2

Beginnings

In the spring of 1977, four Palestinian legal professionals—three lawyers and a judge—wrote from the West Bank to the International Commission of Jurists (ICJ) in Geneva, initiating a correspondence that would culminate in the establishment of LSM as an ICJ affiliate.[1] The ICJ, with its key mandate vested in the judiciary and the legal profession, was an obvious and attractive international partner to this group of legal professionals, and they were seeking to establish a branch of the ICJ in the West Bank, as they explained:

> Sir,
> We the undersigned are a group of lawyers and judges working in the occupied West Bank of Jordan. One of us is a member of 'Justice', the British Branch of the International Commission of Jurists.
>
> The situation now in the West Bank is such that there is no Law Council, Bar, or any other association of lawyers, in operation. There is also no centre for legal research.
>
> All of us the undersigned believe in and uphold the principles of the rule of law. We believe that it is at this time more than at any other time that it is important that these principles be promulgated, developed, and applied, especially since we are on the brink of a new re-organization of our society here.
>
> We also believe in and uphold all the principles of human rights and liberties as set forth in the Universal Declaration of Human Rights.
>
> Therefore and in order to uphold and strengthen these principles which we believe in and in order to help in promulgating these and also in order to assist in every way the existence and maintenance of high principles of justice, we are desirous of establishing a society here to be a branch of your commission and whose objects conform with the objects which your commission was established to help promulgate.
>
> We would however like from the outset to describe to you all the difficulties that we would be facing. The first is that, unfortunately, these objects which both

> you and we uphold are not as yet part of the tradition of this land nor are they commonly understood or believed in. We believe that in order to make them common knowledge and in order to win more adherents it is imperative that we should have the means both intellectual and financial to write, publish, translate articles, pamphlets and books and to do whatever else we deem necessary to achieve that goal. Although we would be able to draw to some extent on the means available to us here, yet, due to the unnatural and most difficult conditions we have to operate under, we shall be in need of assistance if we are to operate effectively. We would, furthermore, like to make it absolutely clear from the outset that we have no political affiliations nor would we support or advocate any specific political creed or future. We would advocate and pursue the ideas which the commission was founded to uphold such as the supremacy of the rule of law and which we believe should prevail as the foundation stone upon which any such structure should be constructed. However, and in order that this may be ensured, the ground must be prepared and this we hope with your help to do by establishing here a branch of your commission which would do what it would deem necessary in the way of publishing, lecturing, sponsoring research etc. The Branch would also be active in preparing reports on the administration of justice in the area and would be willing to cooperate with other Branches of the Commission abroad by exchanging literature on jurisprudence and working on joint projects in comparative law.
>
> We would like to know at your earliest convenience your readiness to assist in the establishment here of a branch of your commission and of your readiness to help us financially if not directly then perhaps through the contact of your central office in Geneva.[2]

This is the letter of a group anticipating social and political change and seeking to promote and uphold the rule of law (and "also," in a subsequent paragraph, human rights). They want to do this—and be seen to do it—almost without reference to the highly political context. The impetus is very much focused on rule-of-law issues in Palestinian society, on the need for promotion and dissemination of these principles, despite "the unnatural and most difficult conditions we have to operate under." This oblique reference is the only mention of the Israeli occupation. The insistence on their lack of political party affiliation or a view on the political future (the disposition of the Palestinian territories) may have been included to reassure their ICJ interlocutors (and any Israeli interceptors of the correspondence) of their distance from nationalist (PLO) politics that the Israeli authorities considered a security threat. In fact, the secretary-general of the ICJ at the time, Niall MacDermot, was considerably more politically outspoken on such matters than his West Bank correspondents were able to be.

On receipt of the letter, MacDermot responded with interest. "Our timing was impeccable," Shehadah was later to write: "The respectable human rights organization was looking for partners to work with on the issue of the Israeli occupation."[3] The ICJ already had a section in Israel, headed by Justice Haim Cohn, who was also

at the time an ICJ commissioner.[4] It was under the names of Cohn as chairman and the group's honorary secretary that early in 1970 the Israeli National Section of the ICJ had released a statement to "register its protest against the publication in the Review of the International Commission of Jurists, of a Report entitled: 'The Middle East: War or Peace,' because of its being tendentious and misleading."[5] The 1969 ICJ report, its first on the Middle East, was published under the leadership of the previous secretary-general, Seán MacBride.[6] MacBride was an imposing figure who among other things had fought against the British for Irish independence, been a politically committed lawyer and then a minister of foreign affairs in Ireland, and helped Amnesty International get started; he went on to be awarded both the Nobel Peace Prize in 1974 and the Lenin Prize for Peace among Nations in 1977, and to be closely involved in different United Nations initiatives.[7] The Israeli section's statement of protest against the ICJ's 1969 report was a two-page single-spaced defense of Israeli government positions, current and historical. Inter alia, it read:

> As far as allegations of "disrespect for the civilian population" are directed against the Israeli authorities, the Report fails to mention that in Israel, unlike some other countries, every person, without distinction of race or religion, domicile or nationality, political or other affiliation, has free access to independent courts of justice which exercise jurisdiction over all Israeli public officers and which enforce the Rule of Law without fear or favour. [. . .]
>
> Much capital is made in the Report of the non-compliance (by Israel of course) with various resolutions of the General Assembly, the Security Council and other organs of the United Nations, and several such resolutions are adduced as proof of "flagrant violations" (by Israel) of the United Nations Charter (p. 13), of military action (by Israel) endangering the "maintenance of peace" (ibid.), and even of "the violation (by Israel) of human rights in the Arab territories occupied by Israel" (p. 12). [. . .] To present readers of the Review with the one-sided picture of censures passed against Israel is to imply that there was, indeed, nothing to censure in the Middle East War but what the Security Council was allowed, without being vetoed, to censure; and to demand respect for such resolutions on the part of Israel is to ask a nation upholding the Rule of Law to submit to political machinations calculated to undermine the Rule of Law and supersede it by procedural and political tactics. Compliance by an innocent party with United Nations resolutions of this kind would amount to a suicidal self-castigation which is morally, legally and politically unjustifiable.
>
> The Israeli National Section of the International Commission of Jurists, which is second to none in its dedication to the Rule of Law, comprises among its members many jurists and lawyers who are, and have for many years been actively engaged in the administration of military justice including, since 1967, the administration of justice in the occupied territories. They deeply resent the wholesale allegations of violations of human rights, even if emanating from United Nations origins and if echoed in publications such as the Review, as slanderous war propaganda. As they will not let themselves be deviated from their duty to enforce the laws justly and impartially, so will this Section be and always remain vigilant for the observance of

> the Rule of Law and the protection of human rights. But the purposes and concerns of the Rule of Law appear badly served if its promoters allow themselves to be made the mouthpiece of partiality and prejudice.[8]

This image of Israel as a state firmly based on the rule of law was shared broadly in Israeli society; the Israeli National Section of the ICJ was to become a significant platform for articulating Israeli government positions in this regard.[9] The broad acceptance of this image in the West constituted both major motivation and vital context in and against which the founders of LSM/al-Haq consciously sited their efforts. The Israeli section's disdain for the UN, a little over two years after the 1967 war, seems in part a response to MacBride's own insistence (in the ICJ report) on the necessary role of the international body in resolving the conflict. Also clear in this letter are allusions to the Cold War context in which the Soviet Union championed its Arab allies and the Palestinian cause.

Like his predecessor at the head of the ICJ, Niall MacDermot had come into human rights after a career in law and then in politics, although in this case in the British parliament. A political contemporary recalled MacDermot as "the most surefooted, on-top-of-the-job, confidence-inspiring ministerial performer of all the talented 1964 Labour government."[10] His highly promising political career was stymied after British intelligence (MI5) briefed against him as a security risk to the then Labour prime minister, Harold Wilson, and in frustration he left politics and quite soon took over from MacBride at the ICJ.[11] Tolley reports from a journalist who watched him in action at the UN Commission on Human Rights that "no one talked down to MacDermot, and no one ignored him. Diplomats deferred to him, and dreaded his rebuke."[12] In 1977, *The Review* of the ICJ ran a piece titled "Israeli Settlements in Occupied Territories,"[13] which MacDermot later summarized as follows:

> In our Review of December 1977 we in the Secretariat of the International Commission of Jurists sought to show what we believe to be the fallacies in the Israeli arguments. [. . .] No country supports Israel in opposing the repeated UN resolutions declaring that the settlements have no legal validity. All the permanent members of the Security Council are agreed upon their illegality. To me the Israeli settlements are the touchstone of Israeli intentions.[14]

The ICJ's rule-of-law approach enabled (indeed required) a structural approach to violations that went directly to the concerns of the LSM founders. MacDermot had already robustly told his audience at the UN's Palais des Nations in Geneva that "the Israeli government say they cannot negotiate with terrorists. For my part I am unmoved by this description of those who fight for their liberation."[15] In the same venue the following year he turned his attention to those matters of politics from which his West Bank interlocutors had distanced themselves in their initial communication. He told his audience how a recent study "shows clearly how unacceptable to the Palestinians are the so-called autonomy proposals of the Camp David

Agreement" and closed with the observation that "the PLO should be included" in detailed negotiations that might lead to "an acceptable transition period if, and it is a big if, the people of Israel could bring themselves to accept the legitimate rights of the Palestinians, and accept the idea of self-determination for the Palestinian people and their eventual right to erect their own sovereign state."[16] Very differently placed from the LSM group, MacDermot lost no opportunity to link human rights and international law to a just and durable peace process realizing the goal of self-determination. Carter's Camp David impressed MacDermot no more than it had the Palestinians.

At the same time, MacDermot had to bear in mind that not all of his commissioners—those ultimately responsible for governance at the ICJ—saw things the same way. Hiltermann recalls that into the late 1980s "in the United States a Palestinian was an adjective modifying the noun terrorist."[17] At the 1979 meeting, MacDermot began by noting that "on such a controversial subject as this, it is difficult for me to say anything other than platitudes which would meet with the approval of all my Commission members"; his views and comments were to be taken as his own.[18] Tolley notes that "after MacDermot pressed a reluctant Executive Committee to recognise Palestinian rights, the ICJ became one of the few non-communist NGOs to criticise Israel."[19]

The ICJ had things in its past that would lend themselves to rumor and distrust in Palestine: its own website describes its Cold War origins (in 1952) as "born at the ideological frontline of a divided post-war Berlin." Things changed in the 1960s; with the recruitment to its ranks of more jurists from Asia, Africa, and South America, the ICJ worked for "the endorsement of economic development and social justice objectives" of which, as Richard Pierre Claude points out, "ICJ anti-communist founders heartily disapproved."[20] Tolley notes that "ICJ advocacy of development as a human right sought to bridge a major North-South divide."[21] Despite these principled changes in direction under MacBride's leadership, in 1967 the ICJ was embroiled in a scandal when the press broke what Claude refers to as "the tale of the United States Central Intelligence Agency (CIA) in secretly bankrolling the formation of the ICJ as an instrument of the Cold War" through the "conduit" of the American Fund for Free Jurists.[22] Tolley notes that MacBride "denounced the CIA and asserted that he had no information about covert funding through conduit foundations."[23] The ICJ survived the initial fallout through funding from the Ford Foundation and an energetic battle by MacBride to counter any reputational damage; Neier's assessment is that the organization "was never severely discredited" by the revelations.[24] At the end of 1970, MacDermot took over as secretary-general from MacBride. "Oh paradox!" wrote a reviewer in 1981, welcoming the ICJ's copublication of LSM's *The West Bank and the Rule of Law:* under MacBride and MacDermot, the ICJ had been transformed into a "veritable international power [. . .] whose reports are feared like the plague by dictatorships of the right, totalitarian regimes of the left, in brief by oppressors."[25]

