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Founders

This chapter considers the individual concerns and motivations of the three men who cofounded LSM and formed its first Steering Committee—the two codirectors Raja Shehadeh and Jonathan Kuttab, along with Charles Shammas—and how, in responding to the challenges of the time, they articulated and built the values, ethics, and approaches of the new organization. A number of documents are quoted at length, particularly those which are not available online.[1]

RAJA SHEHADEH

Raja Shehadeh described as follows the coming together of what a former researcher refers to as "the Triumvirate," the group of three who succeeded in establishing LSM as a working entity:[2]

> During my stay in London I had learned of an organization called Justice, the British section of the International Commission of Jurists, whose headquarters were in Geneva. This was an organization dedicated to the promotion of the rule of law. I began to dream about the creation of a Palestinian section of the ICJ, to promote the rule of law in the West Bank. It was my good fortune that I then met Charles Shammas, a Lebanese American graduate of Yale University who had come to the West Bank to try out new ideas. He was exceptionally bright with a highly developed ethical sensibility. [. . .] Together we began the difficult process of creating the first professional nonfactional organization in the West Bank dedicated to working on issues of an essentially political nature. We were soon joined by a third partner who proved of immense help to us, Jonathan Kuttab [. . .] He was an American lawyer whose family had emigrated after he finished high school in Jerusalem. He was looking for ways to serve the Palestinian cause through the law and had written to ask me for ideas. I told him about the new organization and he soon left the law office in New York where he had been working and came to help us with our new project.

> We were an enthusiastic trio. We put all we had into our work, writing letters, meeting people, and devising strategies. With Charles's meticulous mind and Jonathan's flair I was in very good company.[3]

Shehadeh had completed a degree in English literature at the American University of Beirut after two years at Birzeit Junior College. He then qualified in law in London, where he was called to the bar. He began his two years as a *stagier* (trainee lawyer) in the law office of his father and his uncle, who had been among the first West Bank lawyers to leave the strike and return to practice after the occupation. It was the task of preparing a subject index of Israeli military orders that revealed the extent and implications of changes made to Jordanian law by the Israeli military authorities: "all these changes weren't random, there was a method to it," and here, he thought, was a role that he could usefully play. Shehadeh's testimony at the UN and LSM's first publication, *The West Bank and the Rule of Law* (WBRL), were direct results of this examination. The little book sets out the UN position that the West Bank—including East Jerusalem—is occupied territory and explains that Israel has refused to recognize this status and denies that the Fourth Geneva Convention applies, while insisting that it is "willing to be governed" by its humanitarian provisions (not specifying which these might be).[4] Israel insists that "the framework of Jordanian law has been retained and that only those amendments necessitated by humanitarian and security considerations and proper and effective administration were made." Shehadeh then explains:

> It is not a primary purpose of this study to examine the status of the West Bank under international law. Without accepting the official Israeli position as stated above, the intention here is to study the situation now prevailing in the West Bank, using universally accepted standards, to assess whether the principles of the rule of law are being observed. As Israel has declared that Jordanian law continues to be applied in the West Bank, this body of law will be used as the frame of reference.
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> It must be emphasized from the start, however, that the military occupation itself places the greatest limitation on the rule of law. As long as it continues all essential requirements of a society under the rule of law such as the right to self-determination, representative government and an independent judiciary will continue to be denied. As matters now stand no indigenous central government machinery or legislative body of any sort is in existence. The judiciary is the only national institution that continues to function in the occupied territories. For this reason and for the reason that an essential requirement of a society under the rule of law is the existence of an independent and respected judiciary, and an independent legal profession with a professional body to uphold its standards, this study will focus first on the position of the judiciary and the legal profession.[5]

The systematic debilitation of the West Bank judiciary during the Israeli occupation was a major source of concern and a prime motivator for Shehadeh upon his return from abroad; it also involved the issue of the lawyers' strike. LSM introduced itself as follows on the back cover of the book:

> Law in the Service of Man, which became an affiliate of the International Commission of Jurists in 1979, was formed by a group of West Bank Palestinians to develop and uphold the principles of the rule of law in the West Bank, carry out legal research, and provide legal services for the community.

