on duty lost consciousness as a result of tear gas inhalation.²⁰

* On 14 September, soldiers raided Ramallah Government Hospital and arrested 17-year-old Majdi 'Abd al-Latif Qatouni of New 'Askar refugee camp near Nablus. Mr. Qatouni was injured when he was hit in the head by a stone thrown at him by a person suspected by local Palestinians to be a collaborator with the military authorities. Although unconscious and in critical condition, Mr. Qatouni was dragged by soldiers from the intensive care unit and arrested. Neither his family nor the medical personnel at the hospital were informed where the sick youth was taken.²¹

* During the al-Haram al-Sharif massacre of 8 October, soldiers surrounding Maqassed Hospital in Jerusalem fired three tear gas grenades inside the hospital. Tear gas spread into the southeast section of the hospital and into wards designated for newborn children. The area was immediately evacuated; meanwhile, many newborn infants and women in the delivery section of the hospital had to be treated for gas inhalation.²²

¹⁸ Al-Haq Field Work Report 97/90, also al-Haq Affidavits No. 2715 and 2719.

¹⁹ Al-Haq Fieldwork Report 240/90.

²⁰ Al-Haq Affidavit No. 2844.

²¹ This practice of forcibly removing patients from hospitals while they are in critical need of medical treatment constitutes a wanton disregard for the most basic human rights. In this particular case, the wounded person was not even charged with any offense at the time of his arrest. Al-Haq Information Sheet No. 244/90.

²² Al-Haq Affidavit No. 2946.

CHAPTER THIRTEEN

Education

Introduction:

Education in the Occupied Territories continued to suffer from serious dislocation in 1990. This is despite the fact that the Israeli military authorities did not close all West Bank primary and secondary schools for most of the year as had occurred during the first year and a half of the uprising. Further, while the Israeli military authorities permitted the reopening of most two-year colleges and training institutes, all universities remained closed with the exception of Bethlehem University and Al-Quds University (the two smallest of the six Palestinian universities).

In 1990, the Israeli authorities pursued a relatively more selective policy of closing schools and other educational institutions, which nevertheless affected a large number of schools and thousands of students. In addition, the educational process in both the West Bank and Gaza Strip (excluding Jerusalem) suffered as a result of various other measures perpetrated by the Israeli military authorities: students and teachers were frequently subjected to physical and verbal harassment; schools and classrooms were broken into by soldiers; and tear gas, rubber bullets, and live ammunition were used inside and within the vicinity of schools, thus continuing a pattern established in previous years.

Reduction of the West Bank School Year:

Article 112 of the 1964 Jordanian Education Law mandates that, with rare exceptions, an academic year must comprise between 205 and 210 days. This was the norm in the Occupied Territories until the beginning of the intifada in December 1987. In July 1989, after a year and a half of almost continuous closure, the Israeli authorities permitted Palestinian schools to reopen. Nonetheless, since this reopening, the authorities have used the pretext of "security precautions" in order to significantly reduce the number of school days in an academic year.

Traditionally, the school year in the West Bank extends from September through May, at which point a three-month summer vacation begins. In addition, a two-week vacation separates the winter and spring semesters. The entire 1989-90 academic year extended from 10 January through 2 July 1990, with a total of 105 school days. Approximately 75 days were lost in this period due to the forced closure of schools by the military authorities, curfews, and Palestinian strike days.

Teachers and students attempted to complete a full year's curriculum in half a year, but were unable to do so for the most part. As a result, students were moved up to the next grade level without mastering the curriculum of the previous year. The situation was further complicated by the Israeli authorities' continued banning of popular, alternative forms of education. This form of education was designed and organized by Palestinian teachers and parents in early 1988 to counteract the effects of the total closure of all schools for long periods of time. Soon after the inception of these alternative education programs, the Israeli authorities banned them on the pretext that they were administered by the popular committees, which themselves were declared illegal.

Selective Closure of Schools:

In 1990 the military authorities imposed blanket curfews in the Occupied Territories and closed all private, UNRWA, and Israeli government-run schools on at least five separate occasions, including 30 March (Land Day), 20 May (Rishon Letzion massacre), 8 October (al-Haram al-Sharif massacre), 15 November (Declaration of Independent Palestinian State), and 9 December (third anniversary of the intifada). On each of these occasions, schools were closed an average of three days.

Despite the fact that most schools in the Occupied Territories were reopened by the military authorities in January 1990, 106 schools -- 53 in the West Bank, 48 in the Gaza Strip, and 5 in Jerusalem -- remained closed according to al-Haq's documentation. Of these, 37 were elementary, 30 were preparatory, and 39 were secondary. The number of closure days ranged from one day to a month. However, several cases were documented in which schools remained closed indefinitely. For example, three schools in the Gaza Strip closed during the 1989 school year remained closed at the end of 1990; from 2 January through the end of May 1990 all schools in the Tulkarem refugee camp were closed. During the first two months of the 1990-91 school year, which started on 1 September 1990, 19 schools in the West Bank and 6 schools in the Gaza Strip were closed by the authorities.

Military orders closing down a school are usually issued or enacted on the pretext that a demonstration or a stone-throwing incident occurred within the vicinity

of the school. It is clear that these school closures are a form of collective punishment and are not proportional to the offense alleged to have been committed.

Harassment of Students and Teachers:

Israeli soldiers usually maintain a presence within proximity of most school buildings, especially when children are arriving and departing in the early morning and afternoon. These soldiers often search the students' bags, check their identity cards (if aged 16 or above) and subject them to other forms of harassment and intimidation before they are allowed to enter the school building.

Soldiers usually respond to stones thrown from within the school compound, or to students demonstrating on campus or in the neighborhood, by breaking into the school and firing rubber bullets, concussion grenades, tear gas, and/or live ammunition at students and into classrooms. During these incidents, students are in many cases arrested and the school itself is closed.

Based on documented evidence, including sworn affidavits by eyewitnesses, the following are some examples of this type of harassment and assault:

- * On 13 February, Israeli soldiers broke into Bethlehem Secondary School and detained 40 students, physically assaulted them, and then released them.¹
- * On 20 February, a group of soldiers broke into Deir al-Lateen School in Birzeit village. In the process of pursuing students in the school yard, the soldiers opened fire and arrested four of the students, all of whom were approximately 10 years old.²
- * On 20 February, three army jeeps entered the front yard of the Bani Suhaila Secondary Boys School in the Gaza Strip. When students began chanting nationalist slogans, soldiers responded by firing tear gas, rubber bullets, and plastic bullets. Fifteen students were injured.³
- * On 3 March, after students from nearby schools had staged a demonstration in the area, soldiers broke into the Khan Yunis Elementary School and fired tear gas at students ranging in age from 7 to 12 years. Several students had trouble breathing

¹ Al-Haq Affidavit No. 2406.

² Al-Haq Affidavit No. 2501.

³ Al-Haq Affidavit No. 2474.

as a result of inhaling tear gas. The school itself was closed down.⁴

* On 22 March, two army jeeps entered the premises of the Khan Yunis Secondary Girls School. Stones were thrown at the vehicles and soldiers shot at the students. Nine students were injured.⁵

* On November 26, a patrol attacked students in al-Sa'diyyah Secondary School in Qalqilya following a brief skirmish with some students coming to school at approximately 7:00 am that morning. The soldiers fired live ammunition, rubber bullets, and tear gas into the school compound. As a result, seven students were injured and required hospitalization: five as a result of injury from live ammunition and shrapnel, one from injury caused by a rubber bullet, and one from a broken leg as a result of beating. Further, around 60 students had to be treated for tear gas inhalation.⁶

* Similar harassments took place in several other schools, including Khaled Ibn al-Waleed Secondary School in the Nuseirat refugee camp (Gaza Strip) on 12 November⁷ and Khaled Ibn 'Abd al-'Aziz Elementary School in Hebron on 7 February.⁸

Education in Jenin – A Case Study:

A total of 150 elementary, preparatory, and secondary schools with 1,227 teachers serve approximately 42,660 students in the Jenin district. The ratio of students to teachers is 1 to 34. Fifteen of the schools are run by UNRWA and serve 4,000 students from refugee camps in the area. The remainder are run by the Israeli government and serve 38,660 students. There are 97 school custodians, leaving at least 53 schools without a custodian.

During the school year under discussion, 10 January through 2 July 1990, students attended a total of 105 school days. The authorities closed down 12

⁴ Al-Haq Affidavit No. 2518.

⁵ Al-Haq Affidavit No. 2529.

⁶ Al-Haq Information Sheet No. 91/377.

⁷ Al-Haq Affidavit No. 2981.

⁸ Al-Haq Affidavits No. 2423 and 2424.

schools in the Jenin area -- seven secondary, three preparatory, and two elementary (eight percent of the total number of schools in the Jenin area). A total of 4,760 students were affected by the closures. In addition, all schools in the district were closed on Thursday, 29 March, in anticipation of Land Day events the following day. All schools were also closed on 21 May for four consecutive days after the Rishon Letzion massacre.

Due to the abridgement of the school year and the ensuing reduction in the number of teaching days, students were able to finish less than half of the required curriculum. For example, 11th grade students at the Jenin Secondary Girls School finished only 41 percent of the overall curriculum: they completed 37 percent of the science and math requirements in the first semester and 31 percent in the second semester, or an average of 34 percent of the academic year's requirements for science and math; Arabic language did not fare much better, as they were only able to complete 36 percent of the year's required material.

It should be pointed out that the Jenin Secondary Girls School was not among those closed by a military order specific to the school. The loss in curriculum taught occurred as a result of the abridgement of the school year and the collective closures in Jenin on specific occasions throughout the academic year. It is clear, therefore, that other schools that were closed down individually, in addition to the collective closures, suffered even more in terms of scholastic achievement in 1990.

Post-Secondary Educational Institutions:

As a result of persistent international and local pressure, in June 1990 the Israeli authorities gradually began to open colleges and other post-secondary institutions, which had been closed since 3 February 1988. In addition, after more than two years of closure, Bethlehem University was allowed to reopen on 10 September 1990 and Al-Quds University (Jerusalem) was permitted to reopen at approximately the same time. The remaining four Palestinian institutions of higher education -- Birzeit University (Ramallah district), al-Najah National University (Nablus), The Islamic University of Gaza, and Hebron University -- remained closed by virtue of closure orders that are renewed every three months.

While the military authorities decided to allow the reopening of some of the institutions of higher education in 1990, they appear to have used the occasion to try to exercise more control over these institutions by putting conditions for their continued operation. For example, al-Haq has secured a copy of a letter addressed

to al-Najah College,⁹ dated 28 June 1990, and signed by the Israeli officer in charge of education at the civil administration, which stipulated conditions for "granting a license for the operation of a private educational institution for the academic year 1989-1990." The letter makes it clear that the continued operation of the institution is contingent upon the observance of the conditions specified in the letter, and that any violation will result in revoking the license without prior notice.

The conditions to which the college is expected to adhere include the restriction of the total number of students studying at the college to a number specified by the military authorities. A similar restriction is imposed on the total number of students in every department within the college. Other conditions stated in the letter hold the administration of the college responsible for any violations of "public order," as well as any "unlicensed demonstrations and processions" embarked upon by students or employees on campus or in the "environs" of the college. Moreover, the college administration is held responsible not merely for preventing -- on the campus or its "environs" -- the distribution of leaflets banned by the military censor, but is also made responsible for "possession" of such leaflets by any of its students or employees. Leaving aside the practical difficulties involved in executing such responsibilities, some of the tasks required of the administration of the college relegate to it duties that belong to military police.

The letter of the education officer is an application of Military Order No. 854 of 6 July 1980. Palestinian educational institutions have always refused to consider this order binding. In addition to the fact that the order is replete with ambiguous phrases which allow more than one interpretation, it gives direct control to the military government over many aspects of academic life, as well as over students, faculty, and educational institutions as a whole. The military order makes educational institutions in need of an annual permit in order to function. Since educational institutions accept students for programs that require more than one year to complete, it is clear that no educational institution can accept to function on the basis of a temporary license that may or may not be renewed, to be granted not by an academic or impartial authority, but by an authority with a political ax to grind.¹⁰

⁹ A two-year college for teacher training attached to al-Najah University in Nablus.

¹⁰ For more information on Military Order No. 854, see Jonathan Kuttab, *Analysis of Military Order No. 854* (Ramallah: Al-Haq, 1981).

CHAPTER FOURTEEN

Religion

Introduction:

The freedom to hold and practice religious beliefs is a fundamental human right guaranteed by international law. This right includes protection from all acts of violence, threats, or insults that affect practicing a religion. In addition, it involves protection of holy places from any desecration or from damage that might impede free access to these places of religious practice.¹ The desecration of holy places also violates Israeli military orders applicable in the West Bank; specifically, Article 2 of Military Order No. 327 regarding holy places states: "Holy places shall be protected from desecration or any other damage and from anything that might impede the free access of religious followers to their holy places or which might offend their sentiments towards these places." Without aiming to be comprehensive, this chapter discusses some types of violations of religious rights perpetrated by the Israeli authorities in 1990. The chapter also outlines Israeli violations against religious burial rites, including evidence which confirms the previously noted existence of a secret burial ground in the Jordan Valley.²

Violations Against Palestinian Holy Places and Worshipers:

In 1990, al-Haq received a number of reports of cases when soldiers opened fire and/or threw tear gas canisters inside mosques or within the vicinity of holy places. Al-Haq also documented instances, outlined below, of armed soldiers entering holy places without removing their shoes, in violation of Muslim religious

¹ For previous discussion and documentation on the violation of religious rights, see Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990), pp. 487-502.

² *Ibid.*, pp. 492-493.

practice. The following sections discuss cases of religious desecration, examples of violence against and harassment of worshipers and clergy, including the al-Haram al-Sharif massacre of 17 Palestinians, and the obstruction of worship by the Israeli authorities.

* Al-Haram al-Sharif is the third holiest site in Islam and the holiest Islamic site in the Occupied Territories. On 8 October, 17 Palestinians were killed and at least 150 were injured when Israeli Border Police opened fire in the vicinity of al-Haram al-Sharif. At that time, according to witnesses interviewed by al-Haq, between 3,000 and 5,000 Muslims had gathered in the mosque courtyard in the wake of announcements by the Temple Mount Faithful (a Jewish extremist group whose stated aim is to reconstruct the Third Temple) of their intention to lay the cornerstone of the Temple in al-Haram al-Sharif area that day.³

The tension among the worshipers intensified while waiting for the Temple Mount Faithful group to arrive. At the same time, army and police presence around the mosque increased, with soldiers positioned on the walls around the mosque. Between 10:30 and 10:50 am, tear gas canisters were launched in the midst of the women who were gathered for prayers. Following that, men headed towards al-Magharbeh Gate where Israeli Border Police were stationed. Some of the men threw stones towards the border guards. The Israeli Border Police opened fire without issuing any verbal warning to the crowd and without firing warning shots into the air. They continued firing indiscriminately; because automatic gunfire was used at certain stages, several of the wounded were shot more than once. The Border Police then entered the yard of the mosque and there opened fire again.⁴

* On 12 April, the Greek Orthodox Patriarch, Theodoros I, in addition to other clergymen, were tear-gassed by Israeli police and Border Police in the vicinity of St. John's Hospice, a building which belongs to the Greek Orthodox patriarchate in the Old City of Jerusalem. The incident occurred when the Patriarch and people representing the community and other churches proceeded toward St. John's Hospice after learning of its takeover by an Israeli extremist religious group. The

³ The area of al-Haram al-Sharif is approximately 141 dunums in size (one dunum equals a quarter of an acre or 1,000 square meters). It includes al-Aqsa Mosque (where men usually pray), and the Dome of the Rock (where women usually pray).

⁴ For further information about the al-Haram al-Sharif massacre, see al-Haq's "Reconstruction of Events," dated 28 October 1990; also see Chapter Three and Chapter 12 in this report.

Greek Orthodox Patriarch and at least one other priest lost consciousness as a result of tear gas inhalation.⁵

Soldiers opened fire and launched tear gas canisters inside mosques on a number of occasions in 1990. On 13 April, for example, at approximately 7:10 pm, worshipers in 'Abd al-Rahman Mosque in the Khan Yunis refugee camp heard shooting outside the mosque. About six worshipers left the mosque to see what was happening; they noticed soldiers running after young men who had allegedly been throwing stones; one of the young men ran inside the mosque. When the worshipers re-entered the mosque five minutes later, they heard shooting inside the building; rubber bullets were later found inside. Three tear gas canisters were also shot into the mosque, forcing the worshipers to run out in order to avoid inhaling the gas. Soldiers then apprehended the alleged stone-thrower in the mosque, beat him, and arrested him.⁶

Freedom of worship was further obstructed by the repeated confiscation of mosque loudspeakers and the closure of mosques.⁷ On 8 May, for example Israeli soldiers confiscated the loudspeaker of the Kharbathah Bani Hareth mosque near Ramallah on the basis that it was used for incitement; this mosque's loudspeaker had previously been confiscated in January 1990 for three and a half months. In the Gaza Strip, al-Maghazi al-Kabir mosque in al-Maghazi refugee camp was closed on 16 January for three and a half months on the basis that stones had been thrown from the mosque's vicinity.

Al-Haq also received documentation of several cases where Israeli soldiers entered holy places with their weapons and without removing their boots. The cases documented did not involve any imminent danger that would have compelled the soldiers' entry in a manner offensive to religious sentiment. On 28 February, for

⁵ Al-Haq Affidavit No. 2601.

⁶ Al-Haq Affidavit No. 2610.

⁷ The closure of mosques deprives people of their right to perform their religious obligations. There is only one mosque in most Palestinian villages. In towns and refugee camps, each mosque serves several thousand people. Further, in Islam, prayer is required five times a day (these times are based on the lunar calendar and therefore vary throughout the year); the call to prayer over loudspeakers informs worshipers of the exact time to begin prayer. Praying can be performed at home or in a mosque with other worshipers, but praying in a group is preferable from a religious perspective.

example, at approximately 3:30 pm, while worshipers were still praying, soldiers accompanied by a few armed Israelis in civilian clothing entered the mosque of Jalazoun refugee camp near Ramallah wearing their military boots. The soldiers ordered all the worshipers out of the mosque, except for approximately 22 men, whom they detained and then took into custody; the detainees were driven away in civilian vehicles. The soldiers ignored a religious leader who informed them that they were violating the sanctity of the mosque by entering it with their weapons and boots.⁸

Obstruction of Burial Rituals:

In 1990, al-Haq continued to receive reports of the bodies of Palestinians killed by Israeli military authorities being confiscated and held until the family agreed to certain conditions for their burial.⁹ Usually, the body was returned at night and the family was ordered to bury it that same evening. The practice of seizing bodies and delaying their burial until after sundown is a violation of Muslim burial rites, which require that the deceased be buried before the sun sets.