Back in 1977, MacDermot wrote back to his Palestinian correspondents, raising what he must have known would be for them a most political matter, as well as one of principle: the ICJ's Executive Committee, he anticipated, would expect him "to invite the comments of our Israeli Section on your application." He asked his Palestinian interlocutors whether they would agree to MacDermot's forwarding a copy of their letter to Justice Haim Cohn for his comment or whether they would prefer to approach Cohn themselves.[26] In response, the four replied that after serious consideration they had come to the conclusion that "we have nothing to gain from such contact." They were located in the "occupied territories of Jordan whereas the other Branch is in Israel." And:

> We would therefore appreciate it if you would consider the Branch we intend to establish as entirely separate and independent and that you do not invite the comments of the Israeli Branch on this matter. As we are legally-speaking in two different countries you are not under any obligation to consult the Israeli Branch.[27]

There is another reference here to "this occupied area which is approaching a political reorganization." Given that the founders wanted the protection of the ICJ against the likely hostility of the Israeli occupation authorities, along with their sensitivity to being considered to be coming under an Israeli principal in any matter, it was an answer that MacDermot might have anticipated. When he in turn replied, he reported on the meeting of the ICJ's Executive Committee to which he had submitted the West Bank letters and also a comment from Justice Haim Cohn (an ICJ commissioner) whom he reported as writing:

> I welcome the establishment in the West Bank of a Section of the Commission, composed of legal practitioners without "political affiliations" whose purpose is not to "advocate or support any specific political creed or future." [. . .] If some formula can be found to recognize this group without (expressly or impliedly) recognizing the West Bank as a state, the Israeli National Section will be glad to cooperate with it in fostering and promoting the Rule of Law.[28]

Clear here is the significance of LSM asserting a nonpolitical stance. The response underlines antipathy to the idea of a "state" in the West Bank (and/or Gaza Strip). Fully in line with official Israeli positions at Camp David,[29] Justice Cohn suggested that the ICJ might furnish him with the names of the West Bank signatories, which MacDermot had removed from the copy: "I would have pleasure in inviting them to an informal meeting in which some patterns of cooperation could perhaps be worked out." MacDermot advised the West Bank group accordingly:

> The Executive Committee fully understand and agree that your organisation should be totally separate from the Israeli National Section. [. . .] However, in view of Mr Justice Haim Cohn's friendly reply, they hope very much that you will agree to meet him, and authorise me to disclose your names and addresses to him for this purpose.

This point was pursued by the ICJ in subsequent correspondence. Given the international context at the time, it is entirely possible that certain Executive

Committee members were keen that a potential Palestinian partner be approved by the established Israeli section, however informally this was to happen, and despite the fact that the author of a history of the ICJ describes the latter at the time as "the inactive Israeli national section nominally headed by Haim Cohn."[30] Shehadeh describes this as getting "clearance."[31] MacDermot himself seems to have viewed it as a matter of practicalities beyond convincing his committee:

> It seems to me almost certain that before the authorities will agree to the creation of your association, they will consult Mr Justice Cohn, since he is one of the Commission members and President of the Israeli Section. It will be difficult for him to lend his support to the application if he has not met you. I think you will find that he fully accepts that your association should be wholly independent of the Israeli national section.[32]

The issue was raised with Charles Shammas when he met with the ICJ in Geneva in the summer of 1978, and he was reminded later that year: "We think the stage has been reached to approach and inform Mr Justice Haim Cohn of the developments, something we understood you agreed on, here in Geneva."[33] The following year, informing Jonathan Kuttab of the Executive Committee's approval of the application, a postscript from MacDermot notes that "The Executive Committee hopes that you will keep Justice Haim Cohn informed of developments and of your activities. They consider that it may prove to be in your own interest to do so."[34] By then, Charles Shammas and Raja Shehadeh had indeed paid an informal visit to Justice Cohn, and engaged an institutional relationship that was to be tested in the next few years. Shehadeh describes the encounter as follows: "With his kind but authoritative manner, he asked us a few questions, which we answered honestly. The verdict he communicated to Geneva was that 'we were okay. But too political.'"[35] Shehadeh assumes that the finding of "political" rested on their view that the building of settlements was in violation of international law. For his part, Shammas recalls that he and Shehadeh were struck by "how completely unaware he [Cohn] was of the practices of the military government."