For its part, the International Commission of Jurists (ICJ) described itself on the inside back cover as "a non-governmental organisation devoted to promoting throughout the world the understanding and observance of the Rule of Law and the legal protection of human rights." The omission of *human rights* from the LSM blurb was no doubt deliberate: because the initial focus was very much on law, and/or because the term *human rights* might attract unwanted attention from the occupation authorities, or indeed because the existing legal regime of human rights had less to do with the structures of occupation than did the rule of law. The rule-of-law theme fed into the methodological approach of taking seriously official Israeli claims about the occupation's approach to the law and testing these normative assertions against the facts of the conduct of the occupation: fundamentally, it was about legality, a form of "rightful resistance."[6] Summing up his motivations, Shehadeh explained:

> If we wanted a Palestinian state (and I did, I thought we did), we're going to have to work for it, have the rule of law, different to what I saw around me. So the main thing was: the rule of law, Israeli violations and correcting the record and not letting the Israelis get away with it.

Howard B. Tolley Jr. reports that publication of the book was funded by a Kuwaiti donor (presumably sourced by MacDermot) and translated into five languages by national sections of the ICJ. The UN Human Rights Division bought five hundred copies to distribute to the UN General Assembly; "foreign missions in Geneva made bulk purchases," and "Jordan requested copies for UN Commission members." Israeli representatives, says Tolley, "made outraged denials."[7] Al-Haq's archives contain press clippings of reviews and notices published in international press outlets.[8] This was quite an impact for what Shehadeh spoke of as "our dry little book on the niceties of law."[9] Later, he noted, "It was a short, modest book, but it made a strong impact because it was understated and because most of what it revealed [. . .] had not been known."[10] Understatement became a hallmark of al-Haq's work. Recalling his earlier fears, Shehadeh remembers being telephoned by the Israeli adviser on Arab affairs to the military government, who told him that "they had considered banning the book, but decided against it because 'that would make you a national hero.'"[11]

Not all of the reviews were as distanced from the political implications as was the book itself. A positive review in *Afrique-Asie* predicted that the publication "will mark a date in the history of international law" and "will be a weapon for other occupied peoples—Sahrawis, Namibians, Eritreans."[12] Closer to home, the Israeli press picked up on the mostly unspoken conclusion; a review in the *Jerusalem Post*

observed that "it is not a better, more just, more humane occupation he is after, but the end of the occupation."[13] A publication of the Israeli left observed:

> Shehadeh's survey, though he does not say so, is meant to serve as a tool for lawyers, politicians and any other interested individuals who are in some way involved in the ideological-informational battle against the Israeli occupation and for Palestinian self-determination.[14]

Not all reactions were positive. A letter forwarded by a charitable organization shows a US lawyer writing that "from a legal standpoint the pamphlet strikes me as sheer nonsense." Shehadeh records the following encounter:

> I was asked to lunch with an Israeli law professor who has written quite scathing criticisms of the military legislation on the West Bank. I was invited together with a well-known international human rights figure. When our host greeted us—I had as usual lost my way in Tel Aviv trying to find his home—he was very gruff and cold, and I thought it was because we were late. We sat down to lunch and suddenly, without any warning, he turned to me and began shouting a barrage of insults about the book—how dare I—I don't know what I'm talking about—he would not give me a first-year pass mark in law school, such ignorance, lies, distortion. [. . .] It turned out (and this I still cannot quite believe, I don't know what to make of it) it turned out, he *had not read it either*.[15]

The response of the Israeli legal profession, endorsed by Justice Haim Cohn, was swift and had immediate effects. The ICJ secretary-general had opened his preface to *WBRL* by stressing that Israeli military orders "which have constituted the only form of legislation applicable to the area for over 13 years, are not published and are not to be found in any library," the orders mostly being "distributed to practising lawyers" and some being "sent to the people directly affected by them." In a much-quoted passage, MacDermot noted:

> There have been isolated cases, as in Chile, where one or two decrees of a military government have been treated as secret documents and not published. However, this is the first case to come to the attention of the International Commission of Jurists where the entire legislation of a territory is not published in an official gazette available to the general public.[16]

