

## Context

In the late 1970s, a group of Palestinian professionals from the West Bank (including East Jerusalem) initiated a lengthy correspondence with the International Commission of Jurists (ICJ) in Geneva. It resulted in the establishment of Law in the Service of Man (LSM, later to become al-Haq), as the West Bank affiliate of the ICJ, in 1979. In the next chapter, I examine the challenges identified by the group through this correspondence, and how they rose to them; this chapter is a short reminder of the times insofar as they are raised by the narrative. I focus on the immediate context of the West Bank at this time, not to erase the longer and still violent histories that preceded the 1967 Israeli occupation.

### THE OCCUPIED TERRITORIES, ISRAEL, AND THE PLO

The group's initial approach to the ICJ was sent in April 1977. The West Bank (including East Jerusalem) and Gaza Strip—those parts of Palestine remaining outside the Israeli State since its establishment in 1948—had been under Israeli military occupation for just shy of ten years. Jordan, which had ruled the West Bank since 1948, retained its claim till the first intifada, and still maintains authority over its Ministry of Awqaf and Islamic affairs and *shari'a* courts in occupied East Jerusalem, where Israel refuses to countenance Palestinian Authority jurisdiction and over which Israel has asserted sovereignty. US President Trump's 2017 decision to recognize Israel's position on the city as its capital challenged decades of international consensus against recognizing Israel's claims to territory acquired by force.<sup>1</sup> Egypt for its part had governed the Gaza Strip as “administrator” until the 1967 war. The leadership of the Palestine Liberation Organization (originally founded by Arab states in 1964) was taken over by Fatah (headed by Yasser Arafat) after the 1967 war. In 1970, the PLO was ousted from its bases in Jordan after “Black September” and armed engagements between the PLO and the Jordanian army. The PLO was now headquartered in Beirut. It was to be ousted in turn from

Lebanon after the Israeli invasion of 1982, removing its last armed bases in a country bordering on Israel, and was thenceforth headquartered in Tunis until the signing of the Israel-PLO Gaza-Jericho Agreement in 1994. In the occupied territories, membership of any faction in the PLO and any contact with the organization were illegal, as were such manifestations of nationalism as raising the Palestinian flag. In LSM's first publication, *The West Bank and the Rule of Law*, Shehadeh records the following example:

In April 1980, several students from Bethlehem University were arrested and accused of wearing T-shirts which carried the emblem of the Bethlehem University Student Council. The emblem contained streaks of green, black and red on a white T-shirt. The authorities claimed that this added up to the four colours of the Palestinian flag. The University was warned that wearing these T-shirts was illegal, and the students were tried and convicted by a military court under Military Order No. 101.<sup>2</sup>

Gabi Baramki, who was acting president of Birzeit University after the 1974 deportation of the standing president Hanna Nasir, recalls in his memoir the frequency with which the Palestinian flag was raised by students and the hostile responses of the Israeli military.<sup>3</sup> Charles Tripp has pointed out that this kind of repression (whereby "it is forbidden to raise, exhibit or attach any flags or political emblems except after obtaining a licence")<sup>4</sup> made it "perversely easy to commit multiple small acts of resistance" which could involve large numbers of people.<sup>5</sup>

The charge of *tanzhim*, short-hand for membership in an illegal organization (i.e., a PLO faction), was leveled at activists involved in the nationalist political struggle. By no means were they all involved in or accused of involvement in the armed struggle that remained part of the resistance strategy of the various PLO factions (although not of the Communists).<sup>6</sup> Lisa Taraki stresses the formative background of many future leaders of the women's, union, and student movements in the voluntary work committees of the 1970s.<sup>7</sup> Writing in the first intifada, Joost Hiltermann traces the emergence of a "nationalist movement of classic design" in the West Bank and Gaza to the 1970s, after the PLO made a decision in 1974 to focus its energies on the occupied territories:

The local movement consisted of two branches: the underground military-political branch, whose members adhere directly to one of the factions of the PLO and carry out resistance operations on the orders of their commanders, who are usually outside the area; and the semilegal social-political branch, consisting of institutions and popular organizations set up by local activists who have attempted to mobilize the Palestinian masses by offering them services that were otherwise not available, while articulating nationalist concerns and aspirations as part of their day-to-day work.<sup>8</sup>

Hiltermann refers to an "intensive recruitment drive [that] took place among students, workers, professionals and others." The PLO's decision to focus on the occupied territories came after the Arab League's recognition of the PLO as the