Back in the West Bank, the group was working on the technicalities of registration. A long letter in early 1978 set out the "three species of corporate entities" that were available: registration as a charitable society, as a cooperative society, and as a limited public company.[36] This first explanation to the ICJ of the choice of a company framework set out the powers of regulation in regard to the first two types of entity over permission to establish, over operations, and over membership of the Executive Committee, as well as, in the case of charitable societies, over "each transfer of funds from abroad." These powers under Jordanian law were now in the West Bank exercised (in the case of the establishment and committee membership of charitable societies) by the delegated Israeli army officer. As the letter pointed out, "for any proposed society whose objects appear to any degree to be problematic from the standpoint of the Military administration, permission to register is simply withheld indefinitely." LSM's continuing interest in this

as a rule-of-law issue was to be demonstrated by the publication in 1982 of the collected laws and military orders applying to charitable societies in the West Bank, which like other military orders were not routinely available.[37]

Having set out the legal constraints, the group proposed the option of the limited public company, "not considered as a public trust and therefore [. . .] not subject to the same degree of regulation and control by the relevant minister or, as things stand, the relevant officer of the Israeli army." This option involved technical transactions between the company, the association it would set up, the ICJ in Geneva, the shareholders, and the elected officers of the association. By way of further explanation, the letter observed:

> Incorporating the branch's charter into a contract between the company and a foreign provider of funds for the branch should make it more difficult for local forces to compromise the branch's functional independence and non-political status or to impose modifications in its internal processes or its complexion without precipitating its closure. [. . .] A branch organized as a subsidiary project of a holding company would not be reporting directly to any authority, civil or military.

Although not picked up immediately in Geneva, this paragraph was trying to convey a further concern to do with interference from "local forces." The reply from the ICJ shows discomfort at this proposed setup, which clearly constituted a departure from the normal institutional form of unincorporated membership organizations. "The scheme you propose seems extremely complicated," responded MacDermot, and "I doubt whether our Executive Committee would favour entering into a contract of the kind you suggest."[38] MacDermot offered to "take the matter up with the Israeli authorities in advance" on the assumption that "whatever form of organisation you adopt, the creation of the association is going to require the consent in some form of the Israeli authorities, civil or military."

In the autumn of 1978, with Shammas's visit to the ICJ in Geneva in between, the West Bank group wrote back with a five-page letter addressing the ICJ's concerns and reservations "with respect to our proposal to organize within the framework of a company." This letter revisits some of the points in regard to applicable law and practice but also addresses the "contextual constraints" within which the group saw itself operating and which the proposed institutional framework was intended to accommodate:

> Both our choice of framework and the procedure which we propose to follow in establishing an effective non-politicized affiliate of the International Commission of Jurists reflect, on the one hand, restrictions on freedom of assembly and association that have been in force since the Israeli occupation and, on the other hand, certain problematic characteristics of our society's internal processes which those restrictions have exacerbated.[39]

The authors detailed the restrictions on freedom of assembly and association imposed under the terms of Israeli Military Proclamation 101 that would challenge

attempts to hold meetings and activities as an "ad hoc committee," which was one structural suggestion from the ICJ. The following paragraphs are a dense exposition of the challenges the drafters saw themselves facing:

> Economic and political developments to date have provided little impetus or leeway for the generation of modern institutional forms and internal alignments typical of a society organized around production for exchange rather than patronage and subsidy. [. . .]
>
> Consequently efforts such as ours must be carried out within the context of a still vigorous sectarian order whose subjects have some difficulty accepting at face value a public interest or social development project with whose proclaimed objectives they may wholly identify. This difficulty has been aggravated since 1967 by the prohibition of all organized political activity, the effect of which has been to cause political expression to assume a cryptic idiom, thereby giving sectarian political overtones to even the most loosely organized pro bona initiative.
>
> In light of the above, we strongly believe that the effective promotion of the rule of law within our context requires an organizational vehicle that proclaims as well as assures the non-sectarian nature of the enterprise if it is to attract participants on a non-sectarian basis. An arrangement which lacks either an incorporated institutional foundation or a democratic, constitutional process of internal regulation will not under the prevailing conditions win sufficiently broad participation because it calls for the commitment to a visible group process of individuals whose civil rights are highly circumscribed and precarious, and who have uncertain expectations of each other's conduct and a weak tradition of ad hoc association. Failure to attract participants across sectarian lines would seriously diminish our ability to spread the ideas we uphold within the society at large.

Part of what the authors are referring to here was the tendency in Palestine to ascribe to any group or organization a political character in the sense of associating it (and its actors) with a particular PLO faction or the Communists or, alternatively, with loyalty to the Jordanian regime or to even more dubious allies, foremost among these last the CIA. The fledgling West Bank affiliate did not escape such characterizations, and the effort to establish the organization as "nonpartisan"—as emphasized in its earliest literature—is examined in the following chapters.

The group raised the need to be inclusive of all West Bank lawyers who identified with their objectives, whether they were striking or practicing. The group writing to the ICJ included both, and in this letter informed their interlocutors in Geneva that they had decided not to pursue an earlier idea of including a Gaza branch in their establishment plans: Gazan lawyers had established a functioning professional guild after the Israeli occupation, which constituted "a prospective framework already in existence within which to establish a local Gaza affiliate of the ICJ." Colleagues in Gaza, they reported, preferred to "initiate their own direct contacts with the ICJ to study further the feasibility of a unified West Bank/Gaza framework": and moreover, "some of our colleagues have expressed concern about how the authorities might construe a unified initiative at this juncture."

This long letter is something of a tour de force in its attempt to have the ICJ in Geneva understand the particular challenges of setting up an affiliate in the West Bank in the late 1970s. The creativity of the very idea of LSM was matched by the ingenuity of the response to these challenges in terms of structure (the company framework) and process. The group proposed registration of company shares in the names of four local lawyers, a contractual arrangement with the ICJ, an unpaid executive staff elected from among the unpaid employees (the members) and the employment of paid full-time staff. Variations on this theme appeared in later correspondence once the ICJ's Executive Committee had understood "after some explanation why you choose to operate in the proposed way."[40] In 1979, a letter from Jonathan Kuttab opened with "Good news: We have been officially registered."[41] This letter responded to a number of concerns that had been raised by the ICJ. The complex relations with Gaza had been explained to an intermediary with whom "lengthy meetings" had been held. The form of cooperation "remains to be worked out and depends to a large degree on the preferences of our colleagues in Gaza."[42]

The group were at pains to explain anticipated internal political dynamics requiring, in their view, structural safeguards for the organization:

> The limitation on shareholders is deliberate. It is intended to insure a measure of control over the Company by those who are serious and active. There is a real fear that, if our Company's activities come to arouse a broad interest or achieve any significant impact, we may be flooded with "members" who have neither the dedication nor the willingness to work on behalf of the Company's goals. The procedures followed give a special voice and measure of influence to a core group of founding members, together with those who have proven their interest in the Company by serving as directors. This group of shareholders can exercise pivotal powers, and insulate the Company from partisan take-over attempts. [. . .] We strongly believe that retaining this set-up is wise and necessary in light of the intrusive pressures of internal politics in the West Bank.