Shehadeh recalls that Israeli officialdom appeared particularly stung by comparative reference with the Chile of that time. In his 1994 article about al-Haq, Mouin Rabbani noted further:

> The frenzied Israeli reaction to the publication of the West Bank and the Rule of Law served to expose the Achilles' heel of the occupation and that which makes it unique among modern occupations: its dependence upon the perception of legality fostered by a constant attention to legalistic detail. To accuse Israel of repressing Palestinians was one thing, but to accuse it of doing so illegally quite another.[17]

A discernible impact became the more regular publication and distribution of military orders, although LSM was still investing considerable effort in collating

and compiling collections for the first few years of its existence.[18] In 1983, Lieutenant Colonel Joel Singer of the Israeli army's International Law Branch wrote to Shehadeh and Kuttab that "for more than a year, two book stores are selling to the public copies of the military government orders" which he said was "in addition to the regular method of distribution of the orders."[19] In public, however, the Israeli establishment tended to simply deny the facts as presented. Perhaps nowhere was this more evident than in the response of the Israeli national section of the ICJ, titled *The Rule of Law in the Areas Administered by Israel* (1981) and without the ICJ as a copublisher. Haim Cohn contributed the foreword, referring to "the area of Judaea and Samaria," which along with the Gaza Strip and the Golan Heights "came under the control of Israel by virtue of belligerent occupation." He then noted that "no claim has been laid by the State of Israel so far to any of these 'administered areas'"—apart from "the city of Jerusalem which, including its eastern part, has always been regarded by the State of Israel, and under its laws, as an integral part of the territory of Israel." With no comment on the contradiction between Israel's action in Jerusalem and the prohibition on annexation under international law, Cohn described as "largely academic" the debate on the application of the laws of occupation because "it has from the very first been the declared policy of the State of Israel that its military and civil organs abide by the humanitarian provisions of the Hague Regulations and the Fourth Geneva Convention of 1949 as if they were binding and applicable."[20] Shehadeh pointed out with some alacrity that the report failed to examine the military orders affecting Israeli settlements as an example by which to test the lawfulness of Israel's conduct; in a later piece he observed:

> Not only did this position conceal the truth regarding the denial of the Palestinians as a national group with the inalienable right to self-determination, it also left Israel entirely free to pick and choose which international legal norms it wished to adhere to [. . .] because it did not at any point define what were these "humanitarian provisions," and it certainly never considered them to include the prohibition against the establishment of Jewish settlements in the Occupied Territories.[21]

Acknowledging that "Israel administers these territories as an uninvited ruler," the foreword explained:

> Rather than dissipating her resources on political polemics, Israel has preferred to concentrate her efforts on steadfastly ameliorating the administration of the territories and raising the living standards of the population—with the result, of course, that the voices of resentment have grown progressively stronger and have appeared to win the day by default.
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> The political agitators have now, however, been joined by reputable legal scholars who have inscribed the motto "Law in the Service of Man" on their banner and who, thanks to their sincere motivation as co-fighters for the Rule of Law, have won affiliation with the International Commission of Jurists.[22]

Cohn observed that "the study of Messrs. Shehadeh and Kuttab can in no way be accepted as a correct statement either of the facts or of the law" while welcoming

the challenge "to state both fact and law as they really are."[23] He then continued, in regard to the Israeli study:

> While this study is neither government-sponsored nor government-backed, it is mostly the work of lawyers who do their reserve duty in the Israel Defence Forces as legal advisers to the military commanders in the administered areas [. . .] keeping a constant and jealous watch for any infringement or diminution of the Rule of Law at the hands of military men and administrators not trained in the law. If they have not always succeeded, it is because security considerations, which are not within their competence or expertise, have been regarded as overriding—as indeed they are under the provisions of international law.