“sole legitimate representative of the Palestinian people” followed by Yasser Arafat’s historic address at the UN General Assembly, both in 1974 and, as recounted by Noura Erakat, significant outcomes of the PLO’s legal work at the UN.<sup>9</sup> Arafat was presented (by then Algerian foreign minister Bouteflika) as chairman of the Executive Committee of the PLO and commander-in-chief of the Palestine Revolution; this was the speech he ended with his dramatic appeal: “Today I have come bearing an olive branch and a freedom-fighter’s gun. Do not let the olive branch fall from my hand.”<sup>10</sup> Erakat describes the intense efforts that led to this occasion, “the first time a non-state actor had taken the international podium,” and describes the General Assembly at that time as comprising an “automatic majority of non-aligned states in a global context of ongoing, armed liberation struggles.”<sup>11</sup> In the West Bank, those tied to the “old guard” of the Jordanian regime lost ground to the nationalists; in the 1976 municipal elections, “pro-PLO candidates were re-elected or swept into office in all the major towns except Bethlehem,”<sup>12</sup> and with the formation of the second National Guidance Committee (in 1978) there emerged “the first non-clandestine political framework” in the occupied territories.<sup>13</sup> Hamas did not exist, although its parent movement, the Muslim Brotherhood, was likewise engaged in broadening its constituency and institution-building during this period.<sup>14</sup> The West Bank (including East Jerusalem) and Gaza were known as the occupied territories (sometimes the Israeli-occupied territories); today’s nomenclature of the occupied Palestinian territory (oPt) did not appear until the first intifada, with Jordan’s renunciation of its claim to the West Bank and the PLO’s recognition of and entry into negotiation with the state of Israel.

The Israeli government declined to recognize its status as an occupying power under international law, and preferred the term “administered territories”; it had illegally annexed East Jerusalem and applied the biblical names Judea and Samaria to the West Bank. In the West, Israel had been largely successful in “presenting its occupation of the Palestinian territories as the most benevolent in history.” This realization, in the face of the situation he found when he returned home from his law studies in London, was one of the factors to provoke Raja Shehadeh into “agitating”—getting a group together to write to the ICJ.<sup>15</sup> The idea of a “benign occupation” and the assumption that what Israeli officials presented as truth was just that or a fair approximation dogged the attempts of Palestinians and their allies to present the facts as otherwise. This was perhaps the main challenge on the international front that LSM set out to meet.

Writing about the West Bank in the mid-1980s, George Bisharat reflects on the politically unresolved status of the territories and the issues of authority to which this state of “indeterminacy” gave rise:

Indeterminacy has also given rise to the phenomenon of “over-control,” the subjugation of the West Bank to multiple external authorities exerting contradictory pressures on the local community. Israel exercises direct control through the

agency of the military government. Jordan exercises indirect influence through its control of the flow of people and goods between the East and West banks, and through its network of client-notables. The PLO commands some quasi-governmental resources and enjoys the political loyalties of the majority of the Palestinian community. The result is a combination of suffocating control in matters that involve the interests of the three external authorities and a breakdown in the system of social accountability and near anarchy in realms implicating only or primarily local community interests.<sup>16</sup>

Reflections of this situation appear in the initial correspondence from the would-be founders of LSM. The deleterious situation of the court system in the West Bank, with all matters of interest to the Israeli occupation authorities being transferred to the military courts or army-headed Objection Committees, exemplifies Israel's effective power and lack of legitimate force.

#### WEST BANK LEGAL PROFESSION

Bisharat's study focuses on the legal profession and the challenges and dilemmas it faced during these times, not least its internal division between striking and working lawyers. The strike by West Bank lawyers had begun with the 1967 occupation, when the legal profession in the West Bank as a whole went on strike in protest against Israel's annexation of East Jerusalem, its transfer of the West Bank's Court of Appeal to Ramallah from Jerusalem, and its noncompliance with the Fourth Geneva Convention. As Shehadeh explains:

The general feeling among the lawyers was that to appear before the newly organized courts would give legitimacy to the annexation of Jerusalem, because the Jordanian law specifically designates Jerusalem as the seat of the Court of Appeal. It would also, they thought, imply that the other changes carried out by the military authority were being condoned and legitimized, if they continued to work as usual.<sup>17</sup>