This paragraph addresses a key element in the structure that was to characterize LSM: it was not, fundamentally, a "membership organization" in the manner of, notably, the Tunisian league (LTDH). Its idea of "LSM members" referred to all those working with it, not to a formalized membership base. "We wanted to make sure it wouldn't be factionalized" says Kuttab, "so we had to write the by-laws in such a way as to keep people out." The letter points up two related concerns: the desire to maintain the influence of the "core group" and the need to prevent "partisan take-over attempts." Elsewhere in the region, the new human rights groups faced similar concerns, and recruitment mostly proceeded at first through personal contacts. Waltz describes the LTDH as having begun "as an experiment closely governed by a fairly intimate band of professionals who shared a common vision of justice," which had a membership of around a thousand in 1982, tripling by 1985. Despite a measure of control through membership being, at

this time, by recommendation, the central leadership became "wary of the loss of control implied by precipitous expansion" and began debate on a charter that would set out the position on a set of human rights, based on the UDHR, to which members would have to commit. Action was also taken against local branches judged to present a partisan political risk, whether from leftist groups or from the government party.[43] In his 1991 study, Kevin Dwyer presents the reflections of two leading LTDH activists on these challenges, and similarly the comments of one of the founders of the AMDH to the effect that the young Moroccan Association also had to find a way to control the membership: "We couldn't let everyone join who wanted to. To remain in control of the work you had to have a pretty tight structure."[44] Groups sought to involve a range of political parties while avoiding their jeopardizing organizational independence and the integrity of the work.

In the meantime, in the West Bank, the limited public and not-for-profit company structure served LSM/al-Haq well for many years, until in 1997 staff shareholders attempted to dismiss the new board. The tangled events leading up to the 1997 crisis are examined in chapter 7. Back in 1979, three more West Bank lawyers had joined the group; eight of the nine signatories were shareholders, with only Shammas omitted as holding neither a law degree nor a West Bank or Jerusalem ID card. The company, LSM, was registered. In October 1979, MacDermot wrote with news that the ICJ Executive Committee had approved affiliation with the ICJ. MacDermot then passed the relevant registration documents to the PLO representation in Geneva. A cover note reads:

> A group of Palestinian lawyers approached the ICJ in 1977 with a proposal to form an organisation in the West Bank to work for the rule of law in that area, and to be affiliated to the ICJ.
>
> The ICJ showed interest and encouraged them to proceed. Eventually the group formed a limited liability company called "The Institute of Law in the Service of Man, Limited." This is known for short as Law in the Service of Man or LSM.
>
> A company was formed because it was the view of these lawyers that in this way they would be able to avoid some of the more paralysing controls imposed on other forms of association by the occupying authorities. [. . .]
>
> Operating Regulations have been prepared, under which there will be an elected Executive Council and three operating divisions concerned respectively with a) research, library and documentation, b) legal reporting, c) legal aid. It is intended to ensure that the Company remains non political.
>
> The founders believe, and the ICJ's enquires support the belief, that the LSM, if it succeeds in getting itself established and in operation, will be widely welcomed and supported by Palestinian lawyers in the West Bank.
>
> November 1979.

The note is on unheaded paper and without attribution. A handwritten note at the top reads "handed to PLO Representative by NMD 19/11/79."[45] MacDermot's

experience and diplomatic background likely prompted this initiative to ensure that the PLO, as the major political force in the West Bank (albeit lacking any legal presence there) and specifically Fatah, which held the representative posts in diplomatic missions around the world, need not feel unsettled by developments outside its control. MacDermot certainly seems to have understood the "cryptic idiom" of the group's letter of September 20, 1978, and to have done what he thought appropriate to secure space for "an organizational vehicle that proclaims as well as assures the non-sectarian nature of the enterprise." The note is dry and in the manner of a courtesy; it does not seek approval or permission, nor does it present the ICJ as an intermediary between LSM and the PLO; the LSM correspondents were not informed.[46]

In January 1980, MacDermot paid his first visit to the occupied territories,[47] where with Nidal Taha he signed an agreement between the ICJ and LSM.[48] The ICJ secured seed funding from private sources for its new affiliate.[49] MacDermot also met with others in the occupied territories and in Israel, including an interview with Israeli prime minister Menachem Begin, with unanticipated results. In early spring 1980, a letter from Nidal Taha updates MacDermot on LSM's activities since their meeting,[50] reporting visits paid to introduce LSM to the mayors of Nablus and Hebron. The former, Bassam Shaka'a, was to lose both legs a few months later in a series of bombings carried out against West Bank mayors by underground Israeli Jewish groups after an attack by armed Palestinians on Israeli settlers in Hebron. The mayor of Hebron, Fahad Qawasme, was to be deported after the attack, along with the mayor of nearby Halhul, Muhammad Milhem, and Shaykh Rajab al-Tamimi, judge of the Hebron *shari'a* court. The Israeli authorities' official response included a lengthy curfew imposed on Hebron and conduct by the occupation forces that subsequently gave rise to "shocking revelations" in the Israeli press.[51] The failure of lawyers' attempts to prevent the deportations through recourse to the Israeli High Court—in only the second case of its type—is the subject of Shehadeh's last (and rather despairing) journal entry for 1980.[52]