* On 2 May, for example, at 11:00 pm, the body of 23-year-old 'Abd al-Latif Mustafa al-Saqqa of Khan Yunis was returned to his family and ordered to be buried after being confiscated by soldiers and transferred to the military headquarters in Khan Yunis. The body was returned on the condition that only 15 family members attend the funeral, excluding the mother of the martyr, for reasons not given. Further, representatives of the ICRC were not allowed to observe the funeral.¹⁰

* Similar conditions were placed on the burial of 19-year-old Mahmoud Suleiman Irbayye' of Khan Yunis, who was killed by the army on 6 April. The funeral was only allowed to take place at 11:00 pm, and only 20 people were permitted to attend.¹¹

Further, al-Haq documented several cases of the Israeli army raiding the houses where the family and friends of a martyr were gathered to offer condolences. During these raids, soldiers beat people, fired tear gas at them, and ordered them

⁸ Al-Haq Affidavits No. 2643, 2573, and 2644.

⁹ These conditions included restricting the number of those allowed to attend the funeral, usually to 15 or less.

¹⁰ Al-Haq Questionnaire No. 90/01929.

¹¹ Al-Haq Questionnaire No. 90/01924.

to remove nationalist slogans or pictures of the martyr displayed in the home. On 15 April, for example, at approximately 7:10 pm, soldiers in four military jeeps raided the Hebron home of the family of 16-year-old 'Amer 'Abd al-Nabi 'Amer, who had been killed on 11 April, while family and friends were gathered to offer condolences. The soldiers ordered all slogans removed from the walls of the house and then beat a number of the people present.¹²

Burial in a Secret Cemetery:

Al-Haq has this year again documented cases of burial by the army in a secret cemetery in the Jordan Valley. The burials apparently occur without the requisite prayers and religious rituals. On 19 May, for example, 'Atef Ahmad 'Abdallah Safi, from Nahhalin near Bethlehem, was ordered by soldiers to put the bodies of three people in his truck. The bodies were covered with blood. He was then ordered to drive his truck and follow a military jeep, himself being followed by an additional three jeeps. When they reached the Jordan Valley after driving for approximately 30 kilometers, he was ordered to stop and was handcuffed, blindfolded, and ordered to sit in the back of the truck with the bodies. The vehicles were then driven further for approximately an hour. When they stopped, Mr. Safi was ordered to take the bodies from the car and put them on the ground. After he did so, a bulldozer came and dug a hole in the ground. At that point, each body was put in a plastic bag and placed in the hole. The soldiers then placed a tag with a number on it on top of the bodies and the grave was covered with earth.¹³

In its previous annual report, al-Haq noted that bodies had been buried in a secret cemetery in the Jordan Valley near Jericho. However, because this cemetery is located in a closed military zone (sealing it from any kind of inspection), little is known about the cemetery. The only information available has been gathered from witnesses like in the above-mentioned case.

Applicable Legal Standards:

The freedom to hold and practice religious beliefs is a fundamental human right guaranteed by international law. Article 18 of the Universal Declaration of Human Rights states that

[e]veryone has the right to freedom of thought, conscience and

¹² Al-Haq Affidavit No. 2546.

¹³ Al-Haq Affidavit No. 2546.

religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observances.

Further, Article 27 of the 1949 Fourth Geneva Convention states:

Protected persons are entitled, in all circumstances, to respect for...their religious convictions and practices...and shall be protected especially against all acts of violence or threats thereof and against insults....

It is al-Haq's opinion that the practices described in this chapter not only demonstrate the Israeli authorities' failure to safeguard holy places and freedom of worship in the Occupied Territories as required under international law, but implicate them in such violations.

CHAPTER FIFTEEN

'Ein Yabroud: A West Bank Case Study

Introduction:

In August 1990, al-Haq began a six-month research project in the village of 'Ein Yabroud (Ramallah district) aimed at documenting and analyzing Israeli human rights violations since the beginning of the Palestinian uprising. 'Ein Yabroud was chosen because its characteristics are representative of many villages in the West Bank.

'Ein Yabroud has a population of approximately 1,840. The village has a history of moderate activity, in terms of intifada-related activities against the Israeli occupation. Like many villages in the West Bank, a Jewish settlement, in this case Ofra, was established in its vicinity following the Israeli occupation in 1967. Although some of 'Ein Yabroud's inhabitants emigrated during Jordanian rule (1949-1967), most of those who have done so emigrated in the period since 1967. The survey indicates that 42.6 percent of 'Ein Yabroud residents depend on remittances from family members living abroad; 32.6 percent of the work force are blue-collar laborers; 7.8 percent work in agriculture; 4.5 percent work in the commercial sector; 3.3 percent are white-collar workers; and 9.2 percent have other sources of income.

Al-Haq's research was facilitated by two questionnaires designed to document individual and collective human rights violations in the village. Based on the first questionnaire, 18 al-Haq volunteers (from Birzeit University and 'Ein Yabroud itself) interviewed one member, usually the head of household, of every home in the village (306 interviews). The second questionnaire was used to interview an additional number of representatives of local institutions. The questionnaires incorporated issues related to Israeli human rights violations against residents, institutions, and associations in 'Ein Yabroud. In addition, influential individuals in the community were interviewed for the general background and history of the village.

Human Rights Violations:

In the course of the research, al-Haq identified and documented a total of 34 types of violations -- aimed at collective and individual punishment -- committed against 'Ein Yabroud villagers and their property by Israeli soldiers and settlers. These include home demolitions, illegal acquisition of land,¹ uprooting of trees, refusal to grant licenses and permits, beatings, humiliation, illegal imposition of fines, curfews, closure of schools, and suspension of electrical and water services.²

While these violations have been a consistent aspect of the Israeli occupation of the West Bank and Gaza, many of them have been perpetrated against 'Ein Yabroud residents on a large scale only since the beginning of the Palestinian uprising in December 1987. For example, since the beginning of the intifada, one person from 'Ein Yabroud has been killed, 52 people have been injured, 150 have been detained, and 9 houses have been demolished. In addition, during 1990 alone, 24-hour curfew was imposed on 'Ein Yabroud from 4 until 14 February³ and night curfew (7:00 pm until 6:00 am) was imposed from 1 May through 1 July after a settler vehicle passing through the center of the village was stoned; night curfew was reimposed on 20 July and remained in effect through the end of 1990.

The violations against 'Ein Yabroud residents were committed by soldiers (86.3 percent), settlers (7.0 percent), a combination of soldiers and settlers (4.8 percent), a combination of soldiers and civilian personnel -- such as intelligence

¹ According to an interview with the *mukhtar* (head) of the village, in 1954, 'Ein Yabroud's area measured 13,000 dunums; by 1990, approximately 8,000 dunums of village land had been acquired by the Israeli authorities under various pretexts.

² The breakdown is as follows: Six types of violations against property (i.e. theft, vandalism); seven types of violations against agriculture (tree uprooting, land confiscation, sewage runoff, etc.); four types of violations against construction (refusal to grant building permits, house demolition, house sealings, etc.); five types of violations related to residency and freedom of movement (refusal to register newborns, expulsion of wives of residents, refusal to issue identity cards, etc.); five types of humiliation and violence; three types of situations where fines are imposed; three types of other violations (military occupation of the roof of a home, closure of an entrance, etc.); and collective violations (curfews, closure of schools, disconnection of electricity and water services, etc.).

³ Resulting in the loss of thousands of poultry and some livestock that could not be fed or watered.

personnel or tax collectors (0.4 percent), or others Israeli agents (1.5 percent). The following table outlines the breakdown:

Perpetrators of Human Rights Violations in 'Ein Yabroud

Perpetrators	Number of Violations	Percentage
Soldiers	652	86.3
Settlers	53	7.0
Soldiers/Settlers	36	4.8
Soldiers/Civilians	3	0.4
Others	11	1.5
Total	755	100.0

It is difficult to precisely calculate the economic damage that has occurred as a direct or indirect result of the violations committed against the residents of 'Ein Yabroud. However, the damage inflicted upon the residents in 13 types of violations that have direct economic effects between December 1987 and August 1990 was estimated by the residents to total US\$168,504.

Investigations:

Al-Haq research indicates that only 3.2 percent of the violations with identifiable perpetrators were ever investigated by Israeli police or army officials. In addition, villagers indicated that Israeli officials undertook only the most superficial inquiries in the small number of incidents that were investigated. For example, Palestinian witnesses were never interviewed, and the known perpetrators of specific violations against the community were never held accountable for their actions. As a result, only 10 percent of the Palestinian victims filed complaints regarding 26 (of 34) types of violations committed by Israeli soldiers, settlers, or others. Of these complaints, only 36 percent were filed with the Israeli military and police authorities; the remainder were addressed to the press or local and international institutions.⁴

In general, the Israeli authorities claim that most Israeli soldiers and police

⁴ The breakdown of the remainder of complaints is as follows: 24 percent to al-Haq; 16 percent to the media; 12 percent to the ICRC; 4 percent to other Palestinian institutions; and 4 percent to the US Consulate in East Jerusalem.

abide by existing regulations. In addition, they usually excuse violations of Israeli regulations and/or human rights violations as "aberrations" or "exceptions." This is clearly not the case. For example, Israeli open-fire regulations require that "fire...be used only as a last resort for apprehending a suspect." When Israeli officials do use firearms, they must first warn a "suspect" in Arabic; then they must fire a warning shot into the air if the "suspect" does not stop; and, last, they must "shoot at the legs only."⁵ In the case of 'Ein Yabroud, only 10.9 percent of the soldiers/settlers followed these guidelines when they used firearms against villagers. It is therefore obvious that 89.1 percent of the perpetrators acted illegally and thus should be held accountable for violations of Israeli law.

Ofra Settlement:

Many of the human rights violations in the village are directly related to the proximity of Ofra settlement, which was established in 1975 on approximately 1,250 dunums⁶ of land expropriated from 'Ein Yabroud and nearby Silwad village. An additional 300 dunums of village land bordering the settlement are subject to use restrictions that prohibit village construction, cultivation, and grazing.

In 1978, Ofra settlers constructed a pool to collect the settlement's sewage. For 13 years, in spite of the protests of 'Ein Yabroud villagers, whenever the sewage system fills up, settlers open the drainage outlet and allow sewage to flow onto 'Ein Yabroud's agricultural land. This sewage flow has not only destroyed dozens of olive, fig, and plum trees, but also poses an ongoing health hazard to 'Ein Yabroud villagers.

Another example of Ofra settler infringement on the rights of 'Ein Yabroud residents is that settlers and soldiers use 'Ein Yabroud's main road in order to enter or to leave the settlement. This increases the chances for daily, and usually negative, contact between the villagers and settlers. For example, settlers and soldiers regularly force 'Ein Yabroud residents who live on or near the main road to guard the road against stone-throwing in the evenings.

Emigration:

According to al-Haq's data, approximately 91 percent of 'Ein Yabroud

⁵ Al-Haq, "The Illegal Use of Lethal Force Against 'Fleeing' Suspects," *Human Rights Focus*, 1 May 1991, p. 2.

⁶ One dunum of land equals 1,000 square meters.

residents who have emigrated from the Occupied Territories since 1950 have done so during the past 24 years of Israeli occupation; the remaining 9 percent emigrated during 18 years of Jordanian rule (1949-1967). Of those who emigrated during Israeli rule, 25 percent (90 inhabitants) have done so during the intifada and 75 percent (269 inhabitants) left between 1967 and 1987.

The same data suggests that the human rights violations undertaken or sanctioned by the Israeli occupation authorities, especially those targeted at 'Ein Yabroud residents' economic livelihood, are important in encouraging their emigration from the Occupied Territories. The data also indicates that Israeli responses to intifada-related activities have qualitatively and quantitatively accelerated the pace of human rights violations against residents who have remained in the village.

CHAPTER SIXTEEN

Bureij Refugee Camp: A Gaza Strip Case Study

Introduction:

Bureij refugee camp measures three square kilometers in area and is located among citrus groves 13 kilometers southeast of Gaza City in the Israeli-occupied Gaza Strip. The same grounds were used as an army camp for the British military during the Mandate period. Bureij is one of eight Gaza Strip camps created to aid thousands of Palestinian refugees in the wake of the 1948 war. Since 1950, Bureij, like all refugee camps in the Occupied Territories, has been administered by UNRWA. The camp is currently home to approximately 19,128 Palestinians¹ living in 2,400 households.² Ninety percent of the families in the camp are refugees who fled from Palestinian towns and villages (especially Jaffa, Lod, and Ramleh) during and immediately following the war of 1948. The camp is currently supervised by an Israeli-appointed "village council," which has been headed by an Israeli military officer since the inhabitants of Bureij convinced the Israeli-appointed Palestinian chairman to resign in the beginning of the intifada.

While human rights violations by the Israeli military authorities continued against the residents of Bureij in 1990, acts of collective punishment, such as the demolition and sealing of homes, and restrictions on education, religious observance, and movement became a much more prominent feature of life in the camp, particularly after 20 September, when an Israeli soldier was killed by some of the camp's residents after he struck a mule-drawn cart driven by two children with his car. As in previous years, the use of live ammunition, rubber bullets, and tear gas against Bureij residents, as well as tax raids, administrative detention, and the torture of detainees continued during 1990.

¹ The registered population as of 30 June 1990 according to *UNRWA Newsletter*.

² This figure was cited in the minutes of the "village council" meetings.

Seventy percent of Bureij's labor force of approximately 3,000 people are wage earners (as opposed to sharecroppers, farmers, merchants, etc.). Of the wage earners, 85 percent work inside Israel. The remainder of Bureij's labor force is distributed in the following manner: 13 percent are unemployed; 8 percent are merchants; 6 percent work as teachers or health care personnel; and 3 percent depend on farming for their livelihood. One of the services provided by UNRWA is a Social Welfare Center which extends financial and material assistance to destitute families in Bureij. One indication of the camp's economic status is that approximately 600 Bureij families depend on benefits from this center.³

There are eight UNRWA-administered schools in Bureij refugee camp, six elementary and two preparatory, providing education through the ninth grade. In these schools, 129 teachers provide instruction for 4,730 pupils in 105 classrooms.⁴ Because UNRWA does not offer schooling after the preparatory level, students from Bureij travel to nearby Nuseirat refugee camp to attend a secondary school administered by the Israeli civil administration. Both the UNRWA and Israeli government-run schools at all levels in the Gaza Strip must use the Israeli-censored Egyptian curriculum. In addition, Bureij has a Youth Activities Center administered by UNRWA and run by a Palestinian board which had provided a recreational outlet for children in the camp. This center was closed by its administration in December 1987 based on information that the Israeli authorities were planning to order its closure.

Health services in Bureij are primarily provided by an UNRWA-supervised clinic that was established in 1952. The clinic, which is open all day and has one ambulance, serves approximately 120 patients daily.⁵ Patients who require treatment that the clinic cannot provide are referred to hospitals in Gaza City and Khan Yunis. UNRWA also used to administer a baby nutrition center which provided free meals to children and served 400 daily. This center was closed by UNRWA on 31 December 1990 as a result of austerity measures.⁶

Bureij also has a medical center administered by the Israeli Health

³ Review of the social welfare registers in Bureij camp and an interview with the UNRWA Public Relations office, 31 August 1990.

⁴ UNRWA-UNESCO, *Gaza Education Statistics*, 1989/1990.

⁵ UNRWA Bureij Health Clinic registers.

⁶ Information from UNRWA Bureij Nutrition Center.

Department, which serves Palestinians who are covered by Israeli health insurance. This health insurance is compulsory for employees of the Israeli government in the Gaza Strip (teachers, health care personnel, etc.) and Palestinians who legally work within Israel; enrollment in the insurance scheme costs approximately NIS 600 annually, an amount that is deducted from the wages of the Palestinian employee. This government-run clinic serves approximately 75 patients daily.⁷

September Incident:

On 20 September 1990, a uniformed Israeli soldier driving a civilian vehicle at an excessive speed within Bureij camp struck and injured two children guiding a mule-drawn cart. The camp's inhabitants began stoning the soldier's car and then set it on fire while the soldier was still inside. After the soldier's death, a curfew was imposed on the camp for 12 days. In addition to the demolitions and sealings referred to below, the military authorities detained approximately 500 residents of the camp in the aftermath of the incident.

The incident also elicited a strong official reaction from within Israel. Raphael Eitan, the Minister of Agriculture, stated after a Knesset meeting on 23 September that "all homes within 100 meters of the incident must be destroyed."⁸ According to Israel Radio, within three days of the soldier's killing the IDF had determined that a series of "stringent" measures would be imposed on the camp in response. Specifically, an unidentified IDF source indicated that drastic steps would be taken "which would change the landscape of the camp." He added that these changes would include "the demolition and sealing of homes of those suspected of involvement in the killing of the Israeli soldier."⁹

Demolitions and Sealings:

Since the beginning of the intifada, the Israeli authorities have sealed, demolished, or partially demolished a total of 64 houses and shops in Bureij refugee camp. Fifty-seven of these sealings or demolitions (89 percent) occurred in 1990; 54 (84 percent) of the buildings were sealed or demolished after 20 September 1990. In the vast majority of these latter cases, the sealing or demolition was carried out because the military authorities suspected the owner(s) of having directly or indirectly

⁷ Government health center registers in Bureij.

⁸ *Al-Quds*, 24 September 1990.

⁹ *Ibid.*

taken part in the killing of the Israeli soldier.¹⁰ As indicated by the statement of the Minister of Agriculture, the authorities assumed such involvement if a resident had a home or shop within some proximity of the site of the incident. An additional number of houses, not located in the vicinity of the site, were sealed or demolished on similar grounds. In an interview with ACRI, the Israeli Area (Military) Commander of the Gaza Strip, Matan Vilna'i, admitted that these measures of collective punishment were implemented in direct response to the killing of the Israeli soldier.¹¹

Curfews and Other Restrictions on Movement:

In 1990, curfew was imposed 13 times in Bureij, for a total number of 47 days. These curfews are a form of collective punishment which, especially when extended for more than a couple of days, inflict considerable hardship on the population by denying access to the workplace, medical care, agricultural lands, food and vegetable markets, and places of worship, as well as paralyzing education.

In addition, since the beginning of the intifada, the Israeli authorities have sealed 38 streets and entrances leading into the camp, thus dramatically restricting and controlling the movement of the camp population. Only one road has been left open for cars to enter or leave Bureij.

Restrictions on Medical Treatment and Care:

As in previous years, health care facilities in Bureij were repeatedly raided by the military authorities in 1990 in order to apprehend patients or to search the premises. In addition, soldiers frequently prevented residents from reaching health centers or hospitals in medical emergencies.