The Jordanian Bar Association—the professional organization for West Bank lawyers—supported the strike and undertook to pay stipends for the loss of professional income. Striking lawyers could practice—as appropriate—before the *shari'a* courts (where the judiciary had refused to give any recognition to the Israeli authorities) and the different courts of the Christian communities, but not in the military courts, which were gaining in jurisdiction, nor in the regular court system now under the control of the Israeli occupation authorities. Practicing West Bank lawyers were expelled from the Jordanian Bar Association (JBA) or else not allowed to join when they qualified. In the early 1980s, Bisharat estimates that some 60 percent of the profession were striking in the West Bank; there was no strike by lawyers in the Gaza Strip, where the separate system administered previously under Egypt's control had been unaffected by the changes to the judicial system in the West Bank.<sup>18</sup> Bisharat considers in detail the factors that, over the years since 1967, brought some lawyers back into work and kept others committed

to the strike or encouraged them to join it upon qualifying. In regard to the system of justice administered by the occupation authorities, he observes:

In the minds of local practitioners, these laws are a reflection of the very power of the military legal system, which is not to dispense justice, but to further the policy goals of suppressing Palestinian nationalism and facilitating Israeli settlement of the West Bank. In this view, the underlying objective of the military courts is less to affix guilt to specific individuals for violations of security regulations than to exact a steady toll from the community in general for acts of resistance, in the hope that pressure will develop within the community itself for the disciplining of its members.<sup>19</sup>

From the early 1980s there were attempts on the part of practicing lawyers in the West Bank to come to some kind of accommodation with the Bar Association in Amman, and/or to set up a branch of the JBA in the West Bank. These developments were followed closely by LSM in its formative years, given the deleterious effect on the coherence and standards of the profession of the absence of a professional association. The JBA threatened to have tried for treason those involved in negotiating with the Israeli military government for permission to establish a West Bank branch.<sup>20</sup> Shehadeh's journal records a striking lawyer telling him, "All of you lawyers who work here are collaborators. Every move you make is used to consolidate the Israeli occupation."<sup>21</sup> I return to these tensions in chapter 3.

The Palestinian population included rural and urban dwellers and the residents of refugee camps established after the 1948 *Nakba*, with other refugees added from the internal displacements of the 1967 war; there were also scattered Bedouin encampments. Travel within the West Bank, between the West Bank and Gaza, and between the West Bank and Israel was comparatively unimpeded in light of today's barricades of the Wall and permanent checkpoints to control movement of Palestinians between Areas A, B, and C. Although the whole of the occupied territories was a closed military area, flying checkpoints and closures after particular incidents were qualitatively different from the overall closures and partitions that characterize the areas today. The movement of Palestinians was controlled through the ID card system; in 1980, Shehadeh explained the wider significance of this form of control as follows:

The agony of the exile and the dispersion of thousands and thousands of Palestinians can be stated in terms of their inability to obtain from the Israelis an identity card, evidence of their acceptance and status as residents in the country they were forced to leave. On the other hand, the humiliation of the million Palestinian holders of these coveted cards and the discrimination to which they are subjected is symbolised by this card which may at any time be confiscated, terminating their right to stay in the area.<sup>22</sup>

Palestinian vehicles were identified through the distinctive area-specific license plates the military authorities assigned. There were checkpoints—some regular and others flying—but none of today's Israeli-controlled terminals marking the end of "Area A" urban centers under Palestinian Authority jurisdiction; all this

was to come after Oslo. Provided you were not wanted by the Israeli authorities and had not been placed under particular movement restrictions, you could get a blue-plated (West Bank) *servis* (shared seven-passenger taxi) from Ramallah all the way into East Jerusalem and back, something that is no longer possible even for those Palestinians who have the requisite Israeli permits allowing them to enter occupied East Jerusalem. West Bank Palestinians holding East Jerusalem ID cards had relatively easier passage with their yellow-plated vehicles.

Snapshots of life in the West Bank can be glimpsed in Raja Shehadeh's published extracts from his journal written over 1979–80.<sup>23</sup> Israeli settlers could be seen driving through the main towns of the West Bank, on their way to settlements, sometimes buying supplies, sometimes smashing up cars and committing other acts of violence against Palestinian civilians and their property. The road network that links up the settlement colonies with Israel's municipal areas and fractures the West Bank into atomized enclaves was not yet built, though in its original form it was to be the subject of one of LSM's early reports. Settler violence was an early focus of the organization's monitoring activities. The settlements were growing, with the active support of Israeli Prime Minister Begin. The settlers were armed, as were the Israeli soldiers who patrolled in jeeps or on foot through the Palestinian towns and villages, living in barracks and guarding the prisons and the headquarters of the military governor in each district. Palestinian students and schoolchildren were involved in protests and clashes with Israeli settlers and soldiers. The Palestinian population was not armed, with the exception of those members of the "military-political branch" of the PLO factions referred to by Hiltermann. A different exception comprised those Palestinians collaborating with the Israeli occupation authorities, notably members of the Village Leagues established by Israel to foster an alternative leadership and described by Shehadeh in one of his nonacademic pieces as "a criminal collaborationist grouping."<sup>24</sup>