Nidal Taha's letter also pointed up challenges which the fledgling organization was meeting in the aftermath of MacDermot's visit: questions being raised in the West Bank about who or what was the ICJ and, by extension, its local affiliate LSM. MacDermot had made a speech to the UN Commission on Human Rights which Tolley describes as the moment when "MacDermot began confronting Israel."[53] The speech was selectively reported in the Israeli press, and Taha's letter describes the consequences:

> These quotations gave the expression that you are in favour of the Israeli occupational authority; this consumed much of our energy in answering questions from nearly everyone who knows or doesn't know about our group or the commission. But fortunately your report as a whole illustrates this point and we translated it and wanted to publish it in the local magazines. But the Israeli military censor refused to permit the publishing of the Arabic translation of the report which you find enclosed.

> As things stand now there is only one way in which this may be achieved: the publication of your report in some European periodical that is received and/or circulable here, and the local newspapers' subsequent translation and publication of same. Should the censor again refuse permission for its publication we will be in a position to raise an action contesting the censor's ban.

This appears to be the first time that LSM had its material censored; it was not to be the last. The misquoting of MacDermot's statement drew unwelcome local attention to LSM. ICJ protection had been sought against the forces of the Israeli occupation, but in this first challenge it was Palestinian society that was asking the questions.

MacDermot reacted swiftly to Taha's letter. In the June issue of *The Review*, the section on "Human Rights in the World"—contributed by the ICJ Secretariat—included an entry titled "Palestine: Torture in the Occupied Territories."[54] It opened as follows:

> To attempt to write or say anything impartial, objective or balanced about the situation in the occupied territories of Palestine is a thankless task. Either side in the argument will quote and make use of those passages which support its own case so as to give a distorted impression of what has been said.
>
> At the 1980 session of the UN Commission on Human Rights the Secretary-General of the International Commission of Jurists made an oral intervention describing a recent brief visit to the occupied territories and an interview he had had with the Israeli Prime Minister, Mr Begin, who invited him to raise any matters concerning human rights. Those extracts of his speech which seemed favourable to the Israelis were reported in the Israeli English language and Hebrew press with no mention of the criticisms he had made. There is a group of Palestinian lawyers in the West Bank and Gaza Strip affiliated to the ICJ who work to promote the legal protection of persons in the occupied territories. Seeking to redress the balance, they prepared a translation of the full text of the speech with a view to its publication in the Arabic press in Jerusalem. When it was submitted to the Israeli censors, the entire speech was deleted, including even the passages which had already been quoted in the Israeli press.[55]

The piece then turned its attention to "further use of the speech" made by "a distinguished human rights activist in the United States" whose treatment was first quoted and then corrected as being "wholly inaccurate" in one part and containing "other inaccuracies" elsewhere. The specific focus was on allegations of torture and ill treatment of detainees under interrogation. The ICJ secretary-general, said *The Review*,

> did not say he received 'no reports of torture'. He said he had received no reports of *physical* torture in the last eighteen months, but that he believed that unacceptable methods of psychological pressure were being used. Many victims of these forms of psychological torture considered this type of torture more difficult to bear than physical torture.[56]

The Review then proceeded to reproduce in relevant part MacDermot's speech, including his reference to "prolonged periods of sleep deprivation, accompanied by prolonged standing or sitting, bound hand and foot and hooded and in complete isolation" and his invocation of Begin's own account of the effect of sleep deprivation on prisoners.[57] MacDermot had told the Commission, "I urged Mr. Begin and other Israeli authorities to whom I spoke to lay down very clearly what methods of interrogation were permissible and what impermissible, and to have a system of inspection or spot checks to ensure that the rules were adhered to." Some years later, the Israeli authorities—prompted by a domestic scandal over interrogation techniques and General Security Services agents' false testimony about their use—adopted the recommendations of the Landau Commission (1987). These endorsed "moderate physical pressure" and annexed a secret set of guidelines for use by interrogators.[58] Clearly, this was not what MacDermot had had in mind.

There are two things to note here for the purposes of the current study. On the positive side, the ICJ's emphasis on social and economic rights was to influence its colleagues in LSM in terms of the development of LSM's thinking on collective rights and the right to development.[59] On the downside, the story of covert CIA funding (which had been briefly raised again in 1975) surely fed into the questions being asked in 1980 in the West Bank, when for Palestinian nationalists the CIA was on a political par with Shin Bet or Mossad.[60]

MacDermot's early action in response to an appeal from his Palestinian colleagues was indicative of energetic support; he was, of course, also responding in defense of the integrity of the ICJ's own work. Two months after Taha's letter, in May 1980, MacDermot was sitting day after day listening to Shehadeh give evidence to the UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.[61] This episode, already exciting enough in its own right, was to lead to LSM's first and seminal publication, one that propelled the organization onto the public stage at home and abroad. It had come about during a trip to New York the previous year, when Shehadeh had secured an introduction to an influential UN human rights staffer who worked with the committee. Shehadah had told him that in his view the committee was "doing consequences not causes" and needed to include in its examinations the legal changes being effected by Israel in the Palestinian territories.[62] In April 1980 the committee sent Shehadeh a letter inviting him to appear and to "talk on the matters which are concerned with the property rights of the civilian population in the occupied territories" and "to deliver to us information on the developments of the recent month, involving measures affecting the civilian population and their property."[63]