Examples of raids on medical facilities include the following:

- * On 28 February, at 6:10 pm, an Israeli army unit forcibly entered the UNRWA clinic in Bureij. Soldiers searched the rooms and cupboards and left without confiscating any materials.

¹⁰ See Chapter Two of this report for a discussion of Israeli house demolition procedures and the Israeli High Court decision with regard to the demolition of buildings in Bureij after the September incident.

¹¹ *Al-Quds*, 27 September 1990.

* On 27 May, at approximately 10:00 am, a group of soldiers apprehended a 14-year-old male being treated for head injuries at the same UNRWA clinic. They beat the youth with sticks and rifle butts and then took him outside the clinic. At this point, approximately 100 women had gathered in front of the building. They shouted at the soldiers, demanding that they release the youth. The soldiers responded by launching tear gas grenades at the women, injuring a number of them. It was only when a United Nations refugee affairs officer and a Palestinian doctor on duty intervened with the soldiers that the youth was released. As a result of the beating, he was bleeding from a lower lip injury, which required three stitches.¹²

The following are examples of Israeli soldiers restricting access to health care and emergency medical attention:

* On the morning of 20 September, during a curfew, soldiers physically assaulted two women returning from the hospital with a 15-month-old infant. As a result of the beating, one of the women, Sa'dieh 'Ayish Muhammad Abu Dan, spontaneously aborted a four-month-old fetus, in addition to sustaining a broken right hand.¹³

* On the morning of 22 September, again during a curfew, soldiers prevented the mother of a seven-month-old infant from taking her to a clinic located approximately 400 meters from their home. The child, Baha'i Muhammad Mansour, was suffering from an illness in her respiratory tract which made breathing difficult. At about 6:00 pm that same evening, the mother again attempted to reach the clinic, this time with success. When she arrived, she was urgently referred to a hospital, where the infant died after half an hour.¹⁴

* On the same morning, 22 September, soldiers prevented two women from reaching the UNRWA Bureij clinic by physically assaulting both of them and compelling them to return home. The women had tried to seek medical treatment for an ill nine-month-old infant.¹⁵

¹² Al-Haq Fieldwork Report No. 111.

¹³ Al-Haq Affidavit No. 2493.

¹⁴ Al-Haq Field Work Report No. 287.

¹⁵ Al-Haq Affidavit No. 2911. See Chapter 12 in this report for further details on this incident.

Restrictions on Education:

Education has been greatly impeded by repeated school closures, blanket curfews, and the frequent forcible entry of school grounds by the Israeli military. Between 17 January and 4 March 1990, for example, Khaled Ibn al-Waleed Secondary School, which serves approximately 1,000 male and 1,050 female students from Bureij and Nuseirat refugee camps, remained closed by military order on the grounds that stones were thrown from the school's compound.

In addition, Israeli soldiers forcibly entered elementary, preparatory, and secondary schools at least seven times in 1990. On these occasions, Israeli soldiers employed live ammunition, rubber bullets, and tear gas against the students. The last such incident during 1990 occurred on 11 November, when soldiers began physically harassing a group of students on their way to Khaled Ibn al-Waleed Secondary School. A number of students were struck by soldiers, which provoked stone-throwing from other students. Soldiers then fired live ammunition, rubber bullets, and tear gas grenades onto the school grounds. Two students were injured by live fire and dozens of students required treatment for tear gas inhalation. The military authorities then ordered the school closed until the end of the year.¹⁶ According to al-Haq's documentation, Khaled Ibn al-Waleed School was closed for a total of 106 days in 1990.

Excessive Use of Force:

Hundreds of injuries were sustained by Palestinians in Bureij as a result of Israeli army violence in 1990. A clear example of the excessive use of force in Bureij occurred during a demonstration in response to the Rishon Letzion massacre of 20 May 1990, during which 65 Bureij residents were injured with live ammunition and rubber bullets.¹⁷

There are also other documented instances where Israeli soldiers used excessive force against individual camp residents without provocation. Some examples are outlined below:

- * On 3 June, three soldiers forced their way into the home of 35-year-old Ibrahim al-Majed 'Abd al-Hassan Abu Seif and beat him with their fists and the butts of their rifles. One of the soldiers fired seven rubber-coated metal bullets into Mr. Abu Seif's

¹⁶ Al-Haq Affidavit No. 2981.

¹⁷ UNRWA Bureij clinic records.

left leg from a distance of one meter, seriously injuring his knee.¹⁸

* In August, soldiers forced their way into the home of 48-year old Saleh 'Abd al-Majed, who is half-paralyzed and confined to a wheelchair, in order to detain his son Sami. When they did not find the son, the soldiers threatened to kill Mr. 'Abd al-Majed and his children if they did not reveal Sami's whereabouts. One of the soldiers then struck Mr. 'Abd al-Majed with his fist and kicked him in the head and chest until he lost consciousness. The soldiers returned three times in the next few days and repeatedly physically assaulted Mr. 'Abd al-Majed. In addition to such abuse, the soldiers destroyed dishes, cupboards, closets, furniture, and food during their total of 11 visits to the family's home.¹⁹

* On 4 November, a group of soldiers, for no apparent reason, beat up another disabled inhabitant of Bureij, 31-year old Talal Subhi Ismail Khatib, while he was sitting on a specially modified bicycle in front of his home, breaking the bicycle in the process.²⁰

The Israeli military authorities have also used helicopters and other vehicles to lob stones at high velocity at residents and their homes in Bureij. On 29 August, for example, residents and homes were attacked with a rock-throwing vehicle; three people were injured and 81 homes were damaged. In another example, on 3 November a military helicopter dropped stones upon demonstrators and houses in the camp, damaging ceilings in a number of homes.²¹

Use of Tear Gas:

The use of tear gas by the Israeli military authorities is a daily occurrence in most areas in the Occupied Territories and is employed both to disperse crowds and to harass the Palestinian population. Nonetheless, its physical effects in refugee camps, especially on children, pregnant women, and the elderly, tend to be much more harmful because it is concentrated in limited and enclosed spaces.

Tear gas has repeatedly been used in Bureij for purposes of harassment.

¹⁸ Al-Haq Affidavit No. 2617.

¹⁹ Al-Haq Affidavits No. 2856, 2857, 2858, and 2859.

²⁰ Al-Haq Affidavit No. 2982.

²¹ Al-Haq Affidavit No. 2956.

According to eyewitness accounts, between March and September 1990, for example, soldiers from a military unit encamped on the roof of a building in Bureij daily launched tear gas grenades toward homes in the area every five minutes from approximately 2:00 pm until approximately 7:00 pm. Bureij residents reported that many of these canisters exploded either inside or at the entrances of homes, allowing tear gas to penetrate all areas that were not adequately sealed.

In another example, on 19 July, 7-year-old Salem 'Abd al-Jalil lost an eye from the impact of a tear gas canister; the boy was hit with the canister while he was standing in the center of Bureij in the vicinity of a demonstration in which he was not taking part.²²

²² Al-Haq Affidavit No. 2741.

CHAPTER SEVENTEEN

Detention Memoirs of Al-Haq Fieldworker Sha'wan Jabarin

Preface

This chapter consists of the translated affidavit of Sha'wan Jabarin, an al-Haq fieldworker from the village of Sa'ir (Hebron district), who was arrested by the Israeli authorities on 10 October 1989. The affidavit describes in detail Mr. Jabarin's transfer from the 'Anata Detention Center to Ansar III, and his experiences during his detention at Ansar III.

Not included in the account is the torture Mr. Jabarin suffered on his way to and at the "Khashabiya" police holding facility in Hebron on the day of his arrest.¹ In response to international criticism and the intervention of former US President Jimmy Carter, the Israeli authorities launched an official investigation, which yielded "prima facie evidence" supporting Mr. Jabarin's claim of torture on three separate occasions.²

On 22 October Mr. Jabarin was issued a one-year administrative detention order (without charge or trial) to be served in Ansar III, of which he served nine months. In response to local and international appeals on Mr. Jabarin's behalf, the Israeli authorities have tried to justify his detention by accusing him of being "a senior activist" in the Popular Front for the Liberation of Palestine (PFLP). In the absence of evidence that substantiates such allegations, al-Haq is inclined to believe that Mr. Jabarin's detention was related to his fieldwork for al-Haq.

Mr. Jabarin's case is not unique. It is estimated that between 2,800 and

¹ See Al-Haq Alert, 13 June 1990.

² *Ibid.*

3,000 Palestinians were administratively detained during 1990.³ Administrative detention orders are issued by Israeli military commanders and are not based on specific charges and court proceedings. Since the beginning of the intifada, administrative detention has been used extensively by the Israeli authorities as a form of control and punishment.⁴ 'Anata, the Jerusalem military detention center referred to by Mr. Jabarin, was opened as a detention facility in November 1988 in anticipation of local celebrations of the Palestine National Council's declaration of Palestinian statehood on 15 November of that year. On that occasion, a minimum of 500 Palestinians were immediately arrested and detained in 'Anata as a "preventative" measure.

Ketziot Military Detention Center, more commonly known as Ansar III, is located in the Negev Desert close to the Egyptian border and was opened by the Israeli authorities on 17 March 1988. It holds administrative and sentenced Palestinian detainees. By the end of 1990, an estimated 5,915 Palestinians were being held in Ansar III.⁵ Al-Haq has repeatedly called for the closure of Ansar III based on the fact that detention conditions fail to meet the minimum standards set forth in the 1949 Fourth Geneva Convention and the UN Standard Minimum Rules for the Treatment of Prisoners. Among the most critical problems at Ansar III is isolation. Detainees are denied family visits and are only allowed brief attorney visits (within hearing range of Israeli military officials). In addition, living conditions are extremely difficult.

According to a report by the US-based organization Physicians for Human Rights,

prolonged detention, e.g. beyond one month, should not be continued at the Ketziot detention center in the Negev desert...where conditions are harsh and temperatures extreme, and where,

³ PHRIC, *The Cost of Freedom: 1990, Palestinian Human Rights Under Israeli Occupation* (Chicago: PHRIC, 1991), p. 23.

⁴ See Chapter Five, entitled "Torture and Death in Detention," in Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990), pp. 165-217, for a more detailed discussion of detention, interrogation, and prison conditions for Palestinians from the occupied West Bank and Gaza Strip and their legal ramifications.

⁵ PHRIC, *Human Rights Update: December 1990* (Chicago: PHRIC, 1991), p. 530.

*practically speaking, family visits are impossible.*⁶

*Family visits are "impossible" because of the difficulty of obtaining permission from the military authorities. Anyone who wishes to visit a detainee at Ansar III must obtain a permit because the camp is located within a closed military zone, which limits the access of Palestinian relatives and friends of detainees. It is important to note that Article 76 of the 1949 Fourth Geneva Convention forbids an occupying power from imprisoning detainees within its borders.*⁷

Transfer from 'Anata to Ansar III:

On the morning of 20 November 1989, at approximately 4:00 am, a number of military police officers came to our cells in the 'Anata detention center in Jerusalem, where we were being temporarily held, in order to announce that some of us would be transferred to Ansar III Detention Center in the Negev Desert. One of them ordered us to sit on the floor and listen to the numbers he was going to read out, since every detainee had been assigned a number upon detention. My number was among the 46 that were called out. The detainees who were thus called up were then told to prepare themselves and their personal belongings because they (we) were to be transferred to Ansar III. Ansar III is located about 150 kilometers from 'Anata in a closed military zone, which means that only people with special permits can enter the area.

Despite our previous negative experiences at Ansar III, there was a general feeling of relief because we thought conditions at Ansar III might be less severe than at 'Anata. I had personally spent nine months under administrative detention in Ansar III between 9 March and 7 December 1988 and had only been out of prison several months when I was administratively detained again on 10 October 1989, this time for a year. In 'Anata, we were prohibited from leaving the cells and we never saw the sun. The cells are located in old military tank garages that have been converted into barracks. They lack toilets, bathing facilities, and running water. We used an unsanitary plastic bucket, which overturned many times, as a toilet. We were not allowed to receive correspondence or family visits. In addition, of course, there was the regular ill-treatment we suffered at the hands of guards, military police, and

⁶ Press release of Physicians for Human Rights summarizing some of the conclusions of their report on health conditions at Ansar III, 22 May 1990.

⁷ For further discussion on administrative detention, see Al-Haq, *A Nation Under Siege*, pp. 285-301.

interrogation officials.

After approximately 15 minutes, the officer in charge returned and asked if we were ready. When we replied that we were, a military police officer opened the door of our holding area and led us into the open-air compound of the detention center. The officer then told us to enter a tent surrounded by barbed wire in order to organize us before we mounted the vehicle that would transport us to Ansar III. Another officer who was holding the personal belongings we had been carrying upon arrival at 'Anata was also present. He distributed our money, personal papers, and other items, with the exception of our identity cards. We then began to mount the vehicle, which was a truck adapted for the transportation of passengers; it had seats made of thick plastic material. The driver's section was physically separated from the passenger area.

After the officer in charge arranged for our seating on the vehicle according to our names and numbers, he ordered us to sit only on the back seats, leaving six vacant seats in the front. Several detainees, of whom I was one, were left without seats; we were ordered to sit on the floor of the vehicle. I refused to do so. The officer in charge said that Israeli military orders prohibit detainees from sitting in the seats near the soldiers. There were six heavily armed Israeli officials other than the driver on the truck with the detainees -- the officer in charge, a military police officer, and four soldiers -- so I asked him why they did not provide another vehicle so that all the detainees being transferred could have seats. At this point he began beating me with a club. When the other detainees began protesting, the soldiers pointed their guns at them and threatened to open fire, forcing them to be silent. I should note that all the detainees' hands were bound behind their backs with plastic handcuffs. We were, of course, then forced to sit on the floor of the vehicle. The soldiers blindfolded us so that we couldn't see our surroundings, presumably because 'Anata Detention Center is located within a military camp.

En Route to Ansar III:

The truck then began to move. The soldiers and the officer in charge announced that no talking would be allowed inside the vehicle and threatened to beat us if we did so. After approximately five minutes, soldiers removed the blindfolds of most of the detainees, with the exception of 10 others and myself. We were told that it was to punish us for protesting being seated on the floor of the vehicle. The officer then instructed the detainees without blindfolds to keep their heads lowered and not to look out of the windows. There seemed to be no explanation for these instructions except to make us uncomfortable and humiliate us.

After traveling for what seemed a long distance (I couldn't estimate

precisely), I asked one of the soldiers accompanying us to tell the officer in charge that I wished to speak with him. When he came I said to him, "we are humans, and you should treat us as such." He answered: "I am aware of that and what I am doing is carrying out military orders issued to me which I cannot violate." I then asked him to remove the blindfolds of the remaining detainees, including myself, and he did.

During the journey, some detainees attempted to converse in low voices with others sitting near them. When the officer in charge noticed, he rushed out, blindfolded them and bound their ankles with plastic cuffs. We were not permitted to smoke or drink water throughout the journey. In response to our repeated requests for water, soldiers would "shush" us up carelessly. In addition, many of us suffered pain from the tight plastic handcuffs that bound our hands behind our backs. I could see, for example, that the hands of the detainees sitting in front of me were bruised and swollen.

As the vehicle began approaching Ansar III detention center, there was a general sense of relief because the painful journey was about to end. I glanced at one detainee's watch and noticed that it was approximately 12:00 noon. As I looked through the window, I noticed that there were watchtowers surrounding the divisions of Ansar III detention camp, and that the prison and its sections were surrounded and divided by high mounds of earth.

Our Reception at Ansar III:

As we reached the entrance of the camp, we saw three other vehicles full of detainees. We asked the other detainees where they were from. They told us that they were from the Gaza Strip and were brought from Ansar II, another military detention camp. Our vehicle was then parked beside a small building where our names were registered and we were assigned new identification numbers. In addition, we were administered a preliminary medical examination and our personal belongings (watches, trousers, belts, personal papers, and jewelry) were registered into a computer. There were many computers and hundreds of military personnel in the facility. We were taken into the building individually and then returned to the vehicle as this process was completed for each detainee. During this time, the officer in charge ordered the vehicle's air vents closed so that (as he explained) detainees inside the vehicle could not converse with detainees outside. Despite repeated requests, we were given neither food nor water throughout this period. Whenever we made such a request, the soldiers told us that "in a few moments you will enter your divisions and there you will find everything you need." These "moments" turned into six hours, during which we were confined to an unventilated military vehicle, with no food or water, under the hot sun, and with our hands bound behind our backs.

At approximately 6:00 pm we were finally released from the vehicle. They cut off our plastic handcuffs, setting our hands free, and gathered us into a compound surrounded by barbed wire and canvas, whose area did not exceed 50 square meters. We sat down on the dirt floor to await further instructions. At this point, an official began to call out our names and then take us individually to a small room where military officers were waiting to question us. One of these military officials asked for my full name; another who was holding a stethoscope asked questions like: "Do you suffer from any illnesses?" and "Do you take any special medication?" He then took my blood pressure and recorded it on a special card. A third official took my personal belongings and recorded on a duplicate form the description and total number of items taken. I was required to sign both copies of the form, one of which was handed to me and the other kept by the prison authorities. A third official told me: "Your detention number is such and such; you must memorize it."

I was then returned to the yard into which all the detainees were crammed. After these procedures were completed for all of us, we were led to the vehicle again, but this time without handcuffs. They drove us to prison section "G", which I had left only several months before. When the vehicle arrived at the section's entrance, I felt happy not only because the difficult journey was about to end, but also because I would be able to see friends inside the prison and finally have an opportunity to rest. This was the general feeling of most of the detainees.

There were many armed soldiers assembled at the entrance to this section of the prison. In addition, a number of military police carrying clubs surrounded us when we descended from the vehicle. One of them ordered us in Arabic to stand in one line and not speak while walking. He then directed us to walk through a paved passageway to a storage area where we exchanged our civilian clothes for blue or brown prison uniforms. We searched for untorn clothes that were of correct size, but could not find them. As a result, most of us ended up with extremely large uniforms. For example, I was sure that another person could fit into the trousers I had to wear; I could only wear them when I tightened the cord on the waist.

We were then guided to our specific detention areas. While we were walking, other detainees inside the section began asking us our names and inquiring about their relatives. We could not respond, of course, because the officer in charge had warned us not to.

Detention Conditions in the Ward:

After I put down the four blankets and the two-centimeter-thick sponge

mattress assigned to me, the detainees assembled around us to welcome us and invited us to a tent in the division where one of them explained the internal program and rules, and recorded our detention numbers on a small piece of paper. In addition, he told each one of us the number of the tent [Ansar III is an open-air detention camp] in which we would sleep. I was assigned to sleep in tent number 40. I went into my tent and tried to find a space to lay down the wooden frame which would serve as my bed; it was called a *mishtah* in Hebrew. A *mishtah* consists of four wooden boards separated from each other by 5-10 centimeters; it causes back pain because the thin mattress provided is not sufficiently thick to block the gaps between the boards.