#### CAMP DAVID

The Village Leagues were established after the conclusion of the 1978 Camp David Accords between Israel and Egypt, the negotiations for which had been hosted and the agreement brokered by US president Jimmy Carter. These accords were a critical part of the context in which the idea for LSM/al-Haq arose, and they are obliquely referred to in the correspondence with the ICJ examined in the following chapter. Carter had thrown himself into intense Middle East peace efforts since taking office in January 1977. In Israel, Likud came to power for the first time, and in November 1977 Egypt's President Sadat made the first ever official visit by an Arab leader to Israel, speaking before the Israeli Knesset; Erakat notes that the surprise visit derailed ongoing diplomatic exchanges between the United States and the PLO at the time.<sup>25</sup> The following month, Begin presented his plan for nonterritorial "administrative autonomy"—that is, "autonomy was to apply not to the land but only to the people who lived on it."<sup>26</sup> The first of the two Camp David Accords

provided for the implementation of “autonomy” or “self-rule” arrangements for the Palestinians of the territories, with the exception of occupied East Jerusalem.<sup>27</sup> The PLO had not been a party to Camp David, nor had the Palestinian population been consulted, and Egypt’s declared goal of achieving Israel’s agreement to Palestinian self-determination was not realized.<sup>28</sup> Jordan refused to cooperate; Israel and Egypt signed a peace treaty the following year (1979), and Egypt was suspended from the Arab League, which moved its headquarters from Cairo to Tunis. By the time Shehadeh was writing his journal (1979–80), Likud was pushing the “administrative autonomy” concept that Hiltermann attributes originally to Moshe Dayan, looking for cooperative Palestinians to administer Palestinian affairs while Israel kept control of the territories, in accordance with the Israeli government’s interpretation of the Camp David agreement.<sup>29</sup> In 1981 the Israeli occupation authorities established a civilian administration alongside its military government in the territories; LSM responded with an analysis of the substance and implications of Military Order 947 for the West Bank that set up the civilian administration.<sup>30</sup> Raja Shehadeh was later to tell an interviewer from the *International Review of the Red Cross* that this was “the most important legal change” and “this was how apartheid was introduced to the Occupied Palestinian Territory.”<sup>31</sup>

The processes and conclusion of the Camp David arrangements were rejected by “national congresses” in the West Bank and Gaza, under the slogan “No to self-government, yes to the PLO.”<sup>32</sup> They were protested and resisted by school and university students and the burgeoning number of politically affiliated voluntary committees and professional institutions that had been forming since the mid-’70s.<sup>33</sup> Amnesty International’s annual report for 1977 highlights an increase in the number of convictions of Palestinians for alleged security-related offenses, and frequent demonstrations against the occupation.<sup>34</sup> The PLO, as already noted, had been investing in the mobilization of the population of the occupied territories, building on existing organizational structures of the PLO (such as trade unions), voluntary work committees established locally to provide social services for the occupied population, and encouraging the creation of new professional associations and popular groupings. This was “to serve as an infrastructure for a future Palestinian state” and in the meantime to constitute an “institutional infrastructure of resistance” to the occupation, including the authorities’ plans for Israeli-controlled administrative autonomy.<sup>35</sup> Hiltermann theorizes this as a strategy of “out-administering the enemy.”<sup>36</sup> This was not, however, a time of consensus among the factions of the Palestinian national movement in the occupied territories, but rather one of “acrimonious competition” over influence and control, notably among Fatah, the Democratic Front for the Liberation of Palestine (DFLP), the Popular Front for the Liberation of Palestine (PFLP) and the Communists.<sup>37</sup> Although membership in these political groups was illegal, Hiltermann explains the implications for local committees and associations as follows:

In each of these organizations and movements, individuals tend to identify with a particular political current in the national movement headed by the PLO, or else the

organization has set itself apart from similar organizations, becoming for example the workers' branch of a particular current in the national movement.<sup>38</sup>