Shehadeh and Kuttab set to work compiling the presentation, collecting and ordering the myriad military orders and regulations through which the Israeli occupation authorities had been amending the existing Jordanian law, and drawing out their implications. This was the challenge that had first attracted

Shehadeh's attention when he was assigned to sort out the pile of Israeli military orders stacked up behind the door in his father's law office.[64]

Meanwhile, the situation in the West Bank was tense. Shehadeh's journal extracts from the time talk of Israeli settler leader Meir Kahane's "visit" to the Ramallah town hall with members of his Kach movement to announce that "the only solution is for the Arabs to be sent out of here," of everyday clashes between Israeli settlers and soldiers and Palestinian students and schoolchildren, of the attack on settlers in Hebron followed by the deportation of two Palestinian mayors and the imposition of a curfew, and of the confirmation of a massive land expropriation in the Jordan valley.[65] Shehadeh writes:

> Jonathan has been coming here every night for a month. [. . .] The biggest difficulty is keeping it secret, explaining away exhaustion during the day. And at night, as we sit with the lights on, I feel so exposed.
>
> But these documents we are collecting are on the state of law, and it seems too late to speak of law now. They are just words, and it all seems too late. But we can't stop. We must not give in to the fear that silences *samidin*. The world must hear what our legal system has been reduced to—hear about the violation of basic human rights. Whoever cares should know how the Israelis are cloaking their brutality in legal garb.[66]

Together the two of them prepared "*huge* notes," and when it came time for Shehadeh to leave for Geneva, he focused on defiance rather than despair. Looking back at this experience, he recalled:

> I went fully prepared to cover as many of the legal changes and human rights violations as time would allow. I believed that by revealing to the UN Committee the immensity of these violations, they would certainly take action. Israel would no longer be able to proceed as before with its administration of the occupation. Consequently the occupation would crumble.[67]

This wry recounting of his early expectations of international actors is in tune with his belief in the Israeli public's likely reaction to the information in *The West Bank and the Rule of Law*, discussed further below. It also indicates his (and LSM's) understanding of the strategic importance to Israel's conduct of the occupation of its systematic and policy-based violation of IHL rules—these were the causes of the consequences with which the committee had been concerned. At the time, Shehadeh remembers, "I thought I was doing something very heroic and dangerous!" On the plane to Geneva, he reports thinking, "I haven't had any time to think what this will lead to. A report in the *Post*? Twenty years in jail? Banishment?"[68] At the UN, "out of fear of Israeli reprisals, I insisted on being referred to in the document as 'M.'"[69] The meetings were held as closed sessions. In extracts from his journal published as *The Third Way* in 1982, there is no reference whatsoever to this episode at the UN, only to the book *The West Bank and the Rule of Law*, which was already a public document by the time the diary extracts were published.[70]

What happened, according to the records of the committee sessions as well as to Shehadeh's own recollections, was something of a marathon.[71] The meeting began on a Tuesday morning, and the committee called Shehadeh back for a second day, then a third and then a final Friday morning session, with questions to think about in between sessions and requests for follow-up information when he was back. Starting with land seizure and closure, the system of land law in the West Bank, rulings by the Israeli High Court of Justice in land cases, and the obstacles that Israeli military orders placed before Palestinians trying to prove their ownership or usufructory rights to the land, he warned the committee that "there is a programme, a full programme, to settle the whole of the West Bank. I have a copy of this programme."[72] In subsequent sessions, he set out the legal system in the West Bank, the jurisdiction of the Israeli High Court of Justice, and the range of amendments made to Jordanian law. He invoked in support of his argument a ruling by Justice Haim Cohn on the restricted ability of the occupying power to amend local law.[73] He detailed the parlous state of the West Bank judicial system, and the fact that Israeli military orders were not made available to the general public (while "ignorance of the law is no excuse," according to security legislation). The rules on labor law, tax and customs duties, municipalities, and security offenses were all examined. On the Friday morning, Shehadeh delivered a summary of his testimony. The record shows how he tried to get across the enormity of the gap between what Israel was doing in the West Bank and how it was presenting its conduct to the outside world in 1980:

> The intention of the Israeli Military Administration of the West Bank, the intention seems to be as follows: To keep the façade that a legal system is continuing to operate. That this legal system is following Jordanian law. That this legal system is not interfered with by the Israeli Military Administration. That this legal system is run by Arabs who act as judges and who are employed in the various departments and that the lawyers are also Arabs and therefore that the whole system is given freedom to continue to go on as it was going on during the Jordanian time without interference from the Israeli Military. That for security offences, military tribunals have been set up. These military tribunals are dealing legitimately with security offences. That these tribunals follow the Geneva Convention. That when there are any needs for appeal, a decision of the military administration, the local Arabs can be brought to the High Court of Justice in Israel and this is also an addition or something that is unprecedented on the part of an occupying power to make open[ly] available its own courts to the inhabitants of the occupied territories and that in view of all these conditions Israel is doing very well and acting very fairly in its administration of the occupied West Bank. Having painted the picture to the world outside, and as far as my reading goes of literature that is published internationally on the West Bank, this seems very much to be the picture that the writers of these books and papers seem to have.
>
> Whereas this is the picture that is presented, the reality is entirely different. The reality is that one of the first steps taken by Israel was to change the law in order to take the power to appoint judges, to deprive the courts of a whole area of litigation