The tent was overcrowded with beds. I asked a young detainee "tent sergeant," or representative,⁸ about the number of detainees in the tent; he said that there were currently 27 detainees and that sometimes the tent housed 28 people. I recalled the Israeli High Court decision issued in November 1988 concerning the status of detainees inside Ansar III, which stipulated that the maximum number of detainees for each tent should be 24. I asked about the number of detainees in the entire ward. The representative said that there was a total of 300 detainees before our arrival and that with us the number had increased to 345.

At approximately 9:30 pm, one of the detainees was ordered by the authorities to call us together. We gathered in the yard in groups of 25 to 27 detainees and sat down on the ground surrounded by barbed wire. After a few minutes, a force of approximately 15 soldiers took position outside the barbed wire and pointed their machine guns towards us. In addition, a military vehicle with two mounted guns parked outside the barbed wire with the weapons pointed towards us. Several military officials arrived, among them an officer carrying a document with our names and identification numbers. There was also a police officer poised to launch a tear gas canister in our direction if necessary.

A police guard opened the door into the area where we were sitting and the officer who was to count us entered accompanied by a number of military officials and the officer carrying the tear gas canister. He began to read the number and the name of each detainee. As he did so, the detainee was required to respond and then turn around while still sitting so that his back was turned to the official. It took approximately 15 minutes for all the detainees to be counted. When I asked another

⁸ This representative or "tent sergeant" is a detainee charged by the prison authorities with representing the other detainees of a tent or prison section in situations where the authorities want to communicate an order or question to the detainees in general.

detainee why we were required to turn around in this way, he replied that this was a form of collective punishment reinstated a few months earlier in response to events that had taken place in other prison sections.

Meals:

I was awakened the following morning by the shouting of the division warden ordering us to prepare ourselves for one of the daily counts. After I quickly put on my blue shirt, I hurried to the location where we had been counted the previous day and sat down in the same spot. The procedure was carried out routinely in approximately half an hour. After this, the cooks (who were detainees themselves) brought breakfast. An internal committee of detainees undertook the distribution of the meal to the 13 tents in the unit, also called a "small division." In every tent a rotating team of men divided the food equally among everyone. After they set out the food and divided it, they invited us to begin eating. When I saw the amount of food on my plate, at first I thought that it might have been distributed unequally. But when I looked at the others' plates I realized that we had all been given the same amount of food. I was very hungry because I had not been provided with any food in the 24 hours since being transferred from 'Anata.

The meal consisted of a cup of tea, four olives, a (hard-boiled) egg, and one-third of a piece of Arabic (pita) bread. I ate my meal and waited for lunch, which consisted of clear soup (with no vegetables), water, salted olive oil, a small plate of rice, a small slice of mortadella and a tangerine or half an orange. I pinned my hopes on supper. When the final meal of the day came, it consisted of one spoon of jam, one boiled potato, a cup of tea, and a small slice of margarine; there were no fresh fruits or vegetables. Over the next few days I learned that, with the exception of breakfast, the meals rarely changed. For breakfast, we were sometimes served a small portion of *foul* (fava beans), but without any lemon juice or spices.

The quality and quantity of these meals elicited much joking from the detainees. Some considered the diet an opportunity to lose weight; others called Ansar III "Ethiopia." After the detainees who cooked returned from the kitchen in the evening, I asked them why we were served such small meals. One of them told me that the quantity provided by the administration was insufficient; in addition, much of the food rations were stolen by Israeli prison officials and food suppliers. To demonstrate this, he gave me the following example: One day, the food supplier brought 50 kilograms of potatoes for the 1,250 detainees in the prison section. When the Israeli officer in charge of the section realized this, he chased after the vehicle, spoke with the supplier, and brought back an additional 150 kilograms of potatoes, telling the kitchen staff that the supplier had attempted to steal them.

Solitary Confinement:

One afternoon, a military police officer came to the entrance of our section and asked our representative to call a young detainee whom he pointed out in the yard. This detainee was then escorted by the officer and two armed soldiers to the administration building, which is located in the main section at the prison's entrance. When I asked another detainee why the young man was singled out, he told me that he had broken the rules by speaking with his brother, who was detained in a nearby section (about 20 meters away and separated from our section by barbed wire). I asked him: "Is speaking prohibited?" He answered, "these are the orders and regulations of administrative detention." So I asked him why the authorities did not allow organized visits for brothers within the prison or allow them to be in the same section. According to him, there were dozens of detainees who were separated from their brothers by being detained in different sections and were unable to visit each other. He added that the prison administration usually offered administrative or security grounds for its failure to solve this problem.

The military officer returned to the division without the detainee in question. When we asked him about the incident, he informed us that our friend had been sentenced to 24 hours in solitary confinement for violating military orders by talking to a detainee in another division. When one of us explained to the military officer that our fellow detainee in solitary confinement had only been speaking to his brother, the officer responded: "These are orders and regulations; I am here to implement them irrespective of whether I am convinced of their rightfulness."

Inside Barbed Wire and Under the Hot Sun:

I had been in detention for approximately two months. The sky was clear at that time and most of us were sweltering in the hot desert sun. I noticed unusual movement of military officials around our section. From previous experience I expected that either a rigorous census would be taken, or that there would be a ward inspection with the specific intent of finding small pieces of paper on which we might have written messages. Before I had too much time to think about it, I noticed that a military vehicle with two mounted guns sped toward us and stopped in its regular position outside the barbed wire surrounding the compound area where we were usually counted. Soldiers holding machine guns and tear gas masks also surrounded the area.

An officer in charge ordered our representative to call all the detainees into the yard quickly. We went into the yard and sat down on the ground. Some of the soldiers entered the yard and ordered us to follow them in groups of five through the barbed wire passageway that led outside the section. In this passageway, each

detainee was thoroughly searched by a military policeman. We were then ordered to sit down (under the hot sun) to watch about 20 police officers and soldiers enter the prison section and bring out all our bedding and personal items. They searched everything thoroughly, even opening tubes of toothpaste, and unpacked and scattered everything we owned outside the tent. At that point, five detainees forced to help the officials carry our belongings into the yard protested by refusing to do so. The Israeli officials punished them by throwing out their belongings and scattering them among everyone else's. In addition, one soldier flung a Koran outside the tent and urinated on it, which compelled one detainee to begin shouting at the soldier. The situation became tense and reinforcements were sent in to surround us. They all had their clubs ready and aimed their weapons at us.

The inspection procedure took approximately five hours, during which we were sitting under the sun without being offered food or drink. At about sunset, we were allowed to return to our tent and found that everything in it had been completely destroyed. We went to the barbed wire as a group and demanded to see David Tsemah, the commander of Ansar III. He arrived half an hour later and summoned our tent sergeant, who explained how soldiers had behaved during inspection, and asked that the officer in charge be prosecuted for allowing the desecration of the Koran. The commander attempted to calm the detainees down by promising to fully investigate the matter and punish anyone found to have violated prison regulations.

Showers and Hot Water:

The section was covered with the haze and smoke emitted from water heaters as we waited for warm water to enter the piping system. We went to the warden and registered our names in order to take showers. Detainees who came out of the showering area invariably told us that the water was cold because the burner was faulty and did not stay lit long enough to heat up the water. Whenever we protested to the warden, he would respond that the boiler would be fixed soon. This situation continued for many months. I adjusted and convinced myself that cold showers might be better for my health. In the year I was in administrative detention, I remember showering with hot water three times.

Attorney Visits:

One day a detainee called out the names of 12 other detainees for them to meet with their attorneys. An officer on duty allowed them to exit the ward. They were back after a few minutes. We gathered at the barbed wire and asked them about their families and what their attorneys had said. One of them told us that they had not been able to see their attorneys at all. Instead, the soldiers had ordered

them to sit on the ground before they reached their destination; when they refused to do so, the soldiers ordered them back to their detention area. None of the detainees were able to see their attorneys that day.

A week later, after going through the normal morning inspection and counting procedures, a group of soldiers ordered us to stand in a single line and march behind them in order to see our attorneys. On the way, one of the detainees lit a cigarette. He was ordered by a guard to put it out. No reason was given, and the guard threatened that if he did not, we would all be deprived of our attorney visits. I recalled what had happened the previous week and so I pressed my fellow detainee to obey the order. After he did so we resumed our march (approximately 300 meters) and arrived at an asbestos-roofed building surrounded by a large number of military personnel. They ordered us to stop and stand in a single file. They searched us and our shoes. We were then allowed to enter the building and sat in a row of wooden chairs. On the other side of the room, separated by glass and fencing, a row of attorneys were waiting for us. By the time I had greeted my advocate and inquired about my family (approximately 5-8 minutes), the soldiers shouted that the visits were over. We were again thoroughly searched for weapons outside the building and returned to our barbed wire compound, where we were searched again.

The "Cage":

At the beginning of January 1990, I saw cranes bringing cement blocks to an area approximately 100 meters away from our division, on the other side of a cement wall that separated us from the next area. After a few days, I noticed iron poles supporting a frame of barbed wire going up behind the wall as well. The contraption looked cage-like. Some of us thought that the new project was a fortified administration division while others believed that it might be a new detention area. On 24 January, work was completed and 23 detainees, all of them from the Gaza Strip, were transferred to the "cage." We heard no news from them. In February, a car with four soldiers arrived and transferred me to Barzilai Hospital in Ashkelon for a medical examination. On the way, the soldiers picked up another detainee from the "cage." It was the first time I had seen the "cage" at close range. It was horrible to see because although its space was limited, it was packed with detainees. When I returned to my detention area later I told the other detainees about the "cage." They were shocked when they realized that it was used as a long-term detention area. After months had passed, I was transferred to the "cage" and put under solitary confinement (for part of the time) for no reason that I was aware of. Later I realized that it was one of the most effective ways of demoralizing detainees.

On 26 April 1990, the first day of *'Id al-Fitr* (the Muslim holy feast marking the

end of a month-long fasting), a police officer came and asked the tent sergeant to call up my number. The officer told me to collect my personal belongings and prepare for transfer without informing me where I would be relocated or why. Some of the detainees thought I was being transferred for interrogation. I took leave of my fellow detainees with my personal belongings and my mattress and left for the unknown. I was not confused for long, because the officials immediately headed for the "cage."

I approached my new detention area and looked at it from the outside. It was a box-like structure with three-meter-high cement walls and barbed wire. The ceiling and the door of the structure consisted of iron bars; the detainees inside the "cage" were exposed to the sun all day and then bright lights at night. After I was locked up in unit number three, I realized that the "cage" itself was divided into four small "cages" within it. These smaller areas were separated by additional six-meter-high cement walls and prison bars. Within my unit, there were three tents separated by more barbed wire. Soldiers were patrolling with machine guns in the "cage's" narrow corridors and watching us as if we were captive zoo animals. The other detainees welcomed me and asked for my name and where I came from. All of them were from the Gaza Strip. A number of them were sentenced to 10 years in prison.

Curfews:

One day in June, while I was still inside the "cage," the military authorities used loudspeakers to announce, in Arabic, the imposition of curfew "by the order of Commander Shalti'l until further notice." All detainees were ordered to enter their tents within two minutes and close them tightly. Violators were threatened with shooting. We entered our tents and pulled down their "walls." It soon became oven-like inside the tents and many of us felt that we could not breathe. The curfew lasted for approximately two hours.

During my five-month confinement in the "cage," curfew was imposed eight times. If firearms were used against a detainee, for example, the authorities would impose a curfew so that the other detainees would be unable to find out what had happened and to whom. These curfews would be imposed on the thousands of administrative and other detainees and were often made even more difficult by the use of tear gas or live fire.

Prayer Drives An Officer Into a Rage:

On 13 July 1990, at approximately 9:30 pm, a group of detainees prayed in the yard inside the "cage." An assistant commander accompanied by a large number of soldiers came to the entrance of the unit and ordered the detainees to stop

praying. While a detainee was still attempting to explain that prayer did not violate military orders and that they would be finished in two minutes, the official ordered tear gas launched in our direction. The detainees then began shouting and hurling anything they could find in the general direction of the officials standing on the other side of the iron bars. The situation did not calm down until about 11:00 pm. In the morning, the detainees officially protested the incident to the prison commander and demanded an investigation.

Use of Arms Against Detainees:

The use of firearms and the constant threat of their use for trivial reasons creates a general atmosphere of tension in Ansar III. Soldiers are at all times patrolling the prison with machine guns and other weapons. Detainees have been particularly anxious about the use of arms against them since 16 August 1988, when David Tsemah, Ansar III's commander, shot dead two Palestinian detainees. I was in Ansar III at the time and was injured by a tear gas grenade. It is a day that will always be remembered by detainees.⁹

The use of firearms within Ansar III seemed to have increased in 1990. On 1 May, for example, the storage room guard came into the "cage" and asked one of us about our request for cigarettes. The detainee explained that we had not received our rationed number of cigarettes and we did not know why this was the case. At this point, for no apparent reason, the official pointed his gun in our direction and was about to shoot at us. Another soldier rushed to him and prevented him from doing so by grabbing his weapon. The detainees were shocked by the incident and demanded that the guard be prosecuted.

On 24 July, at 5:20 pm, during the evening census, we heard the sound of intense live ammunition nearby. We smelled tear gas and heard detainees shouting "God is great." Our representative asked one of the guards to permit him to see the officer in charge in order to find out why live ammunition and tear gas were being used against other detainees. The guard ignored him, of course. We realized that most of the detainees in Ansar III were protesting the use of gunfire and tear gas because we heard men shouting in various divisions. The prison administration immediately declared a curfew and detainees were ordered to their tents under the threat of live ammunition. Hundreds of soldiers and military vehicles arrived. Detainees in one of the divisions were ordered into the yard, where they were all handcuffed; they stayed there, handcuffed, until approximately 9:30 pm.

⁹ For a detailed discussion and analysis of this incident, see Al-Haq, *A Nation Under Siege*, pp. 565-6.

The next day we learned (through small notes passed among and between divisions) that when a collaborator had attempted to make his way to the administration building during the previous day's census, an officer carrying a tear gas canister misunderstood [his move and who he was] and launched it in the direction of the collaborator (and the detainees). Other soldiers began shooting rubber bullets at the detainees and live fire into the air. Four detainees were injured by rubber bullets, one in the head. They were transferred to the division clinic and then back to their divisions.

Correspondence and Photographs from Family:

During 11 months of detention, except for four letters from my wife, I was unable to receive any other correspondence. In the beginning, I thought it was because no one was writing to me. I later realized that hundreds of detainees did not receive letters which their advocates and ICRC officials assured them were delivered to the prison authorities. Because family visits are not allowed at Ansar III, letters and photographs, especially of children, have an added significance for detainees; they help maintain some kind of emotional connection with family members. The withholding of such items can only be seen as a means of demoralizing the detainee and exerting psychological pressure on him. Many times detainees who went outside their division to empty wastebaskets near the administration building came back with letters and photographs which they had retrieved from the trash bins. Once, two letters were found which belonged to men in our division; they had been sent two months earlier. We complained about the matter to the director of the division and he promised to investigate.

At one point, I polled the 1,300 detainees in our division about correspondence and found that 65 percent had received neither a photograph nor a letter in four months, and the remainder had received an average of one letter in the same period.

The Division Clinic:

Although medical care had improved somewhat in comparison with 1988, serious problems remained. There were many detainees who suffered from renal, arthritic, and stomach problems. Some had appointments for medical examinations and surgeries in Israeli hospitals that they were never able to keep. There was a medical orderly (or practitioner) who made the rounds every morning with several types of medications, mostly tranquilizers for headaches, which were rarely needed. In addition, he took down the names of detainees who needed to see a physician. He was also responsible for distributing prescribed medications, which were rarely distributed on time and were sometimes delayed as much as two weeks because

they were "not available" in the pharmacy. In July 1990, for example, I had to request my prescribed hypertension medication daily from the orderly. For three weeks he would take down my name and number and promise me tablets I did not receive.

On 23 March 1990 a detainee from my division who was in severe pain asked the guard on duty to call a doctor. When the doctor came half an hour later, the detainee was transferred to the division clinic, where he suffered all day and night before being moved to Soroka Hospital in Bir al-Sabi', about 70 kilometers from Ansar III.

Many times, the dispensation of medication or medical treatment was made dependent upon the detainee agreeing to collaborate with the authorities by giving them information. Once, the "doctor" on duty in the clinic mistakenly thought that a sick detainee who had come for treatment was a collaborator; he opened his table drawer and asked the detainee to put this "reports" in the drawer. The "doctor" was shocked when the detainee, who was from Qalqilya, told him that he was not a collaborator.

The Hour of Release:

The procedures for releasing detainees are a final opportunity for prison officials to inflict suffering and humiliation. After the detainee bids his fellow detainees farewell, he is taken to a room where a police officer orders him to undress, turn around, and bend over so that he can look into his anus. Sometimes this official, wearing thin plastic gloves, inserts his fingers into the anus in order to search for documents. If the detainee refuses or resists, as many do, his hands and legs are bound and the search is conducted without his consent. This was a general practice in Ansar III in February and March 1990. The officials occasionally found letters to wives and children, photographs, or drawings. They confiscated them on the pretext that they might contain secret information.

After this search, a detainee goes through the bureaucratic process of acquiring the personal belongings seized when he first entered Ansar III. He then mounts a bus-like vehicle where his hands are bound, and soldiers transport him to the occupied West Bank or Gaza Strip.

PART III

Role of the International Community

ERRATA

Footnotes to Chapter Eighteen

35. [From: The European Council]:

The European Council consists of the heads of state or government of the EC member states and the president of the Commission of European Communities. ... The Commission of the European Communities is made up of 17 Commissioners (at least one and no more than two from each EC member state) heading various areas of responsibility. See *Fact Sheets on the European Parliament and the Activities of the European Community*, EC Directorate-General for Research, September 1990.

54. UN Doc. S/PV.2926, Provisional Verbatim Record of the 2926th Meeting of the United Nations Security Council on 31 May 1990.

60. UN Doc.S/PV.2946, Provisional Verbatim Record of the 2946th Meeting of the United Nations Security Council on 8 October 1990.

61. UN Doc. S/PV.2947, Provisional Verbatim Record of the 2947th Meeting of the United Nations Security Council on 9 October 1990.

66. UN Doc. S/PV.2948, Provisional Verbatim Record of the 2948th Meeting of the United Nations Security Council on 12 October 1990.