Everyday references to a particular person (or group) "being" PF/DF/Fatah thus intended and intend to convey that the person spoken about supports or sympathizes with that faction over others, rather than alleging the individual to be a "member." There was also the matter of money. Shehadeh opens his preface to *The Third Way* with reference to the 1978 decision of the Arab States' meeting in Baghdad to establish a Steadfastness Fund "to help us combat the collapse of our social and economic fabric, caused by the Israeli colonization of our land."<sup>39</sup> The fund was controlled by a joint PLO-Jordan committee, an arrangement which "became the focus of sharp criticism from nationalist leaders in the West Bank, who had little faith in the intentions of the king of Jordan"; according to Hiltermann, "the issue of Joint Committee funding was to become the main cause of contention in the national movement in the late 1970s and early 1980s."<sup>40</sup> This exacerbated tensions between the inside and the outside—the nationalist movement outside the occupied territories, and the local leadership within. Writing about the late 1970s, Hiltermann describes this as a "war of the institutions."<sup>41</sup> This forms part of the background to a key concern articulated in the letters from LSM's founders to the ICJ by those who built the institution: the insistence on a nonpartisan positioning for LSM. In 1978, the Joint Committee took over from the Jordanian government the payment of the stipends of striking West Bank lawyers.<sup>42</sup>

#### HUMAN RIGHTS ORGANIZATIONS

There was a gap among the popular and professional associations developing at this time. In his contribution to al-Haq's *Twenty Years Defending Human Rights* publication, Hiltermann notes that around the same time that the initiative to set up LSM began to take shape, other professional and intellectual institutions had begun to "come into their own," including Palestinian universities, the Arab Thought Forum, and the Arab Studies Society.<sup>43</sup> As already noted, there was no functioning professional association for West Bank lawyers that might have provided a forum for legal challenges. There was no local Palestinian human rights group. From the early seventies, Quaker Peace and Service ran legal advice services for Palestinians from an office in East Jerusalem.<sup>44</sup> In Israel there was the Association for Civil Rights in Israel (ACRI), which did not deal as a rule with matters in the occupied territories and, according to Hajjar, neither challenged the occupation per se nor took a position on the applicability of the Fourth Geneva Convention to Israel's rule in those territories.<sup>45</sup> There was also the Israeli National Section of the ICJ, which was not involved in challenging Israeli measures and policies in the West Bank and Gaza. One source of information was the Israeli League for Human and Civil Rights, chaired by Israel Shahak, publishing information

(often culled from the Hebrew Israeli press) on human rights abuses inside Israel and in the occupied territories; in 1973 this group had been disaffiliated as a member by the New York-based International League for Human Rights.<sup>46</sup> Hajjar traces the “departure point for a local human rights movement” to politically motivated Palestinian and Israeli lawyers working in the military court system and increasingly making reference to international law and issues of legality of the nature of Israel’s conduct of the occupation.<sup>47</sup>

Of less direct influence were developments in the human rights movement internationally.<sup>48</sup> Relatively recent academic reevaluations of the historiography/ies of human rights have cogently critiqued presentations of human rights and/or the “human rights movement” that were concentrated on Europe and/or the United States. Samuel Moyn and others identify breakthroughs in the seventies, with Eckel identifying Eastern Europe and South America as regions where “human rights came to the fore as a protest language.”<sup>49</sup> Moyn has proposed that “the best general explanation for the origins of this social movement and common discourse around rights remains the collapse of other, prior utopias, both state-based and internationalist”<sup>50</sup>—more generally, he argues, a move from politics broadly stated to a morality that sought to stand apart from (and indeed above) the politics of the past and of the day. This last proposition is oddly resonant with the positions articulated by the founders of LSM in 1979. This is not to detract from the cogency of Moyn’s critics, for example Joseph Slaughter, who prefaces his intervention with a quotation from Upendra Baxi: “An adequate historiography will, of course, [ . . . ] locate the originating languages of human rights far beyond the European spacetime.”<sup>51</sup> Nor indeed would al-Haq locate “international” or “human rights” as coterminous with concepts, movement, or histories in the West or Global North, but would be more likely to agree with Vasuki Nesiiah that “the human rights tradition is internally diverse and even internally conflicted, and a singular history does a disservice to the counter-hegemonic projects that have framed their claims through human rights language.”<sup>52</sup> Still, in its origins, LSM/al-Haq (or at least the three founders) tended to look west (rather than south), and to the conventionally recognized and established international human rights organizations, for initial support and alliances, because of their personal familiarity with these groups and their contexts, but also for pragmatic assessments of the potential impact such groups offered in their interventions with the Israeli occupation authorities: To whom would Israel listen? Whose voice would Israel hear? As noted, they paid close attention to the struggle against apartheid in South Africa, noting the structural underpinnings of apartheid rule.<sup>53</sup> As for Arab organizations, Joe Stork and Susan E. Waltz consider the turbulences elsewhere in the region that unsettled existing ideologies and allegiances and made space for a human rights discourse to emerge. This is explored briefly below, but as a number of interviewees for this study made clear, their real, sustained engagement with