> having to do with administrative law, to reduce the stages, the levels of appeal from four to three, to appoint less judges and employees than are necessary under the conditions and in view of the big number of cases, to control the purchase of land and the laws concerning land and control the land departments and all the departments which are related. To change Jordanian law so that the legal system is deprived of many of the powers which it had originally had under Jordanian law as it stood in 1967. To take many of the offices which previously, and according to Jordanian law, should be held by various individuals who sometimes are controlled or sometimes are related in one way or another to various ministries, to assume all these offices and vest them in the Officer in Charge of the Judiciary, or as the case may be so that the checks and balances which the Jordanian law had provided are no longer available and all the power is united in the hands of one man who under the present circumstance is the Officer in Charge of the Judiciary who comes to hold 14 offices besides all his functions as minister empowered as Minister of Justice. And also to give the military courts the power to look into cases which the military have an interest in so that in cases where a certain employee is not wanted to continue office, he is charged with corruption and he is not tried at the civil court, he is tried at the military court because there is an interest there in making him lose office.
>
> And finally changing Jordanian law to a great extent and in various areas which have no relation to security the most important of which have to deal with the administration of justice, natural resources including land and water, town planning, expropriation, municipalities and administration of the towns and villages, granting of licences of businesses, income tax and fees and value added tax, pensions and rights of civil employees as well as employees of the police force. Also the laws concerning the police force have been amended [. . . .] so that now the police is a branch of the Israeli police and there is co-operation between the two and control by one of the other. The setting up of objection committees which have assumed the powers which previously were in the hands of the civil courts. These are some of the most important areas where there has been change of Jordanian law by military orders. Having taken all these steps the desired outcome has been achieved and the law that is now being exercised over the West Bank is entirely different from Jordanian law as it existed on the eve of the Six Day War. [. . .] If one compares the situation in Jordan now and the level at which the courts operate and the judgements that are made there is great disparity between the Jordanian practice presently and the West Bank practice which is an indication that it is not inherently problematic to the West Bank or the Jordanian system of courts, but it has to do with the effects of the occupation.[74]

The way this summary was delivered gives some indication of the outrage provoked in Shehadeh by his close examination of the military orders and the changes made to the legal system in order to concentrate the Israeli military's control over a huge range of quotidian civilian, infrastructural, economic, and other matters. The international law on military occupation (specifically the Hague Regulations) generally requires a military occupant to maintain local governance and local economic and legal systems unless "absolutely prevented." Israel's narrative—as explained by Shehadeh—was that this was what it was doing, while in fact it was effecting massive transformations with almost entirely prejudicial consequences

for the occupied population. Against the 2003 invasion of Iraq and attendant developments in the law of occupation, Roberts observes that "certain occupants—and not only those with a generally transformative purpose—have been able to give cogent reasons" why they were prevented from maintaining existing elements of the legal system. His example is "in the Israeli-occupied territories some significant changes were made to laws, including by abolishing the death penalty."[75]

> Back in Geneva, Niall MacDermot, according to Shehadeh, did not miss a single session. When I finished, he took me aside and let me know that the text of my testimony was destined to stand on the shelf in the UN office in Geneva gathering dust and that nothing would be done about it. He suggested that I write a book based on the material presented, which the ICJ would be willing to co-publish with Al Haq. I was delighted. What better way to start off the organization and let the world know of the Israeli violations.[76]

MacDermot proceeded to review the manuscript line by line with Shehadeh, with the eye of a keen editor as well as a demanding interlocutor on matters of evidence. The result, LSM's first publication, is considered in the following chapter. By the time it was published, most of the original group had left LSM. There were sensitivities over the reporting of MacDermot's meeting with the Israeli prime minister and the allegations of CIA-ICJ links. There had also been a tightening of the fault line between working and striking lawyers. During his testimony in Geneva, Shehadeh had told the committee that a large meeting of working lawyers had recently decided to negotiate with the Jordanian Bar Association in Amman on the issue of the strike.[77] Bisharat records a delegation of "young working lawyers," who had established a Committee of Working Lawyers (CAL) in Jerusalem and subsequently the rest of the West Bank, going to Amman to discuss the establishment of a branch of the Jordanian Bar Association in the West Bank. Not only "rebuffed," the delegation was "violently castigated"; certain working lawyers, it was alleged, had held meetings with US and Egyptian officials:

> The strikers charged CAL with complicity in the 'Camp David Scheme' to circumvent the political authority of the PLO and impose a settlement against the will of the Palestinian people, and with posing itself as an alternate local leadership compliant to Israeli and American interests.[78]

Internal differences in the group led to sometimes acrimonious meetings. Kuttab recalls "the same old political arguments," with someone questioning whether the Shehadeh law office "was really viewed as nationalist," and questioning Kuttab's own standing ("who is he, just back from the US, we don't really know him"). Shammas was even more of an unknown quantity, with his Brooklyn Lebanese origins and his interest in and unusual approach to matters economic. Certainly Kuttab, Shammas, and Shehadeh had very clear ideas of what they did and didn't want the organization to do and to be. "It was a new concept, new to this society," says Kuttab; and new in those days tended to be distrusted. Unlikely as individuals

to have been minded to compromise, together they seem to have formed an unsettling alliance in the face of established local figures.

The initial approach to the larger group, says Shehadeh, was made "because we thought we had to have legitimacy." Had it worked, LSM might have developed more along the lines of its counterparts elsewhere in the region, with a broader set of local professionals (at least to some extent representing different political tendencies) involved in its growth. In the event, the striking lawyers withdrew together, and a final meeting voted to dissolve the group. Nidal Taha was one of those to leave. "There were lots of rumours here, lots of us withdrew, it was very difficult." He himself left to practice law in Nablus, returning to al-Haq's board of directors in the difficult days of the internal crisis in 1997, subsequently heading the board. The three who remained, wearied like everybody else from the process, decided to proceed alone. The company shares were reregistered under the names of Shehadeh and Kuttab, who were named as codirectors of the reconstituted LSM, and together with Shammas they went forward as the organization's Steering Committee.