70. Report of the Secretary-General to the Security Council (UN Doc.S/21919), 31 October 1990.

73. UN Doc. S/PV.2949, Provisional Verbatim Record of the 2949th Meeting of the United Nations Security Council on 24 October 1990.

93. UN.Doc. S/PV.2970, Provisional Verbatim Record of the 2970th Meeting of the United Nations Security Council on 20 December 1990.

CHAPTER EIGHTEEN

Ensuring Israel's Respect for International Law in the Occupied Palestinian Territories: Third Party Practice During 1990

Introduction:

As an organization dedicated to the promotion and defense of human rights, al-Haq has been greatly concerned with Israel's persistent violation of a number of basic rights protected by international humanitarian law¹ in the Occupied Palestinian Territories. The 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War has been ratified by over 160 states -- including Israel -- and contains specific provisions relating to a civilian population under belligerent occupation. Under Article 1 of the Convention, each state party has undertaken to "respect and ensure respect for" its provisions "in all circumstances." In view of the continuing failure of the state of Israel to implement the minimal protections and safeguards prescribed by international humanitarian law, al-Haq has become increasingly disturbed by the failure of third party states to discharge their obligation to ensure respect for the Convention.

In the context of belligerent occupation, certain basic human rights are established and implemented through different instruments of law, and they rely on fundamentally different structures of guarantee and accountability than those existing in a normal civil order.² As in the case of a normal civil order, the non-observance of basic human rights under belligerent occupation originates in neglect or deliberate

¹ Specifically, the 1949 Fourth Geneva Convention and the 1907 Hague Regulations.

² A normal civil order is one where rights can be implemented and guaranteed as civil liberties, constitutional rights, and/or through the empowerment of the citizenry.

disrespect by political actors and guarantors. In cases of belligerent occupation, the following are the chief political actors and guarantors of human rights:

- (a) the occupying power under whose control protected persons have fallen;
- (b) other state parties to the 1949 Fourth Geneva Convention and other instruments of international humanitarian law, which have undertaken the duty to ensure the occupying power's respect for the provisions of the Convention; and
- (c) the citizenry to whom the government of the occupying power and state parties to the Convention are accountable.

Under conditions of international armed conflict and belligerent occupation, political authorities and their military forces gain control over civilians and other persons to whom they recognize no accountability; these civilians and other persons risk falling outside the protection of national law and any guarantees of basic human rights operative within the occupant's own system of law and custom. In order to reduce the vulnerability of such persons, and guarantee a minimum standard of human rights observance in such circumstances, state parties to international humanitarian law have undertaken to ensure respect for certain basic human rights by assuming the role and duties of guarantors and by implementing those rights through instruments of international treaty law that directly prescribe basic universal limits, indirectly protect basic universal entitlements, and mandate action by state guarantors.

International humanitarian law binds political authorities to a set of obligations, and commits them to hold themselves and their agents accountable for the treatment of protected persons under their control in accordance with those obligations. International humanitarian law also establishes interstate accountability allowing third party states to ensure that such obligations and protections are respected in the event that parties to a conflict themselves fail to implement their own commitment to ensure respect through their own instruments of enforcement.

In this final section of the 1990 report, al-Haq presents material excerpted from its ongoing review of states' practice relative to the implementation of international humanitarian law in the Occupied Territories, with a view toward promoting scrutiny of the causes underlying the dysfunction of that law. The enforcement of international humanitarian law ultimately relies on the willingness of the high contracting parties to the 1949 Fourth Geneva Convention to take political action -- individually, in regional or cooperative groupings, or through the organs of the UN -- to ensure respect for the Convention in the event that anyone of their number persists in its violation. The need for political action to ensure Israel's respect for the Convention has been addressed in al-Haq's previous annual reports. This year's review focuses on states who have, in varying degrees, the means to

ensure Israel's respect for the Convention -- as they are obliged to do under Article 1 -- through instruments of national policy, or through the instruments at the disposal of the regional or international institutions in which they participate. These states include:

- (a) the US, the high contracting party to the Convention widely considered to be best equipped to prevail upon Israel to respect its obligations under the Convention;
- (b) the member states of the EC, which have a substantial capacity to influence Israel's behavior in the context of their developing economic cooperation;
- (c) the USSR, which, over the period under review, was engaged in negotiating the restoration of full diplomatic relations with Israel;
- (d) the members of the UN Security Council during the period under review, in light of the executive powers vested in the Council.

The review takes note of several significant actions and developments of policy that have signaled a readiness amongst certain international parties to broaden the range of measures taken individually and jointly in order to ensure Israel's respect of the Convention. The review also takes note of other significant actions and developments of policy that were antipathetic to such law-based action, or served to undermine efforts to secure the implementation of international humanitarian law.

Third Party Practice:

Historical Background -- In the past, al-Haq has called directly upon state parties to the 1949 Fourth Geneva Convention to ensure Israel's respect for the Convention in the Occupied Palestinian Territories, pursuant to Article 1. Al-Haq has called upon those state parties with a consular presence in occupied East Jerusalem to monitor and intervene against ongoing violations on the ground. Al-Haq has reminded state parties of their obligation to pass legislation providing for the criminal prosecution of individuals responsible for committing grave breaches of the Convention and called upon those parties who have done so to exercise universal jurisdiction to repress grave breaches committed in the Occupied Territories. Finally, al-Haq has called upon all state parties to employ their instruments of national policy to prevail upon Israel to respect the Convention as a matter of law.

A clear international consensus has existed since the beginning of the occupation on the applicability of the 1949 Fourth Geneva Convention to all the territories occupied by Israel in 1967 -- that is, the Palestinian territories of the West Bank (including East Jerusalem) and Gaza Strip, the Syrian Golan Heights, and the Egyptian Sinai territory (until its return to Egypt following the Camp David Accords). The consensus on the applicability of the Convention to the Occupied Palestinian

Territories is frequently reaffirmed in resolutions by the UN General Assembly and Security Council. The ICRC, widely recognized as the guardian of the four Geneva Conventions of 1949, has repeatedly reaffirmed the applicability of the Fourth Geneva Convention to the territories occupied by Israel since 1967.

For their part, successive Israeli governments have refused to recognize the applicability of the Convention to the Occupied Territories, although they have declared a willingness to abide by what they refer to as the "humanitarian" provisions of the Convention. The official position on the Convention has effectively been maintained since October 1967, when an article in Military Proclamation No. 3 (7 June 1967) requiring the Israeli armed forces to apply the terms of the Convention was cancelled.³ East Jerusalem has been annexed and subjected to Israeli municipal law. Neither this annexation nor the Israeli government's position regarding the Convention is accepted by the international community.

Since 1979, al-Haq has been documenting violations of the 1949 Fourth Geneva Convention by agents of the Israeli military authorities in the Occupied Territories. Al-Haq's experience in the field has led it to call upon the international community to persuade Israel to apply and abide by the Convention as a matter of the greatest priority. With no recognition of its position as an occupying power, and refusing therefore to be bound by the rules and regulations governing the conduct of a belligerent occupier, Israel has in effect been conducting its occupation outside any recognized legal framework for over two decades. The fundamental protections guaranteed the civilian population of occupied territories under the Convention cannot be realized in a system where the authorities deny the applicability of that law and their judicial system fails to challenge that position. The internal mechanisms of enforcement contained in the Convention⁴ are therefore rendered non-operative. An occupying power has been allowed to engage in the extensive and systematic violation of provisions of the Convention in fulfillment of its own political agenda.

Major Currents and Trends During 1990 – During the course of 1990, two opposing currents were evident with regard to the place given to international humanitarian law in addressing the problems of the region. On the one hand, increasing reference

³ See Raja Shehadeh, *Occupier's Law: Israel and the West Bank* (rev.) (Washington: Institute for Palestine Studies, 1988), p. 43. Israel has never defined what it means by "humanitarian provisions"; in the view of the ICRC, as well as al-Haq, the Convention is humanitarian in its entirety.

⁴ These mechanisms include, for example, the Protecting Power, the procedures of conciliation, and investigation of violations.

was made to the obligation of third party states to ensure Israel's respect for the provisions of the 1949 Fourth Geneva Convention in the territories it has occupied since 1967. In their Dublin Declaration, the member states of the EC broke new ground in referring to the obligation to ensure respect for the Convention and calling for action to ensure the protection of the civilian population of the Occupied Territories. The year ended with a call by the UN Security Council, in Resolution 681, for state parties to ensure Israel's respect for the Convention. In addition, pursuant to Security Council Resolution (SCR) 681, the Secretary-General initiated a formal process of consultation with states and with the ICRC aimed at developing a framework for joint action in defense of the Convention and its implementation in the Occupied Palestinian Territories.

The implications of the Article 1 obligation were discussed by members of the international legal community at the Fifteenth Round Table of the International Institute of Humanitarian Law in San Remo under the auspices of the ICRC among others. The theme for the 1990 round table was ensuring observance of international humanitarian law, including a discussion on "the function, scope and limits of the obligation of third party states to ensure respect for international humanitarian law (Article 1 common to the four Geneva Conventions)." The summary of proceedings of the 1990 round table reads as follows in this regard:

Although the participants in the 1949 Diplomatic Conference did not intend the phrase 'ensure respect for' to engage the responsibility of third States, it had now become clear that Article 1 created both a right and an obligation for third States to ensure respect for IHL [international humanitarian law]. This was the view taken by the working group, who pointed out that the adoption of the expression 'ensure respect for' related to the actual implementation of IHL, especially as concerned breaches of its provisions, and also covered the taking of preventive measures....⁵

Consistent with this position and out of concern for violations of the

⁵ Fifteenth Round Table of the International Institute of Humanitarian Law, San Remo, 4-8 September 1990. Proceedings reported in *International Review of the Red Cross*, No. 280, January-February 1991. The annual round table at San Remo is convened under the auspices of the ICRC, the UN High Commissioner for Refugees, the UN Centre for Human Rights, the International Organization for Migration, and the League of Red Cross and Red Crescent Societies. At the invitation of the conveners, al-Haq participated in the panel for the discussion on the Article 1 obligation, held on 4-5 September.

Convention in the Occupied Palestinian Territories, the ICRC reportedly approached certain state parties to the Convention with a view to eliciting action aimed at prevailing upon Israel to curtail certain violations of the Convention.

On the other hand, the year also saw significant entrenchment of the positions of certain state parties, most notably the US, that appeared to view efforts to implement international humanitarian law with regard to the Occupied Palestinian Territories as disruptive to their diplomacy in the region. This tendency was most clearly articulated in the US veto of a draft Security Council resolution on 31 May and its consistent avoidance of reference to the Convention and international law in its treatment of Israeli settlement policy.

Despite the explicit and vigorous condemnation contained in SCR 670 of grave breaches committed in the course of Iraq's occupation of Kuwait, the Council failed to address the grave breaches of the Convention committed by the Israeli government in the Occupied Palestinian Territories, based in some cases on declared Israeli government policy; nor did the Security Council directly address Israel's settlement policy.

Action by State Parties to the Convention –

A. The USSR:

The Union of Soviet Socialist Republics, which established full consular ties with Israel in October, expressed serious concern at Israel's settlement policy during the course of 1990, and voiced particular dismay about the settlement of Soviet Jewish immigrants to Israel in the Occupied Palestinian Territories. In January, protracted discussions about the institution of direct flights between Moscow and Tel Aviv were apparently about to bear fruit when Prime Minister Yitzhak Shamir, addressing a Likud meeting, was quoted as stating that "big immigration requires Israel to be big as well."⁶ This statement was widely interpreted as meaning that the large-scale immigration from the USSR justified or required Israel's retention of the Occupied Territories. The USSR subsequently announced that it would not implement the agreement for the initiation of direct flights reached between Aeroflot and El Al as planned.⁷ In March, the head of the Soviet Foreign Ministry Commis-

⁶ "Shamir: We Need the Areas to Settle Soviet Immigrants," *Jerusalem Post*, 15 January 1990.

⁷ "Shamir Reassures Bush: No Budget Increase to Settle Olim in West Bank," *Jerusalem Post*, 27 February 1990.

sion on Human Rights and Humanitarian Affairs stated that direct flights would only be instituted once it was clear that Israel was not encouraging Soviet immigrants to settle in the Occupied Territories, adding:

The Soviet Union recognizes Israel's right to exist as a state in the Middle East. Neither the US nor the USSR will allow an attack on Israel. So why does the Israeli government use emigres from the Soviet Union for goals contrary to international law?⁸

The Israeli authorities reacted by maintaining that under one percent of the Soviet immigrants to Israel had settled in the Occupied Territories. This issue was to provoke further debate later in the year, when it transpired that the Israeli authorities were excluding from this figure those Soviet immigrants settling in occupied East Jerusalem.

B. The USA:

The US State Department produces an annual publication entitled *Country Reports on Human Rights Practices*, in accordance with the Foreign Assistance Act of 1961. Under section 116(d)(1) of this act, the secretary of state is bound to furnish a "full and complete" report to Congress "with respect to practices regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance." Israel is the recipient of the largest single portion of security assistance granted by the US to any country and its conduct in matters of human rights is therefore subject to this scrutiny.

Al-Haq takes an interest in the US *Country Reports* in reference to the Occupied Palestinian Territories on the basis that as a Palestinian human rights organization, al-Haq wishes to ensure that the human rights situation in the Occupied Territories is accurately portrayed to the outside world, including the US Congress, whose members are required to take these reports under consideration in making decisions on providing foreign assistance. Al-Haq has issued a response to the US *Country Reports* on four occasions; in its response to the 1990 report, al-Haq concluded its analysis as follows:

Whereas in the past two years the *Country Report* has exhibited a relatively even-handed approach, the 1990 US State Department *Country Report on Human Rights Practices in the Occupied*

⁸ Yuri Reshetov, quoted in "Soviet Official Links 'Big Israel' Statement, Settlement in Areas to Halt in Direct Flights," *Jerusalem Post*, 29 March 1990.

Territories marks a significant regression in terms of objective reporting and impartial evaluation.⁹

The response by al-Haq identified and analyzed a number of distortions in the 1990 *Country Report* including:

an uneven presentation of the human rights context; misleading statements (ranging from misrepresentations to understatement); omissions (including partial exposition of the facts and a failure to draw conclusions or comment); and inaccurate and inconsistent use of law and legal standards.¹⁰

Al-Haq concluded that "the sum effect of these defects is to prejudice the report's overall reliability."¹¹

In general, the US has demonstrated a preference for addressing itself to specific practices carried out by Israel in violation of international humanitarian law in political rather than legal terms.¹² Over the course of 1990, this approach was particularly evident with regard to Israel's settlement policy, which will be considered in detail here as a case study. The tone was set early in the year at a February press briefing by White House spokesperson Marlin Fitzwater. The *Jerusalem Post* described Fitzwater as "refusing to be drawn into the debate over the legality of the

⁹ See Al-Haq, *Response to the US State Department Country Report on Human Rights Practices for 1991: The Occupied Territories* (Ramallah: Al-Haq), May 1991, p. 19. Al-Haq also issued responses to the 1983, 1984, and 1989 US *Country Reports*.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Although the US did, for example, classify deportations as violations (although not grave breaches) of the 1949 Fourth Geneva Convention when it threatened to use its leverage in order to prevent Israel from carrying out further deportations at one point in the summer of 1988, it used a political argument rather than binding its action to the requirements of international law. The result of this was that Israel eventually resumed deportations without penalty. For a further discussion of international action against the deportation of Palestinians, see Al-Haq, *A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1989* (Ramallah: Al-Haq, 1990), pp. 315-316.

Jewish settlements in the territories," although he described them as an "obstacle to peace." In the same article, the *Jerusalem Post* reporter commented that:

The Carter administration had branded the settlements as being illegal under international law -- a position dropped by the Reagan administration. The Bush administration has, so far, gone along with the Reagan approach and refused to say whether the settlements are in fact legal.¹³

Later that month, the *Jerusalem Post* reported that US Secretary of State James Baker had "quietly killed a secret study by the National Security Council (NSC) on the legality of West Bank settlements," apparently commissioned either by Brent Scowcroft, the head of the NSC, or by White House Chief of Staff John Sununu. The *Post* article cited two different views as the basis for the cancellation of the study: either James Baker "did not wish to cause greater friction with Prime Minister Shamir at the very time that the US wants Israel to make significant concessions to open the way to an Israel-Palestinian dialogue," or Baker was "unsure about the results of the study."¹⁴ The *Post* article quoted observers as believing that the study had been commissioned in order "to produce the necessary evidence to cause a [US] policy shift and to lead to a stiffer condemnation [of Israel]."

The same day, it was reported that the US had drawn up a draft resolution for the Security Council after the USSR had asked the Council to debate the issue of Soviet immigration and settlement. Arab diplomats reported that the US working paper "regretted" the settlement of Jewish immigrants in the Occupied Territories but did not call the policy illegal.¹⁵

The discussions on the content of a Security Council resolution on settlements continued for several months, against the immediate background in March of a public dispute between Washington and Israel over the status of East Jerusalem and the settlement of Soviet immigrants there. President Bush was said to have been alarmed by an internal State Department report showing that over 10 percent of all Soviet immigrants were settling in East Jerusalem and assertions by

¹³ "White House Again Appeals to Moscow," *Jerusalem Post*, 21 February 1990.

¹⁴ "Secret US Study on Legality of West Bank Settlements Shelved by Baker," *Jerusalem Post*, 26 February 1990.

¹⁵ "Arabs: US Wants UN to 'Regret' Settling Immigrants in Areas," *Jerusalem Post*, 26 February 1990.

Yitzhak Shamir that Israel was encouraging their settlement there as a matter of policy.¹⁶ The Bush administration responded by publicly announcing its opposition to the settlement of Soviet immigrants in East Jerusalem, as well as in the rest of the Occupied Palestinian Territories, with a spokesperson clarifying that this did not represent a change in US policy since they had always regarded East Jerusalem as occupied territory. The *Jerusalem Post* reported that a formal position paper on this subject was delivered to the Israeli government.¹⁷ By mid-March, however, President Bush was refusing to discuss the issue in public because of the "sensitivities" it aroused.¹⁸

The issue of settlements in East Jerusalem became prominent again in October. At the beginning of March the US administration had made it clear that if they were to support Israel's request for a government guarantee of a US\$400 million loan for the housing of Soviet immigrants, Israel would have to agree to apply to the loan the standard contractual clause governing annual aid to Israel. This clause stipulates that none of the funds received from the US would be used beyond the Green Line that separates Israel from the Arab territories it occupied following the 1967 war; this would include Arab East Jerusalem. The US also raised concern about the fungibility of the proposed funds, which while not being directly used beyond the Green Line might free other funds for such use.¹⁹ In June, the State Department had appeared optimistic that assurances from the Israeli government in

¹⁶ "US Insists East Jerusalem is Occupied Territory," *Jerusalem Post*, 6 March 1990.