Arab human rights groups and actors elsewhere in the Global South came after the Vienna meeting of 1993 considered in chapter 6 (and, of course, after Oslo).<sup>54</sup>

In 1977, David Weissbrodt published one of the first articles on the international human rights movement, looking at a number of human rights NGOs with national sections in different countries, including the oldest of them, the Paris-based and primarily Francophone International Federation of Human Rights (FIDH) founded in 1922.<sup>55</sup> FIDH was to become an international partner for some of the first Arab human rights groups, those setting up in the Maghreb around the same time as LSM. Amnesty International, founded in 1961, is described by Weissbrodt as “one of the largest and newest of the nongovernmental organizations concerned with human rights.”<sup>56</sup> Amnesty’s International Secretariat assigned a full-time research assistant to work on the Middle East region in 1970 and undertook an extended research visit to Israel and the occupied territories in 1978; a twentieth-anniversary account of Amnesty’s achievements does not cover its work here.<sup>57</sup> As the model of a membership organization, Amnesty’s activism revolved around national sections, which existed overwhelmingly in the West and did not, at that time, work on human rights violations in their own countries.<sup>58</sup> The award of the Nobel Peace Prize 1977 to Amnesty is part of the standard narrative of the 1970s as the breakthrough decade in the international human rights movement, although in Palestine, the following year’s award to Menachem Begin and Anwar Sadat (for the Camp David Accords) made more of an impression, and not a positive one.<sup>59</sup> Greater impact from an external actor on a human rights–related story was generated in Palestine by the publication the same year of the *Sunday Times*’ report on allegations of torture of Palestinian detainees by Israeli forces.<sup>60</sup>

In the United States, the Lawyers Committee for Human Rights—since 2003 Human Rights First—was established in 1978 and was one of LSM’s earliest institutional interlocutors in the States.<sup>61</sup> Another of today’s players, Human Rights Watch, did not exist as such. Its first structure, Helsinki Watch, was established in 1978, to follow up on the commitments to human rights and fundamental freedoms made by state signatories to the Helsinki Accords of 1975.<sup>62</sup> Other watch committees were established during the course of the 1980s, with Middle East Watch the last in 1989.<sup>63</sup> In Europe, the International Commission of Jurists (ICJ) was established in 1952, solidly on one side in the context of the Cold War, but its Geneva-based secretariat later moved determinedly and innovatively into a more international position considering a broader range of human rights issues, including social and economic rights. The ICJ had national sections, again mostly in Western Europe, and was best known among lawyers for its focus on rule-of-law issues and its governing commission of prominent judges and lawyers.<sup>64</sup> The ICJ produced its first report focusing on Israel/Palestine in 1970, in the wake of a funding scandal that is discussed in chapter 2 in the context of its repercussions in the West Bank. The ideological counterpart to the ICJ (at least historically) was the International Association of Democratic Lawyers, which Weissbrodt described in

1977 as finding “the large part of their members and support in socialist countries and in allied groups in nonsocialist nations.”<sup>65</sup> One of the first substantial human rights reports on Israeli violations in the occupied territories was published in 1978 by the National Lawyers Guild, a US organization affiliated with the IADL.<sup>66</sup>

#### INTERNATIONAL LAW

International human rights organizations in the 1970s did not address issues of international humanitarian law (IHL) as a matter of course, if at all.<sup>67</sup> IHL was then mostly the concern of the International Committee of the Red Cross (ICRC) and military lawyers in different parts of the world. Israeli law journals were among the few academic venues for publications on this body of law at the time, and Israel and the occupied territories constituted the main case study for contemporary application of IHL.<sup>68</sup> It was in the *Israel Law Review* that Yehuda Blum published his arguments in support of the Israeli government’s decision early in the occupation that it was not legally bound to apply the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), a position central to Israel’s annexationist agenda and part of its “lawfare” work discussed further in the epilogue.<sup>69</sup> Beyond this context, however, it is hard to convey the overwhelming lack of interest, then, among both international legal scholars and human rights groups in the principles of the law governing military occupation and, indeed, armed conflict. There has been an explosion of scholarship and other material on IHL since the 2003 US-led invasion of Iraq and, to a certain extent, in the 1990s context of the wars in former Yugoslavia. This has included analysis of state practice-led developments in IHL to accommodate changes to existing governance and legal systems in occupied territory necessitated by the “transformative goals of certain occupations” (as the occupation of Iraq is presented). These contrast with the “conservationist principle in the laws of war,” certain underlying rules of which, according to Adam Roberts, “set a framework of minimal alteration of the existing order in the occupied territory.”<sup>70</sup> In the late 1970s, the lack of academic interest in IHL was matched by a lack of intellectual resources to support those (such as the founders of al-Haq) struggling to understand and work with it. By contrast, Noura Erakat maps considerable efforts invested by the PLO in securing admission with other liberation movements to the ICRC-convened Diplomatic Conference charged with reviewing what became the 1977 Additional Protocols to the Geneva Conventions. However, she also reports key figures from the time as recalling that the PLO was not technically engaged with the law, but rather, “its strategy was to enter every available space in order to enhance its international standing.”<sup>71</sup> This approach was also to mark the PLO’s engagement with the negotiations of the Oslo Accords in the early 1990s, to the documented despair of Raja Shehadeh.

As for international human rights law (IHRL), the two International Human Rights Covenants had come into force in 1976, developing into international

treaty law the principles established in the 1948 Universal Declaration of Human Rights (UDHR). Human rights-related activity at the United Nations proliferated in consequence, including the establishment of the UN Centre for Human Rights and the drafting of additional human rights treaties.<sup>72</sup> However, the extension of this body of law to occupied territories and war zones was not yet under investigation. In 2006, Roberts was still describing the “applicability of the international law of human rights to military occupations” as “a relatively new and controversial issue.”<sup>73</sup>

On the other hand, the Covenants share a common Article 1 that begins, “all peoples have the right to self-determination,” a principle that the colonial powers had kept out of the UDHR when it was proposed by Egypt and supported by Lebanon. Anthony Tirado Chase observes that the context of the 1960s, particularly the greater involvement of states from the developing world and the Non-Aligned Movement in UNGA debates, allowed arguments led by Middle Eastern states in committee to ensure inclusion of the right to self-determination. Tolley notes further that “new Afro-Asian members reformed Human Rights Commission procedures to hear black African and Palestinian demands for self-determination.”<sup>74</sup> The right of self-determination, says Chase, has been “particularly instrumental for grounding the South African and Palestinian struggles in international law,” and the fact that it is there in the first article of the Covenants is “due, in good part, to the Palestinian case.”<sup>75</sup> Samuel Moyn considers self-determination to have been the “chief and threshold right” in the anticolonial struggle.<sup>76</sup> In the case of Palestine, the “threshold right” of self-determination had not been achieved, and there was no national state from which to seek the promotion and protection of the human rights of its citizens. The argument that an occupying power would be bound by treaty obligations under international human rights law had not at this point been made, let alone won, and Israel had yet to sign on to the two International Covenants.

It is unsurprising that the founders of LSM mostly steered clear of the principle of self-determination, focusing rather on violations of the rule of law to meticulously build a picture of the occupation very different from that projected by Israel as the occupying power. Mouin Rabbani, a researcher with the organization during the first intifada, observed that this risked an “emphasis on micro-violations to the detriment of the bigger picture.”<sup>77</sup> Nevertheless, as Hajjar has pointed out, the Israeli authorities clearly regarded “most Palestinian attempts to mobilise round a collective national identity” as a security risk and could be expected to react accordingly.<sup>78</sup> In the initial correspondence with the ICJ in Geneva, examined in the next chapter, and against the background of Camp David, the would-be founders of the new organization explicitly distanced themselves from expressing any view on what political arrangements should prevail in the occupied territories, provided the rule of law was respected, and declared themselves free of partisan

political affiliation. That the rule of law for them would include implementation of Palestinians' right to self-determination was not made explicit.

#### HUMAN RIGHTS IN THE REGION

In such positioning, those who became the founders of Palestine's first human rights organization were different from counterparts in the Arab region moving towards human rights initiatives. The founders of LSM did not consciously work on enabling political pluralism or on the promotion of democracy, although they insisted on their vision of the "rule of law" entailing internal processes of inclusion and equality in Palestinian society. The circumstances of occupation (and IHL) framed priorities here differently. It was not until Oslo and the arrival of the Palestinian Authority that al-Haq was advised, by Chilean human rights leader José Zalaquett, that it might need to make a "certain declaration of principles about the connection between human rights and democracy" were it to treat such matters as fair elections as human rights issues.<sup>79</sup> Nor were the three founders political activists, as many of their counterparts were.<sup>80</sup> The first human rights organization in the Arab region not set up by a political party was the Tunisian League of Human Rights (LTDH), formally authorized by the Tunisian authorities in May 1977.<sup>81</sup> Others followed: in Morocco, the Moroccan Association for Human Rights (AMDH) in 1979 and the Moroccan Organisation for Human Rights in 1988; different Algerian Leagues in the mid-1980s; the regional Arab Organization for Human Rights in 1983;<sup>82</sup> and the Egyptian Organisation for Human Rights in 1985. The circumstances of their emergence depended on the domestic context, but there were common regional factors. Several of these related to Israel/Palestine: Israel's defeat of the Arab forces in 1967 and the "subsequent ideological decline of Arab nationalism," according to Chase, and the 1982 Israeli invasion of Lebanon and siege of Beirut, when Arab governments failed to assist and also repressed demonstrations by their own nationals against the Israeli action.<sup>83</sup> According to Stork, it was this latter that "prompted human rights to take organizational form" in Egypt.<sup>84</sup> The solidarity of the Arab human rights movement with the cause of Palestinian rights has been a consistent feature of regional activism since its origins.