¹⁷ "Washington Disappointed," *Jerusalem Post*, 12 March 1990.

¹⁸ "Bush 'Doesn't Regret' Comments on Settlements in East Jerusalem," *Jerusalem Post*, 14 March 1990. The article quoted Bush's comments in a televised news conference on 13 March. The next day, the *Post* revealed that Bush had written a letter to Teddy Kollek, the mayor of Jerusalem, opposing any effort "to promote the division of Jerusalem," stating that the US "was not anxious to raise the entire Jerusalem issue at this sensitive point," and omitting any reference to East Jerusalem as occupied territory ("Bush to Kollek: Jerusalem Must Never Again Be Divided," *Jerusalem Post*, 15 March 1990).

¹⁹ See, for example: "US Insists East Jerusalem is Occupied Territory," *Jerusalem Post*, 6 March 1990; "Jerusalem Protests to US," *Jerusalem Post*, 7 March 1990; "US Stalls on \$400 M. Loan Until New Government is Formed," *Jerusalem Post*, 7 March 1990.

this regard would be forthcoming.²⁰ However, in October, both Israeli Housing Minister Ariel Sharon and Prime Minister Yitzhak Shamir insisted publicly that Soviet immigrants could and would be settled in East Jerusalem, and the Israeli cabinet discussed ways of encouraging settlement in Jerusalem.²¹ Meanwhile, the US administration insisted that a letter by Israeli Foreign Minister David Levy committed Israel to not using the US\$400 million housing loan guarantees anywhere in the territories occupied in 1967, including East Jerusalem. State Department spokesperson Margaret Tutwiler revealed that in Levy's letter of 2 October,

Levy said it was not the policy of the Israeli government "to direct or settle Soviet Jews beyond the Green Line," marking territories occupied by Israel since 1967, and the Israeli foreign minister assured Baker that "no special incentives" exist or will be offered to Soviet Jewish immigrants to do so.²²

A second letter from Levy arrived in the US on 18 October, and Tutwiler declared that the assurances received in the earlier letter had not been retracted or called into question by the later one.²³

At the end of October, James Baker delayed the working visit of a US delegation due to discuss implementation of the housing loan guarantee, after Ariel Sharon announced his decision to build 15,000 housing units in East Jerusalem.²⁴

²⁰ State Department news briefing by Spokesperson Margaret Tutwiler, 25 June 1990.

²¹ For example, see: "Shamir Vows New Immigrants Will Be Housed in East Jerusalem," *Jerusalem Post*, 8 October 1990; "Sharon: All of Jerusalem Open to Immigrant Housing," *Jerusalem Post*, 15 October 1990; and "Levy Admits Error in Letter to Baker," *Jerusalem Post*, 17 October 1990.

²² US State Department news briefing by Margaret Tutwiler, 19 October 1990.

²³ *Ibid.* Tutwiler said that the letter received on 18 October did not alter the first letter and "both letters speak for themselves." She pointed out that "in our view, the letter [from Levy] just received was written in response to press commentary and political debate within Israel that had the effect of distorting the meaning and intent of the October 2 letter."

²⁴ "Baker Delays Implementing Housing Loan Guarantee," *Jerusalem Post*, 31 October 1990.

The State Department played down any direct connection between the two decisions, insisting that "there is a great deal of detailed, technical work that needs to be done" and that the US team would be leaving for Israel "soon."²⁵ No date was set, however, and by the end of the year the requested Israeli guarantees had not yet been given and the package had still not been implemented.²⁶

For its part, Israel did not indicate any readiness to reconsider or modify its settlement policy. With the formation of a new government under Shamir in May, the *Jerusalem Post* reported that the guidelines for the new government included a general reference to "bolstering settlements."²⁷

The US continued to negotiate on the proposed text for a Security Council resolution on Israeli settlements and the issue of Soviet immigration. In May, there were reports that the US was undecided as to whether or not to veto a "hard-line" text, which would include a reference to the illegality of the settlements under the 1949 Fourth Geneva Convention. The *New York Times* reported:

[Israeli] Foreign Minister Moshe Arens accused Washington today [May 10] of cooperating with Arab nations to frame a United Nations resolution condemning settlements of Soviet Jews in the occupied

²⁵ State Department news briefing by Margaret Tutwiler, 2 November 1990. Tutwiler informed the press corps that there were no substantive issues delaying implementation of the loan program.

²⁶ On 6 January 1991, the *Jerusalem Post*, in an article entitled "Israel Wants US to Rush Housing Loan Guarantees," reported that US State Department officials had said that the State Department "would be willing to implement the guarantees in two installments -- one in March and another in October." The Israeli ambassador to the US was quoted as commenting that Israel did not accept that position and would "continue to insist on having the money as soon as possible." State Department officials had insisted that the problem was technical, but "Israeli officials and American Jewish leaders have charged that the US is purposely stringing out the implementation of the guarantees in order to ensure that Israel abides by its commitment not to direct Soviet immigrants to the [occupied] territories."

²⁷ "Nahal Outposts in Territories," *Jerusalem Post*, 23 May 1990; and "Aliya and Absorption are the First Priorities," *Jerusalem Post*, 10 June 1990.

West Bank and Gaza Strip.²⁸

Arens summoned the US ambassador to protest and, according to the *Times*, stated that Israel expected the US to oppose such a resolution.²⁹ The preamble of the draft resolution reaffirmed a 1980 resolution of the Security Council, SCR 465, which had called for the dismantling of the settlements; it further declared the need for the impartial protection of the Palestinian population. Within a few days, however, the *Jerusalem Post* was reporting that the US had persuaded the sponsors of the resolution to remove the reference to the illegality of the settlements under the 1949 Fourth Geneva Convention and the clause in the preamble that specifically included East Jerusalem as an area where Soviet immigrants should not be allowed to settle, and had informed Arab states that it would oppose a harsher text were it to be voted on.³⁰ The vote was postponed until later in May, to be drastically overtaken by UN statements and actions with regard to the killing of seven Palestinian workers on 20 May at Rishon Letzion inside Israel.

Against a background of ongoing settlement activity and despite clear public statements of intent to intensify such activity by members of the Israeli cabinet, the US administration continued to address Israeli settlement policy in purely political terms throughout the year, i.e. as an "obstacle to peace."

This position was maintained in the 1990 US State Department *Country Reports*. The report addresses Israel's settlement policy as "discriminating policies or practices affecting land" and avoids specific reference to the fact that the policy in question is in direct violation of international humanitarian law, as well as of

²⁸ "Special Report from Jerusalem," *New York Times*, 10 May 1990. The article further quoted Arens as stating in an interview on Israeli radio that day: "There is no doubt we are going through a period of tension with the United States. We have [had] disagreements with the United States on certain subjects for many years -- with this administration particularly on the subject of anything connected to settlement."

²⁹ *Ibid.*

³⁰ "US May Let Weakened Anti-Israel Resolution Pass Security Council," *Jerusalem Post*, 14 May 1990; and "US Retreats from Censure of Israel in UN," *Jerusalem Post*, 17 May 1990.

customary international law prohibiting annexation.³¹

The apparent reluctance of the US to place Israel's settlement activity in the context of international law can be contrasted with: (a) Security Council resolutions from earlier years declaring the settlements illegal; (b) the position of the ICRC, which holds such settlements to be a breach of the 1949 Fourth Geneva Convention; and (c) the position of the EC, reiterated during the year, that "Jewish settlements in the territories occupied by Israel since 1967, including East Jerusalem, are illegal under international law."³²

C. Member States of the European Community:

The member states of the EC have established the practice of making regular policy declarations on the Middle East in the summits of heads of state and government at the end of the rotating presidency. Statements are also issued by the President on behalf of the EC or by the twelve Foreign Ministers of the Community's member states at other times. These declarations often include references to international law and customary norms.

The Dublin Declaration

On 26 June 1990, EC states under the presidency of Ireland referred for the first time to the obligation of state parties to "respect and to ensure respect" for the 1949 Fourth Geneva Convention in the "Declaration by the Twelve on the Middle East" made in Dublin:

The European Council refers to the obligation on parties to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War to respect and to ensure respect for its provisions. The Twelve have repeatedly called on Israel to adhere to its obligations

³¹ Section 5 of the report notes that "Israeli citizens have been accorded the right to reside in the Occupied Territories under Israel's Law of Return." It then goes on: "Israel continued to place land under its control for military purposes, roads, settlement of Israelis, and other purposes which restrict use by Palestinians and discriminate in favor of Israeli settlers against Palestinians...." (see Al-Haq, *Response*, pp. 14-15).

³² "Declaration by the Twelve on the Middle East," Dublin, 26 June 1990. On 20 February 1990, the foreign ministers of the Twelve meeting in Dublin issued a "Declaration on the Extension of Jewish Settlements in the Occupied Territories."

towards the Palestinian population in the territory under its occupation which is protected by that Convention. They have observed that it has notably failed to do so in a number of important areas. Concerned that the human rights of the population of the Occupied Territories continue to be inadequately protected, the European Council calls for further action, in accordance with the Convention, to ensure that protection.

According to a London newspaper, a draft version of the statement had urged state parties to the Convention to "respect and ensure respect for its provisions." This stronger phrasing was clearly toned down during the "fine-tuning" of the statement.³³ Nevertheless, the statement broke new ground for the EC, including France and Britain, both permanent members of the UN Security Council.³⁴ In the Rome summit in mid-December, the European Council took the

³³ "EC Condemns Israel's Human Rights Record," *Independent* (London), 26 June 1990.

³⁴ Individual European states have also indicated increasing appreciation for the political significance of protecting human rights in the pursuit of conflict resolution. An example can be found in the following extract from the "Statement by the British Representative to the UN Commission on Human Rights" at its 46th session, 1 February 1990:

[R]espect for human rights has, also, a practical utility. Without it, there can be no lasting peace, whether in the Middle East or anywhere else. Of no region in the world is this more true than of the Occupied Territories. No solution for the problem of that unhappy area can be regarded as realistic unless it is based on full respect for all the human rights of the Palestinians including their right to self-determination, as well, of course, as the right of Israel to exist within secure and recognized boundaries.

Moreover, before any lasting peace can be achieved it is essential to create a better climate of trust and mutual confidence between Israelis and Palestinians in the Occupied Territories than, unhappily, exists at present. Here, too, respect for human rights and full observance of Israel's international obligations in that regard is the key. A real obstacle to the creation of a better climate is Israel's continuing refusal to acknowledge that the provisions of the relevant international agreements are applicable to the Occupied Territories.

unusual step of commenting on a matter -- the October report of the Secretary-General -- still under discussion by the Security Council. The "Rome Declaration" stated:

The European Council calls once again upon Israel to comply with Resolutions 672 and 673 of the UN Security Council, to act in conformity with its obligations under the Fourth Geneva Convention on the Protection of the civilian population, and to cooperate with the United Nations. It welcomes the recommendations by the UN Secretary-General in this regard and fully supports every effort of the UN Security Council to achieve a better protection of the Palestinian population and to promote peace in the area.

While making clear its position with regard to the necessity for obtaining Israel's compliance with the provisions of international humanitarian law in the Occupied Palestinian Territories, the EC nonetheless refrained, in general, from treating Israel's refusal to abide by the Convention in the Occupied Territories as an obstacle to the expansion of EC-Israel cooperation, and made no effective provision for ensuring Israel's respect within the context of that cooperation.

The Closure of Palestinian Universities

In only one instance in 1990 was an effort made to apply the incentive of expanded European cooperation with Israel towards achieving the protection of a recognized right of the Palestinian population -- that of education. The action in question was taken in the middle of February by the European Commission, and not by EC states, following a recommendation by the European Parliament occasioned by the prolonged closure of institutions of higher education in the Occupied Territories.³⁵

³⁵ The European Parliament consists of members directly elected by the electorate of each member state (of the European Community); the number of MPs from each state in the European Parliament therefore varies in accordance to the size of the population. The Parliament has supervisory powers over the European Commission and Council, the right of participation in the legislative power of the European Community, and budgetary powers. The European Council consists of the heads of state of EC member states and the president of the Commission of European Communities. The Council is responsible for forming the economic and political guidelines of the EC and translating these guidelines into EC decisions. The Commission of European Communities is formally independent of the national governments of EC member states; it is made up of 17 Commissioners (at least one

On 14 December 1989, the European Parliament had passed a resolution deploring the restrictions imposed on schools and universities in the Occupied Palestinian Territories and calling upon each of the member states of the EC "to consider at a national level the possibility of suspending certain bilateral cultural agreements with the State of Israel until the educational establishments in question have been unconditionally and definitively opened."³⁶ The resolution referred to earlier calls made by the European Council on the matter, particularly a declaration on 5 December 1989, which had called on the Israeli government to put an immediate end to its policy of closing universities and other institutions of higher education in the Occupied Palestinian Territories.

On 18 January 1990, the Parliament passed a further resolution on the subject, noting that all Palestinian universities had remained closed since January 1988 and calling on the Commission of European Communities to "freeze immediately budget heading 7394 allocated to scientific cooperation with Israel."³⁷

The recommendation came at a time when the Commission and Israel were preparing for the approval of some 27 new joint research projects. Israel's reaction was to condemn the resolution as "a one-sided resolution that doesn't help the peace process, because it encourages extremist tendencies among university students."³⁸

and no more than two from each EC member state) heading various areas of reciprocity. The Commission drafts EC legislation and implements EC measures.

³⁶ Adopted on 14 December 1989. The following was included in the text:

F... emphasizing that the right to education is protected by the Fourth Geneva Convention of 1949 (Article 50) and the Universal Declaration of Human Rights (Article 26(1)),

G... whereas, furthermore, the closure of schools and universities by the Israeli authorities constitutes a collective penalty which is absolutely prohibited by Article 33 of the Fourth Geneva Convention....

³⁷ European Parliament, "Resolution on Repression in the Israeli-occupied Territories" adopted on 18 January 1990. Moved jointly by representatives of the Left Unity Group, Green Group, Group for the European Socialist Left, and Socialist Group.

³⁸ A "senior Foreign Ministry official" quoted in "European Parliament Votes to Punish Israel," *Jerusalem Post*, 21 January 1990.

The *Jerusalem Post* reported that a freeze would cut Israeli university research funds by US\$2 million.³⁹ At the time, several EC member states were preparing bilateral scientific cooperation agreements with Israel.⁴⁰

By the middle of February, the European Commission froze consideration and funding of all new projects, immediately affecting the 27 projects still under consideration.⁴¹ European Commissioner for Mediterranean Affairs Abel Matutes had been scheduled to visit Israel in the spring in order to attend a meeting of the steering committee on scientific cooperation with Israel. This visit was postponed indefinitely. The Commission also froze its planned participation in a seminar on the consequences for Israel of the 1992 economic integration of Europe, which led to the suspension of the seminar itself.⁴² The Israeli Foreign Ministry issued a statement saying:

Israel flatly rejects the attempts by the Commission of the European Community and European Parliament to suspend certain activities with Israel. This is an attempt to use punitive economic measures

³⁹ "Israel Hopes EC Won't Suspend Science Projects," *Jerusalem Post*, 22 January 1990. The article quoted Arye Shumer, the director-general of the Science and Technology Ministry, speaking on Israel Radio (Voice of Israel), as saying that "[f]or the [Israeli] universities, the European Community is one of the most important channels for receiving funds."

⁴⁰ France, Portugal and Spain were listed as increasing bilateral cooperation agreements with Israel at this time (*Europe*, No. 5189, new series, 8 February 1990, p. 7). Ten days after the recommendation from the European Parliament, France and Israel reached accords in Jerusalem for joint research in super-computer software and hardware and in biotechnology. The accords were reported to involve US\$500,000 to be invested by each country over the next two years. The *Jerusalem Post*, reporting the agreements, quoted the Science and Technology Ministry Director-General, Arye Shumer, as observing that they "show that scientific cooperation with the European Community continues despite an EC decision to limit scientific ties with Israel as a punishment for its policies in the [occupied] territories" ("France and Israel Science Pact Signed Despite EC Sanctions," *Jerusalem Post*, 29 January 1990).

⁴¹ Projects already in place were not affected.

⁴² *Europe*, No. 5189, (new series), 8 February 1990 p. 8; recapped in *Europe*, No. 5420, (new series), 30 January 1991, p. 9.

against Israel. Such measures will only achieve the opposite of their intended purpose.⁴³

Israeli diplomatic sources were reported to be "fiercely lobbying" the member states of the EC -- whose foreign ministers met in Dublin in the week of 20 February - in order to secure a declaration of opposition to the measures taken by the Commission; these sources were reported to be "cautiously optimistic" of their chances of success, particularly given West German Foreign Minister Hans Dietrich Genscher's statement to Israeli Foreign Minister Moshe Arens that West Germany opposed sanctions against Israel and would urge other European countries to take the same position.⁴⁴ After the Dublin meeting, Israeli Foreign Ministry sources claimed that "all the foreign ministers expressed their fundamental opposition to the use of economic and science-related sanctions for political purposes" and expressed hope that the Community would rescind the measures taken in regard to Israel.⁴⁵ However, an EC spokesperson was reported by the *Jerusalem Post* as saying that "the subject of scientific cooperation was not mentioned in Dublin."⁴⁶

In the context of the war in the Persian Gulf, Commissioner Matutes announced the resumption of talks with Israel on new scientific projects in January 1991.⁴⁷

⁴³ "Jerusalem Lobbies Against European Sanctions," *Jerusalem Post*, 18 February 1990.

⁴⁴ *Ibid.*

⁴⁵ "Foreign Ministry Claims EC Sanctions Are Off -- But EC Disagrees," *Jerusalem Post*, 23 February 1990.

⁴⁶ *Ibid.*

⁴⁷ This occurred against a background of missile attacks on Israel and 24-hour curfew on the entire Occupied Territories (excluding parts of East Jerusalem). The decision, announced in Jerusalem by Matutes, was reported in the *Financial Times* (London), 26-27 January 1991. The Belgian newspaper *Le Soir* ("La CEE Recompense Israel," 26/27 January 1991) quoted a spokesperson for Matutes at the Commission as saying that the decision was "in line with recent declarations by the Twelve and the European Parliament;" and that the "situation in the occupied territories has moreover improved. Several universities have been reopened."

The United Nations –**A. Veto of the "Protection Resolution" in the Security Council:**

After the murder of seven Palestinian workers at Rishon Letzion on 20 May, at least 15 other Palestinians were killed and an estimated 2,000 were wounded by the Israeli army and settlers during the ensuing protests in the Occupied Palestinian Territories. The attention of the international community turned to the question of protection of the civilian population. Representatives of Palestinian groups and institutions in the Occupied Territories appealed to state parties to the 1949 Fourth Geneva Convention to respond to the serious and persistent violation of international humanitarian law by the Israeli authorities through the immediate convening of the Security Council, the initiation of an independent international investigation into the events in the Occupied Territories since the Rishon Letzion murders, and the provision of some form of effective international protection.

The ICRC, describing the Occupied Territories as "the scene of violence and repression resulting in fatalities and hundreds of casualties," urged the Israeli occupying power "to ensure that the life and physical integrity of the civilian population are respected."⁴⁸ The member states of the EC, declaring themselves "shocked and saddened," referred to "the use of excessive force" and called on the Israeli authorities to exercise the utmost restraint.⁴⁹ The US similarly called for restraint.⁵⁰ The UN Secretary-General reminded the international community that "[t]ime and again during the past two and a half years, the Palestinians have appealed for measures to ensure their safety and protection."⁵¹

Discussions began on the possible text of a Security Council resolution, concentrating on the dispatch of a UN team to the Occupied Territories in an attempt

⁴⁸ ICRC press release, 21 May 1990.

⁴⁹ "Statement of the Twelve on Palestinian Deaths in Israel and the Occupied Territories since 20 May," Brussels, 22 May 1990.

⁵⁰ State Department news briefing by Spokesperson Richard Boucher, 21 May 1990. He noted that "[t]he important thing in our mind is to have all sides make an effort to reduce tensions and, specifically, for the Israeli government to take whatever steps it can to exercise restraint and avoid the kind of casualties we've seen so far."

⁵¹ "Arab States Want Security Council Meeting," *United Nations Report*, 21 May 1990.

to provide a form of international protection. US Secretary of State James Baker stated at a White House press conference on 23 May that the US would be prepared to discuss the dispatch of a UN team as was done in January 1988, although it remained opposed to any suggestion for permanent observers.⁵²

A special two-day Security Council session on the subject ended without agreement being reached on whether or not to dispatch UN observers to the area and the discussions continued.⁵³

A draft resolution sponsored by Colombia, Cote d'Ivoire, Cuba, Ethiopia, Malaysia, Yemen, and Zaire was put to the Security Council in New York on 31 May. The draft text included the following provisions:

Reaffirming that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem,

Bearing in mind that any deliberately planned act of violence in the region is a blow to peace,

1. *Establishes* a Commission consisting of three members of the Security Council, to be dispatched immediately to examine the situation relating to the policies and practices of Israel, the occupying power, in the Palestinian territories, including Jerusalem, occupied by Israel since 1967;

2. *Requests* the Commission to submit its report to the Security Council by 20 June 1990, containing recommendations on ways and means for ensuring the safety and protection of the Palestinian

⁵² State Department news briefing by Margaret Tutwiler, 24 May 1990.

⁵³ *Ibid.* Also reported in "US Ready to Consider UN Observers in Areas," *Jerusalem Post*, 24 May 1990; and "No Accord at Geneva on UN Observers," *Jerusalem Post*, 27 May 1990. The 24 May *Post* article also observed that "US officials adamantly denied there had been any agreement to refrain from vetoing an Arab-sponsored resolution in exchange for the PLO's agreement to move the special session [of the Security Council] to Geneva to spare the US a visa request for Arafat." See also *Jerusalem Post*, "US Backs UN Chiefs 'Probe Team' for Areas," 28 May 1990.

civilians under Israeli occupation.

During the discussions at the Security Council before the vote on the draft resolution, the Permanent Observer of the League of Arab States to the United Nations described the objective of the discussions by the Security Council as being to establish "a mechanism to protect the Palestinians, pending a resolution of this conflict."⁵⁴ The representative of Israel declared an uncompromising position on behalf of his government:

Israel is the exclusive and only authority responsible for the restoration of peace and tranquility in the [occupied] territories. Even if Israel, as some here have claimed, is labelled an 'Occupying Power,' then the applicable legal regime is defined by the Fourth Geneva Convention, referred to in the draft resolution, which states categorically that Israel is the exclusive legal authority in the [occupied] territories.

I must therefore reject in its totality the idea of appointing a commission to examine the situation in the territories, and if such a commission is to be appointed, it will not be accepted by Israel.

The draft resolution was vetoed by the US in a vote of 14 to 1. Addressing the Security Council after the vote, US Ambassador to the UN Thomas Pickering stated that

the United States would support practical steps that respond to the spiral of troubling events. But we have made it clear that the steps must not set back the effort to move forward on the peace process as soon as possible. Such an approach, which has been undertaken in the past by the Secretary-General, seems to be the best way to serve the interests of the United Nations in examining the situation in the occupied territories.... The United States government continues to support a special envoy of the Secretary-General to be dispatched on an urgent basis to look at the situation and to report back to the Secretary-General....

The draft resolution before us today, however, seeks to advance a different vehicle, which we cannot support. We cannot entertain any

⁵⁴ Similar statements were made by the representatives of Japan and Pakistan, speaking as non-members of the Council.

hopes for its early or rapid implementation. It does not focus attention on the real needs of moving the peace process forward....

The US veto bore very serious implications for (a) Palestinians in the Occupied Territories; (b) the integrity of international humanitarian law; and (c) the role of the Security Council in regulating situations of international conflict. On 7 June, al-Haq and PHRIC issued a joint "Representation to State Signatories to the Fourth Geneva Convention" taking note of these implications. The representation was circulated to over 130 state parties to the Convention. In the introduction to the representation, the two Palestinian organizations took note of state parties' responsibilities under the terms of Article 1 of the Convention, stating:

As Palestinian human rights organizations dedicated to promoting the rule of law, we are deeply dismayed by the fact that a veto cast by a permanent member of the Security Council effectively frustrated the effort to implement a measure of international protection through the agency of the United Nations. Moreover, as human rights organizations, we are acutely concerned by the destructive consequences of allowing the protections of international law to be rendered impotent by the action of a single government.

B. Mission of the Secretary-General's Personal Envoy:

Having been denied a formal mandate from the Security Council to take further action, UN Secretary-General Perez de Cuellar sent a personal envoy, Jean-Claude Aimee, to the Occupied Territories to assess the situation. On his envoy's return, de Cuellar issued a brief statement to the press, noting that "[t]he principal concern conveyed by the Palestinians was their profound feeling of vulnerability resulting from lack of protection."⁵⁵ On 13 July, the secretary-general made a statement to the Security Council in which he informed its members that he "intended to pursue [his] initiative with the Israeli authorities in an effort to persuade them to comply fully with their obligations under the Fourth Geneva Convention"; he "stressed that if the high contracting parties felt that further measures ... were required, then it was up to them to take such a decision under procedures that were clearly spelled out in the Fourth Geneva Convention."⁵⁶

⁵⁵ "Statement on Occupied Territories Report," *United Nations Report*, 5 July 1990. Aimee visited the Occupied Territories from 22 June through 1 July 1990.

⁵⁶ Report submitted to the Security Council by the secretary-general in accordance with SCR 672 (1990) 31 October 1990.

C. Statement by the UN Security Council President on the Gaza Clinic Incident:

Even before the envoy of the UN secretary-general had left for the Occupied Territories, the Security Council was once again confronted with a serious violation of international humanitarian law in the Occupied Territories. The particulars of this incident and its aftermath were reported as follows:

In a presidential statement dated 19 June 1990, the members of the Security Council strongly deplored the incident which had occurred on 12 June 1990 in a clinic belonging to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and located near to Shati [refugee] camp in Gaza, in which several innocent Palestinian women and children were wounded by a tear gas grenade thrown by an Israeli officer. Expressing dismay that the penalty imposed on that officer had been commuted, the members reaffirmed that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, was applicable to the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem, and requested the high contracting parties to ensure respect for the Convention. They called upon Israel to abide by its obligations under that Convention.⁵⁷

Although such presidential statements are seen as non-binding on member states and lack the force of a Security Council resolution, the use of the term "ensure respect" in this statement foreshadowed later developments within the Security Council itself.

D. Security Council Resolution 672:

On 5 October, the Security Council met again at the request of the delegation of Yemen to consider the situation in the Occupied Territories in the wake of the events in the Bureij refugee camp in the Gaza Strip. The delegate informed the Council that Yemen feared a "major confrontation" if Israel's violations in the Occupied Territories were allowed to continue in contravention of Security Council resolutions and informed the Council that Yemen intended to:

submit a draft resolution dealing with Israel's recent practices and

⁵⁷ Report of the secretary-general submitted to the Security Council in accordance with SCR 681 (1990).

forthrightly calling upon Israel to abide by the Geneva Convention and upon the Secretary-General to make an effort to protect the Palestinians.

The Council heard presentations from other delegates, including those of Israel and the chair of the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People. The UN representative of Palestine, Zuhdi Tarazi, who spoke at the end of the session, called on the Council to prevent illegal acts by Israel, drawing attention to the obligation to ensure respect for the provisions of the 1949 Fourth Geneva Convention. The President of the Council scheduled a meeting of the Council for 8 October to continue consideration of the matter.

On 8 October, the Council met against the immediate background of the massacre of 17 Palestinians at al-Haram al-Sharif (the compound of the Dome of the Rock and al-Aqsa Mosque) in Jerusalem.⁵⁸ The ICRC issued a press release stating that "ICRC delegates on the spot in Jerusalem saw live ammunition being used by the Israeli forces against civilians."⁵⁹ In the Security Council, speaker after speaker condemned the bloodshed, called on Israel to respect the 1949 Fourth Geneva Convention, and urged the Security Council to find ways to protect the civilian population of the Occupied Territories.⁶⁰

⁵⁸ See al-Haq's "Reconstruction of Events (Revised): Al-Haram Al-Sharif, Jerusalem, Monday 8 October 1990," 28 October 1990. Reproduced as "Addendum 2" to the Secretary-General's Report submitted to the Security Council in accordance with SCR 672 (1990) 1 November 1990.

⁵⁹ ICRC press release no. 1,647, 9 October 1990. The member states of the EC issued a statement condemning the excessive use of force by the Israeli authorities. A little later, the US also noted that "the Israeli government is aware of our views opposing the use of excessive or lethal force in maintaining law and order" (State Department news briefing by Margaret Tutwiler, 30 October 1990). Tutwiler also recalled earlier statements to this effect by President Bush and Secretary of State Baker.

⁶⁰ On 8 October 1990, the delegate of Yugoslavia, then chair of the Movement of Non-Aligned Countries, stated that his country,

along with other non-aligned countries, rightly expects that the Security Council will take a resolute stand on the implementation of its own resolutions and the provisions of the Fourth Geneva Convention...

A number of speakers also called the Council's attention to the fact that no action had been taken on earlier recommendations of the secretary-general regarding the protection of the Palestinian population, which had been submitted to the Council at the beginning of 1988.⁶¹

Efforts began among the delegates to prepare a draft text for a resolution that would be acceptable to all members of the Council. Although all agreed that a mission should go to the area, in a repetition of the impasse that had culminated in the US veto of the draft resolution in May, delegates remained unable to reach agreement with regard to the nature and mandate of the mission. In its presentation on 9 October, Syria reiterated the position put forward by the non-aligned members of the Council in May that

the Security Council should set up a committee of its members to be sent to the spot to investigate the violations that are taking place in *al-Quds* [Jerusalem] and the rest of the Arab occupied territories, in contravention of the Fourth Geneva Convention of 1949 which Israel continues to reject despite [the Council's] many resolutions. That committee should then present to the Security Council a report on its findings so that the Council might adopt the necessary

The same day the Chinese delegate stated:

The Chinese delegation strongly condemns the Israeli authorities for their acts of suppression of the Palestinian people, and calls on the Israeli occupying authorities to comply strictly with the Fourth Geneva Convention so as to guarantee the safety of the Palestinian residents in the occupied territory. Since the current situation is extremely serious, we earnestly urge the international community to take urgent and effective measures to stop the illegal acts of the Israeli authorities in order to protect, in a practical manner, the life and property of the Palestinian residents in the occupied territory. We favour immediate, necessary actions by the Security Council in this regard.

⁶¹ This point was made by the delegates of Algeria and Tunisia on 9 October 1990.

measures.⁶²

The US maintained the position it had taken in May, that a mission by the secretary-general was more appropriate, and opposed suggestions by the non-aligned members that the report to be submitted by the secretary-general on the basis of his delegate's mission would include specific recommendations for ensuring the protection of the Palestinian population.⁶³

On 12 October, the Security Council voted on a draft text submitted by Canada and Britain and co-sponsored by Cote d'Ivoire, Finland, France, the USSR and Zaire.⁶⁴ The draft was passed as SCR 672 in a unanimous vote. The Council adopted the US position on the secretary-general's mission in the text of the resolution, but agreed to have reference made to the non-aligned position on the nature of the report in the accompanying statement by the President of the Council. The resolution condemned "the acts of violence committed by the Israeli security forces" on 8 October and called on "Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention, which is applicable to all the territories occupied by Israel since 1967." The Council then welcomed the decision of the secretary-general to send a mission to the region and requested him to submit "a report containing his findings and conclusions" to the Council.

The non-binding presidential statement, read out by Sir David Hannay of Britain immediately before the vote on the resolution, stated:

In the informal consultations of members of the Council which led up to the consideration of this draft resolution, the Secretary-General

⁶² This was supported by the state of Pakistan, among others, whose delegate stressed that "[t]he Security Council must have access to accurate and factual information in order to ensure the protection of the Palestinian people."

⁶³ Judy Aita, USIA correspondent, "Mission to Territories Holding Up Agreement," *US Information Agency Indices*, 11 October 1990. The article also stated that David Hannay, British delegate and then President of the Security Council, "rejected journalists' assertions that in taking so long to pass a resolution the Council was using a double standard in dealing with the situation in Israeli-occupied territories and Iraq's invasion of Kuwait." See also "Security Council Still at Impasse Over Which Probe to Send to Israel," *Jerusalem Post*, 12 October 1990.

⁶⁴ UN Security Council draft resolution, 12 October 1990.

explained that the purpose of the mission which he would be sending to the region would be to look into the circumstances surrounding the recent tragic events in Jerusalem and other similar developments in the occupied territories, and to submit by 24 October 1990 a report containing findings and recommendations to the Council on ways and means for ensuring the safety and protection of the Palestinians under Israeli occupation. He recalled, however, that under the Fourth Geneva Convention the principal responsibility for ensuring the protection of the Palestinians rested with the occupying Power, namely Israel.⁶⁵

The President of the Council also noted before the vote occurred that he had been asked to clarify the meaning of the reference to "the territories occupied by Israel since 1967," and that it was his understanding "that these words include Jerusalem."

Mr. Razali of Malaysia, while welcoming the "watershed" resolution, reminded the Council that the non-aligned countries had had to make significant concessions in order for an agreement to be reached.⁶⁶ The representative of Colombia recalled the previous Security Council decision taken at the beginning of the Palestinian uprising, which had similarly endorsed the sending of a mission and the compiling of a report by the secretary-general, and expressed the hope that the forthcoming report would not meet the same fate as its 1988 predecessor.⁶⁷

The contrasting views of the USSR and the US on the nature of the secretary-general's report and its implications for future action by the Security Council itself are demonstrated by the statements made by their representatives during the discussion on SCR 672. The USSR observed:

We are convinced that the Security Council's consideration of the report of the Secretary-General on the results of that mission will focus on what can be achieved in the future to guarantee the safety and protection of the civilian population living in the occupied territories. We hope that will enable the Council to adopt effective

⁶⁵ Statement by the President of the Council on 12 October 1990; reproduced in *Report of the Secretary-General*, 31 October 1990, p. 2.

⁶⁶ *Ibid.*, p. 41.

⁶⁷ *Ibid.*, p. 48.

measures necessary to that end, and to discuss seriously ways and means to give immediate impetus to the process of a settlement in the Middle East.⁶⁸

The US representative pointed out that the Council had in its resolution reaffirmed the obligations and responsibilities conferred upon the occupying power by the 1949 Fourth Geneva Convention, and then continued:

My government is dedicated to doing whatever it can to bring the parties closer to a negotiated peace. We want to be clear for the record that this resolution, however, should not be misinterpreted: the Council's action tonight does not empower it to address any subject beyond the matters directly contained in this resolution. Most obviously and certainly, this resolution makes clear it does not address in any way the status of the Middle East peace process; nor does it change in any way the role of the United Nations in that regard. We expect the Secretary-General's mission to examine the circumstances of the 8 October incident and to report back. We look forward to reviewing that report.⁶⁹

On 14 October, the Israeli cabinet adopted the text of a statement that described SCR 672 and the accompanying presidential statement as "totally unacceptable." The cabinet stated, *inter alia*:

Jerusalem is not, in any part, "occupied territory"; it is the sovereign capital of the State of Israel. Therefore, there is no room for any involvement on the part of the United Nations in any matter relating to Jerusalem.... Israel will not receive the delegation of the Secretary-General of the United Nations.⁷⁰

Israel's rejection of the resolution was greeted with concern. The US declared itself "disappointed" and Secretary of State James Baker publicly urged

⁶⁸ *Ibid.*, p. 52.

⁶⁹ *Ibid.*, p. 53.

⁷⁰ *Ibid.*, pp. 2-3.

Israel to admit the mission.⁷¹ When the secretary-general of the UN sought clarification of Israel's position, he was informed by Israel's Acting Permanent Representative at the UN that Israel was willing to provide the secretary-general with the report of its own commission of inquiry into the incident; Israel's UN representative added that since SCR 672 had not requested the secretary-general to send a mission, there was no need for one to be sent. In view of Israel's response, on 19 October the secretary-general informed the Security Council that he was not in a position to send a mission to the area, and the Council began discussions on how to respond.⁷²

E. Security Council Resolution 673:

In the wake of Israel's rejection of SCR 672 and, in particular, its refusal to receive the secretary-general's mission, the members of the Security Council were confronted with the need to address Israel's non-compliance with Council resolutions. While a new draft resolution put to the Council on 24 October made no mention of specific articles or chapters of the Charter of the United Nations, in the course of the debate non-aligned members repeatedly drew the attention of the Council to Articles 24 and 25 of the Charter. Article 24(1) states:

In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility, the Security Council acts on their behalf.

Article 25 states:

The Members of the United Nations agree to accept and carry out

⁷¹ US State Department news briefing by Margaret Tutwiler, October 15 1990; Russell Dybvik, USIA Diplomatic Correspondent, "Baker Urges Israelis to Cooperate with UN Mission," 16 October 1990. An article in the *Independent* (London) entitled "Angry Israelis Condemn UN's 'Biased' Censure," on 15 October predicted that the response by Israel would irritate the US all the more because already, according to diplomatic sources at the UN, "a plan to send three more senior UN officials of US and Soviet nationality was shelved in deference to Israel.... The dispatch of the two highest level political appointees from the superpowers would have raised the stakes of the mission considerably...."