The Arab human rights groups also had challenges in common. Their positioning towards their governments, of course, differed from that of LSM towards the Israeli military authorities, but similar balances had to be weighed to survive in hostile political circumstances. The founders of the politically independent Arab human rights groups were as keen as those of LSM to be nonpartisan and to be seen as such in their human rights work. Unlike the LSM founders, they often worked directly to create a consensus of space for human rights work among the different parties, sometimes by having representatives of the parties in their governing structures. Also unlike LSM, the groups in Tunisia and Morocco had

to deal explicitly with the relationship between Islam and international human rights, and the role that Islamists might play in their organizations.

In common with LSM, on the other hand, they found the context for human rights work uncomfortable: “the concept of human rights, it must be noted, was far from fashionable at the time,” says Waltz in relation to Tunisia. Leftists who constituted the majority of the intelligentsia “commonly dismissed human rights as a bourgeois notion and dangerously American.”<sup>85</sup> In Egypt, a founder of the EOHR, Hani Shukrallah, recalled that “the existence of the [human rights] movement was put in question not just by the government but by the intellectual and political elites, including the political parties, legal and illegal.”<sup>86</sup> Talking of the reaction to the establishment of the AOHR, Crystal notes that besides the regimes and the Islamists, “the Arab nationalist left was also historically suspicious of the group’s aims, seeing human rights as an issue of Western origin designed to deflect concern from economic and social issues.”<sup>87</sup>

Part of the ideological association of “human rights” with the West was the use of human rights language by the United States (and Western Europe) against the Soviet Union during the Cold War. In the States, Congress had in 1974 adopted the Foreign Assistance Act, section 502B of which required reports from the State Department on the human rights record of all those states receiving US aid; this was soon expanded to include all states. LSM’s first formal intervention in a third-party state was a response to one of these reports.<sup>88</sup> Furthermore, President Jimmy Carter’s January 1977 speech on taking office is framed as one of the key human rights moments of the era.<sup>89</sup> Carter proclaimed “commitment to human rights as the centre of his foreign policy,” but implementation of the policy was predictably problematic.<sup>90</sup> Dumbrell notes that in contrast to the way liberals received it, “for conservatives, the policy offered a lever against communism and its abuses” or, as one US administration staffer put it, “to really beat up morally on the Soviets.”<sup>91</sup> A distrust of the discourse of human rights among Palestinians—particularly but not exclusively those educated on Soviet scholarships, and the many Communist-aligned activists involved in civil society groups—was to be part of the context of LSM’s early years. “The idea about human rights,” says Khaled Batrawi, coordinator of al-Haq’s fieldwork unit in the late 1980s and a graduate of Kiev, “was that it was a new form of colonialism, or imperialism, a western discourse.”<sup>92</sup>

At the same time as declaring his commitment to human rights, President Carter was cosigning the 1978 Camp David Accords that signally failed to secure Palestinian rights and were the object of so much protest in the occupied territories. Jimmy Carter went on, after the end of his presidency, to set up the annual Carter-Menil Human Rights Prize, which in 1989 was awarded jointly to al-Haq and to the then new Israeli human rights organization B’Tselem.<sup>93</sup> Carter remained engaged with the area into which he had put so much energy, and with so few of the results that he apparently anticipated: the title of his 2006 book, *Palestine: Peace not Apartheid*, was designed to provoke a primarily US audience into

acknowledging the reality of “the abominable oppression and persecution in the occupied territories.”<sup>94</sup> This is part of the current “crueller times” that Shehadeh referred to in his 2009 reflection for al-Haq’s *30 Years* publication, including sustained siege on Gaza, the systematic effort to permanently dispossess Palestinians in East Jerusalem, and US president Trump’s 2017 decision to recognize Jerusalem as the capital of Israel and move the US embassy there.