⁷² *Report of the Secretary-General*, 31 October 1990, pp. 3-4.

the decisions of the Security Council in accordance with the present Charter.

On 24 October, non-aligned members of the Council made it clear that these articles applied to Israel's behavior and questioned the continuing absence of reference to Chapter VII of the Charter in Security Council resolutions on Israel's conduct. Chapter VII provides for enforcement measures by the Security Council in the case of breaches of international peace and security.

The representative of Cuba called attention to the provisions of the Charter as they apply both to the conduct of Israel and that of Security Council members, particularly permanent members, stating:

Article 24 of the Charter...defines the powers and functions of the Council. In that connection we must occasionally recall that it was not the Security Council that created the United Nations but the Council that was created by the United Nations. The Council has special powers because they were conferred on it by the rest of the Organization. Those powers were conferred on the Council so that it could act promptly and effectively, and certainly not so that it could paralyse the action needed from the international community.⁷³

The draft resolution, submitted by Colombia, Cuba, Malaysia, and Yemen, was passed unanimously as SCR 673 on 24 October. In the text, the Council expressed alarm at the Israeli government's rejection of SCR 672 and deplored its refusal to receive the mission of the secretary-general. This shifted criticism from the conduct of the Israeli security forces to the conduct and policy of the Israeli government itself.⁷⁴ In addition, the Council saw fit to affirm its "determination to give full and expeditious consideration to the report" produced by the secretary-general.

⁷³ *Report of the Secretary-General*, 31 October 1990, p. 58.

⁷⁴ Ten days earlier, on 14 October 1990, the *Jerusalem Post*, in an article entitled "Israel May Snub UN Mission," reported that senior Israeli Foreign Ministry officials had noted that "the condemnation [contained in SCR 672] was directed against security forces and not the Israeli government."

F. Report of the Secretary-General Pursuant to SCR 672:

Israel's position remained unchanged after the second resolution, SCR 673, and the secretary-general produced his report without the dispatch of a mission to the area. The report was issued on 31 October 1990 and was duly submitted to the Security Council for its consideration in accordance with SCR 672.⁷⁵ The secretary-general attached as addenda to his report the findings of the Israeli commission of inquiry into the 8 October events in Jerusalem, as well as the reports of al-Haq and of BTselem, the Israeli Information Center for Human Rights in the Occupied Territories.

The secretary-general's report of 31 October was remarkable for its focus on the responsibilities under the 1949 Fourth Geneva Convention not only of Israel, the occupying power, but also of Israel's co-signatories. The report recalled previous Security Council actions reaffirming the applicability of that Convention to the Occupied Palestinian Territories and called upon Israel to desist from practices in violation of the Convention. The report went on to cite Article 27 of the Convention, which entitles protected persons to certain fundamental rights "in all circumstances"; Article 29, which emphasizes the responsibility of the occupying power in this regard;⁷⁶ and, Article 1, which was described as entrusting "an important responsibility...to the high contracting parties" to the Convention.⁷⁷

The secretary-general also recalled that the "principal recommendation" of his January 1988 report to the Security Council with regard to ensuring the safety and protection of the civilian Palestinian population was that

the international community should make a concerted effort to persuade Israel to accept the *de jure* applicability of the Fourth Geneva Convention to the occupied territories and to correct its

⁷⁵ *Report of the Secretary-General*, 31 October 1990.

⁷⁶ *Ibid.*, pp. 7-8. Article 29 of the Convention states:

The Party to the conflict in whose hands protected persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

⁷⁷ *Ibid.*, p. 8.

practices in order to comply fully with that Convention.⁷⁸

The secretary-general then noted the steps that had been taken to provide improved international protection in the wake of his 1988 report, mainly the three-fold increase in UNRWA's international field staff within the Occupied Territories. He reported that this, together with the expansion of the ICRC field staff, had been welcomed by Palestinians, who nonetheless held that "it has not had the necessary impact on the behavior of the Israeli authorities" and that "far more is required on the part of the international community."⁷⁹

In concluding his report, the secretary-general observed:

Clearly, the numerous appeals -- whether by the Security Council, by myself as Secretary-General, by individual Member States or by the ICRC, which is the custodian of the Geneva Conventions -- to the Israeli authorities to abide by their obligations under the Fourth Geneva Convention have been ineffective.... [G]iven the special responsibility of the high contracting parties for ensuring respect for the Convention, the Security Council might wish to call for a meeting of the high contracting parties to discuss possible measures that might be taken by them under the Convention.⁸⁰

The Israeli government rejected the secretary-general's report and suggestions, with its cabinet as a whole expressing "deep consternation."⁸¹ One

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, p. 18.

⁸⁰ *Ibid.*, p. 11. The secretary-general also commented on Palestinian appeals for an "impartial presence, properly mandated by the United Nations," stating that it was for the Security Council to decide a response to such appeals, since "the mandates for the United Nations personnel in the area, whether civilian or military, derive from the competent United Nations bodies," rather than from the secretary-general himself.

⁸¹ "Ideas in UN Report Provoke Dismay," *Jerusalem Post*, 4 November 1990. One Israeli official was quoted in this article as stating that "[o]ur objection to the UN is usually on political grounds...however, once they reconvene the Geneva Convention our name is tarnished, because the issue is presented in purely humanitarian terms."

UN-based journalist explained the cause for such concern in the following fashion:

A meeting of the parties to the Convention has never before been called and the request is an ominous signal to Israel. It comes soon after the Council's decision to collect information on 'grave breaches' of the same Convention by Iraq. Such acts are commonly known as 'war crimes'.... Support for the proposal is expected to be widespread and US officials said yesterday that they could see no reason why Washington should object to it, provided countries did not use it to attack Israel for 'war crimes against Palestinians'.⁸²

"Grave breaches" are listed in Article 147 of the Convention and entail criminal liability subject to universal jurisdiction. They include willful killing, torture or inhuman treatment of protected persons, willfully inflicting serious bodily harm, deportation, unlawful confinement, the extensive unlawful destruction of public or private property, and a number of other serious violations of the Convention.⁸³

The Security Council, the secretary-general and the international community were then also confronted with Iraq's recent occupation of Kuwait, its refusal to acknowledge the applicability of the 1949 Fourth Geneva Convention and evidence indicating the perpetration of grave breaches of the Convention against the civilian population of Kuwait. Their response, in the forceful and unequivocal language of Security Council resolutions 670 and 674, established international humanitarian law as a benchmark of international political accountability and mobilized the power and authority of the Security Council in support of the Convention.

In SCR 670, passed in September, the Security Council warned Iraq

On 5 November 1990, in a *Times* (London) article entitled "Israel Rejects UN Conference Call," Israeli Health Minister Ehud Olmert was quoted as stating:

A conference of the Geneva Convention signatories is a conference of states who actively maintain murderous dictatorships.... The thought that we will be judged by the biggest murderers in the world seems like something we would not agree to.

⁸² Leonard Doyle, "Israel Faces Stern UN Action," *Independent* (London), 2 November 1990.

⁸³ See Al-Haq, *A Nation Under Siege*, pp. 653-659.

that the Fourth Geneva Convention applies to Kuwait and that as a High Contracting Party to the Convention Iraq is bound to comply fully with all its terms and in particular is liable under the convention in respect of the grave breaches committed by it, as are individuals who commit or order the commission of grave breaches.⁸⁴

On October 29 the Security Council passed SCR 674, which demanded that Iraq cease its mistreatment of Kuwaiti and third-state nationals, and any other actions in violation of the 1949 Fourth Geneva Convention and other articles of international law. It called upon states

to collate substantiated information in their possession or submitted to them on the grave breaches by Iraq as per paragraph 1 above and to make this information available to the Security Council.⁸⁵

The passage of these two resolutions held significant implications for the Security Council's treatment of Israel's refusal to abide by the Convention in the territories occupied since 1967, and, in particular, Israel's continued commission of grave breaches as a matter of official policy.

G. Security Council Resolution 681:

In the meantime, amid mounting pressure, the Israeli government agreed to receive Jean-Claude Aimee as a personal envoy of the secretary-general, for the purpose of a "general discussion of the Arab-Israeli conflict." The Israeli media reported that in exchange, the Israeli government would seek undertakings that there would be no further action against Israel over the al-Haram al-Sharif massacre in the Security Council, and would specifically request an agreement by the US to veto any such further action, including any proposal for a meeting to be convened by the parties to the Convention.⁸⁶ Responding to questions from journalists noting speculations on a "deal" published in the Israeli media, a US State Department deputy spokesperson "emphasized that the United States [had] not pledged to veto anti-Israel resolutions in the UN Security Council in exchange for an Israeli invitation

⁸⁴ SCR 670 (1990), 25 September 1990, para. 13.

⁸⁵ SCR 674 (1990), 29 October 1990, para. 2.

⁸⁶ "Israel Ready to Accept Sole UN Envoy," *Jerusalem Post*, 11 November 1990.

for such a visit."⁸⁷ The secretary-general finally agreed to send an envoy after the Security Council completed its consideration of his October report.

In response to the secretary-general's report, a draft resolution was put forward for discussion on 26 November. Sponsored by Colombia, Cuba, Malaysia, and Yemen, the preamble of the draft text noted that the Council considered it "necessary to increase the impartial international presence in the occupied territories" and that the Council "endorses the idea of convening a meeting for the high contracting parties of the Fourth Geneva Convention to discuss possible measures to be taken by them under the Convention." The preamble also formally welcomed a properly structured international peace conference to be held at an appropriate time. It also included two specific paragraphs on impartial monitors in the Occupied Territories, stating that the Council:

Decides to appoint a Commissioner ("ombudsman") to the occupied Palestinian territories to monitor and observe the situation, with the help of the United Nations personnel stationed there, and to report on it to the Secretary-General of the United Nations and to the Security Council (para. 6);

Requests the Secretary-General to nominate a Commissioner and to provide him with the necessary staff to accomplish his task, and to report within one month on the implementation of this resolution to the Council (para. 7)

This draft text was not put to a vote, and negotiations on a text acceptable to all Council members continued through November and into December. Much of the discussion in the Council centered around the reference to an international peace conference, which, according to press reports, some were concerned would be interpreted as a concession to Iraq.⁸⁸

On 15 December, while the intensive process of discussions among the delegates continued, the Israeli government announced that four Palestinians from

⁸⁷ State Department news briefing by Richard Boucher, 13 November 1990. Boucher was also questioned about reports that the Israeli government was conditioning the invitation on the envoy not asking questions about the al-Haram al-Sharif massacre.

⁸⁸ "Late-Night UN Debate on Palestinians," *Jerusalem Post*, 11 December 1990.

the Gaza Strip would be deported.⁸⁹ A vote on the final compromise text of the draft resolution was taken a few days later, on 20 December. Just before the resolution was approved, Shamir declared that "the fate of this resolution will be like the fate of other resolutions, which are now stored in the UN archive."⁹⁰

The text of SCR 681 constituted a milestone in UN Security Council resolutions on the application of international humanitarian law to the Occupied Territories. The text of SCR 681 contained the following elements of particular interest to al-Haq:

Reaffirming the obligations of Member States under the Charter of the United Nations,

Reaffirming also the principle of the inadmissibility of the acquisition of territory by war set forth in Security Council resolution 242 (1967) of 22 November 1967,

Urges the Government of Israel to accept the *de jure* applicability of the Fourth Geneva Convention, of 1949, to all the territories occupied by Israel since 1967 and to abide scrupulously by the provisions of the said Convention;

Calls upon the high contracting parties to the Fourth Geneva Convention, of 1949, to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with

⁸⁹ The US condemned the deportations, calling them "a violation of the Fourth Geneva Convention as it pertains to the treatment of inhabitants of occupied territories" (State Department news briefing by Richard Boucher, 17 December 1990). The *Jerusalem Post* of 17 December 1990, however, reported, in an article entitled "Deportations to Continue as Response to Terrorism," that "officials in the Prime Minister's office say that the decision to deport the four [Palestinians from Gaza] was based on the assessment that US condemnation voiced over the weekend was *pro forma*."

⁹⁰ "US Joins in Unanimous UN Vote Censuring Israel," *Jerusalem Post*, 21 December 1990.

Article 1 thereof (para. 5).⁹¹

Requests the Secretary-General, in co-operation with the International Committee of the Red Cross, to develop further the idea expressed in his report of convening a meeting of the high contracting parties to the Fourth Geneva Convention and to discuss possible measures that might be taken by them under the Convention and for this purpose to invite the parties to submit their views on how the idea could contribute to the goals of the Convention, as well as on other relevant matters, and to report thereon to the Council;⁹²

Paragraph 5 of SCR 681 was the first Security Council call ever made to state parties to ensure Israel's respect for the 1949 Fourth Geneva Convention, combining this with a call to Israel to accept the *de jure* applicability of the Convention. The request by the secretary-general -- under the mandate of the Security Council -- for input from state parties to the Convention was the first time that states were asked to take any form of specific action in the context of a Security Council resolution on the Occupied Palestinian Territories. Furthermore, SCR 681 requested that the secretary-general submit regular monthly reports to the Council, thus laying a basis for a process of ongoing consultation and reporting, with the participation of the Security Council, that had been absent from all preceding resolutions.

The resolution also recalled earlier resolutions against deportation and deplored the Israeli government's decision to resume deportations, describing this decision as being in violation of Israel's obligations under the Convention. It failed to point out, however, that deportation is a grave breach of the Convention, involving the same liability for war crimes which had been recently outlined by the Council in its warning to Iraq in SCR 674. The resolution further requested the secretary-general to make new efforts in monitoring and observing the situation regarding the Palestinian civilians under occupation.

During the voting session, little comment was made on the call upon state

⁹¹ The 26 November draft had called upon the high contracting parties to the 1949 Fourth Geneva Convention to ensure respect by Israel, the occupying power, for the Convention under all circumstances, in accordance with Article 1 of the Convention.

⁹² SCR 681 para. 4-6.

signatories to ensure Israel's respect for the Convention, although several delegates commented favorably upon the idea of convening a meeting of all signatories. The only delegate to express reservations on the passage of the resolution was Thomas Pickering of the United States. While noting that the US had voted for the resolution to demonstrate "deep concern" about the situation in the Occupied Territories, Pickering stated that the US would oppose any extension to the mandate of existing UN personnel in the region, found the idea of a conference of state parties to the Convention of questionable benefit, and regarded the phrase "Palestinian territories occupied by Israel since 1967" as being "merely demographically descriptive, and not indicative of sovereignty." Pickering concluded his statement by reaffirming US commitment to an "active negotiating process," adding that

[t]his process of negotiations between the parties concerned is the only way that will advance the cause of peace in the Arab-Israeli conflict, and all of our efforts should be actively focused on renewing this process.⁹³

By contrast, the three other permanent members of the Security Council who spoke during the session expressed a variety of positive responses to the resolution, ranging from "deep satisfaction" on the part of the USSR to "relief and enthusiasm" from the British. The French delegate described the resolution as "very reasonable ... as a first response." Other speakers were critical of the time and effort it had taken to achieve a text acceptable to all members. The representative of Malaysia, who had acted as spokesperson for the sponsors of the resolution, remarked:

There is also reason to be critical of the barriers, including procedural devices, deliberately used to delay the proper and early consideration of the issue. Future action by the Council must be free of these tendencies and tactics lest the Council be open to accusations that it is the vassal of, or is being shanghaied by, powerful countries....⁹⁴

The representative of Israel, having requested to speak after the vote, made the only direct reference to the call made upon states to ensure Israel's respect for the Convention, describing that and the idea of convening a meeting of high

⁹³ Statement by Pickering on 20 December 1990; issued by the UN on 2 January 1991.

⁹⁴ *Ibid.*

contracting parties as "unprecedented."⁹⁵

As for the secretary-general, he detailed his view of SCR 681 in a subsequent report to the Council:

Resolution 681 (1990) represents a new step on the part of the Security Council because it entrusts, for the first time, ongoing responsibilities to the Secretary-General with respect to the Palestinian civilians under Israeli occupation. At the same time, the resolution underlines the obligations of the parties chiefly responsible under the Fourth Geneva Convention, namely Israel, the occupying Power, and the high contracting parties to the Convention.⁹⁶

The day after SCR 681 was adopted, the secretary-general informed the Security Council that he would immediately contact the ICRC on the subject of the conference of the high contracting parties to the Convention, and would further consult with UNRWA. He also suggested that it would be appropriate under the terms of paragraph 5 of SCR 681 for those state parties with consular staff resident in East Jerusalem to support the efforts of the UN and of the ICRC.⁹⁷ The Israeli Foreign Minister David Levy described this as a "delicate issue," telling the cabinet that he would notify the seven governments in question that their consuls had no right to go beyond their ordinary consular functions.⁹⁸

As the year ended SCR 681 had reaffirmed the obligation of state parties to the Convention to "ensure respect" for the provisions of the Convention and prepared the ground for joint action towards this end to be taken by state parties under the mandate and with the support of the political organs of the UN.

⁹⁵ *Ibid.*

⁹⁶ *Report of the Secretary-General* submitted to the Security Council in accordance with Resolution 681, 9 April 1991, p. 3.

⁹⁷ *Ibid.*, p. 4.

⁹⁸ "Levy to Tell Foreign Consuls to Stay Within Their Mandate," *Jerusalem Post*, 24 December 1990.

Conclusion:

International humanitarian law guarantees certain fundamental protections to identified categories of persons, including the civilian population of occupied territories, in times and circumstances when those rights are very vulnerable to violation. In its last annual report, al-Haq called attention to the importance of ensuring respect for international humanitarian law in order to promote prospects for constructive dialogue and dispute settlement. For the law to work, it must be applied non-selectively and consistently. With regard to the implementation of international humanitarian law, the international community and the UN Security Council did not succeed in sustaining this principle during the course of 1990.

At the same time, the need to make provisions for implementing international humanitarian protection and to confront instances of the dereliction of states' responsibilities under international humanitarian law, in addition to instances of its global violation, was more clearly confronted in national, regional, and UN forums in 1990. Significant incremental policy developments, some of which have been noted in this review, indicate a growing interest in incorporating the fundamental provisions of international humanitarian and human rights law into the structure and regulation of international relations, and in superceding force-based unilateralism and deterrence with cooperative multilateralism and law-based diplomacy.

For those committed to promoting the defense of human rights and the rule of law in the international sphere, the ongoing process of consultation and debate at the UN following the call made upon states to ensure Israel's respect for the 1949 Fourth Geneva Convention in SCR 681 stands as a turning point. The way forward will, however, be charted by national politicians rather than international jurists and human rights activists. The supremacy of the law, and of the human rights established in law, will thus rely on the action of their ultimate guarantors: the body politic to whom each political authority is accountable.