Most authors remained anonymous, but Cohn did pay particular tribute to Joel Singer, head of the army's International Law Branch. Cohn then dealt with the Israeli High Court of Justice and its assumption of jurisdiction—given his own role as a judge in that court—and concluded:

> It cannot in fairness be denied that, in the history of military occupations throughout the world, the Rule of Law has never been better served and implemented than by affording the rights and remedies that Israel has made available to the residents of her administered territories.[24]

Raising once again "the prevailing military concepts of security requirements," he indicated his own unhappiness at "certain aspects" but wrote that, given "terrorist influence and attacks, those concepts must prevail." In his final paragraph, Cohn addressed "the international legal community," anticipating that "the analytical mind of the lawyer" would

> easily differentiate between a *tractatus politicus* and a sober statement of law and fact. Not that a political pamphlet has no justification, especially if it is overtly presented as such and does not purport to pose as what it is not; but lawyers, as distinct from politicians, are hardly in the habit of contenting themselves too easily with what at best amounts to political argument, unsupported by evidence and authority.[25]

Cohn's assumptions demonstrated either real ignorance about the situation in the occupied territories or an inability to acknowledge such a dent in Israel's image as a rule-of-law state.[26]

The Israeli ICJ's publication provoked further reviews of the two reports. "Disagreements on the 'facts' abound," wrote one reviewer in *The Nation*. "The outsider lacking first-hand knowledge of life on the West Bank (as I do) cannot evaluate the truth or the falsity of the conflicting claims. . . . Whom does one believe?"[27] The authors of *WBRL* clearly spent considerable time responding to the reactions; a 1982 letter from Shehadeh to a coeditor of the US-based *Human Rights Internet Reporter*, responding to her review regarding the (then) availability of military orders,[28] noted that "perhaps because of the publicity which the ICJ and LSM

report has caused, most of the Military Orders have now been printed and copies of them are now on sale at local book stores."[29]

This was "the beginning of the organisation in the public eye," says Shehadeh; "we began to have the feeling that we were 'called upon' and had to keep up with changes and alert the world." Different Arab radio stations and the local Palestinian press reported on the publication of *WBRL*,[30] which Shammas reports was "very influential for domestic perceptions." Shehadeh reports working lawyers discussing *WBRL* and recalls suggestions that Prince Hassan of Jordan had raised it with the Jordanian Bar Association (JBA). An Arabic translation was soon published in Jordan.[31] The organization began to recruit, widening its profile through informal networks. Shehadeh reports that they met with "scant interest" from lawyers when looking for recruits for the work;[32] the next lawyer to be drawn into LSM's activities on a long-term basis was Mona Rishmawi, who had grown up in the Gaza Strip, completed her law degree in Cairo, and joined the Shehadeh law office for her training.

The section in *WBRL* on "The Legal Profession" dealt entirely with the lawyers' strike, ending with the dismal consequences of the "lack of any organization of the profession."[33] Shehadeh recalled later, "I found no professional satisfaction in a ruined legal system."[34] Shammas describes Shehadeh as being "in shock at what he found back home." Shehadeh talks of "an emasculating experience" and of the "crippling use of negative power" on the part of Palestinian political forces, lest anything novel should lead to a new form of political force: "None of these factions [of the PLO] supported work that would improve the conditions of the judiciary. Such activity was seen as reformist and implied an acceptance of the status quo. Under these conditions, the fate of the lawyer was simply to endure."[35]

It was in the Shehadeh law office in Ramallah that a number of lawyers met in 1971 to "openly declare their position against the strike and call for its suspension"; the following day, Shehadeh's father and uncle were disbarred for life by the JBA, and his father's Jordanian passport was withdrawn.[36] Shehadeh describes the first case that drew his father back into practice after the occupation, involving a friend's young daughter who had been charged with offending the Israeli flag after an incident at the Allenby Bridge crossing from Jordan into the West Bank.[37] The case is typical of circumstances that brought lawyers back to the courts under the occupation: requests to defend those charged with hostile activity by the Israeli authorities in the military courts, land confiscation orders, ongoing cases in the civil courts, and the fact that in their absence, the occupation had allowed Israeli lawyers to practice not only in the military courts of the occupation but also in the civil courts, with no reciprocal recognition of Palestinian lawyers from the occupied territories. On the other hand, there were the arguments against recognizing the occupation by appearing in their courts and under their rule. George Bisharat, who came as a summer intern to LSM in 1982 while he was a law student

at Harvard, describes conflicted feelings that gave rise to his subsequent scholarship on this issue.[38] In a socio-legal inquiry into cause lawyering published after Oslo, he reflects on the lawyers' dilemma:

> Should they accept invitation into the courts of the occupying power, to defend clients and press their claims? Or would they in doing so validate Israelis' assertion that theirs was a 'benign occupation' and so sap urgency from calls to end the occupation? [. . .] Has their advocacy ultimately legitimated the occupation or contributed to its prolongation?[39]

Accused of "collaboration" by a striking lawyer, Shehadeh acknowledges:

> This is a nightmare that haunts those of us who didn't go on strike. [. . .] I find myself suddenly thinking of us lawyers here on the West Bank as the daylight equivalents of the people dragged out in the middle of the night to whitewash over the slogans painted on the wall. It is as if by our very willingness to function under the distorted rules of "justice" that they have set up here we are providing the occupation—the theft of our land and liberties—with a clean bill of legalistic health.[40]

The choices for lawyers in the earlier years of the occupation were complex and often painful. Bisharat talks of the "palpable impact" of the discussions on the legitimacy and costs of lawyers' practice in the occupation's courts that led to the "fragmentation of the legal profession."[41] He wonders whether the activities of working lawyers on behalf of their clients "may have helped channel anger and resentment against the military government into relatively harmless forms."[42] This is examined further in the following chapters.

The benefit of legal advocacy under the occupation, besides relief for individual clients that might infrequently be won, Bisharat identifies as the appeal to the "court of public opinion." Insisting on "mini-trials" or "trials within trials" on allegations of torture and ill-treatment drove up the costs of the occupation. The premise for such activities, Bisharat notes, is Israel taking seriously the principles of democracy and the rule of law. Bisharat finds that "on balance, Palestinians' election to seek representation in Israeli courts, and lawyers' choice to assist them, has been justified" and that one result was in helping build a Palestinian human rights movement.[43] The broader issue, however, outlasted the West Bank lawyers' strike and continues to preoccupy at least some of those involved. Bisharat reports prominent Israeli rights lawyer Felicia Langer abandoning her practice in defense of Palestinians after 1990, due to her "fear that legitimation costs had exceeded the benefits of continued legal practice during the *intifada*."[44]

In his foreword to the Israeli ICJ's publication, Haim Cohn had argued that allowing Palestinians recourse against acts of the military authorities to the Israeli Supreme Court—acting as High Court of Justice—validated Israel's claims to respect the rule of law. Would recourse to the High Court "legitimate" Israel's rule? Some Palestinian defendants chose not to recognize the jurisdiction of Israel or the Israeli Court and declined to appeal. Others appealed. Bisharat observes:

> Given the understandable choice of Palestinian deportees, administrative detainees, expropriated landowners and others to fight military government actions against them, the question again was whether they would be represented by politically committed lawyers or other lawyers with other motivations and interests.[45]

In 1980, Shehadeh recorded in his journal the return of the two West Bank mayors (Fahd Qawasme and Muhammad Milhem) deported after the armed attack on settlers in Hebron; they were allowed back to appeal to the Israeli High Court against their deportation orders. Shehadeh's father Aziz was preparing one affidavit to the High Court on the Fourth Geneva Convention's prohibition of deportation and another on the illegality of deportation under the Jordanian constitution and the status of the British-issued Defence (Emergency) Regulations (1945) under which the orders had been made.[46] Shehadeh reported "wild hope amongst many" and wrote that "even the political die-hards who say we should never appeal to, or recognize, any Israeli institution are excited."[47] The hearings took place at the Allenby Bridge. At the end of his journal, Shehadeh records hopes crushed when the High Court declined to recommend the repeal of the deportation orders. Some Palestinians continued to have recourse to the High Court; others continued to refuse. In a study on deportation for al-Haq in 1986, Hiltermann reproduced extracts from the statement of two men who had refused to appeal at all, whether to the Military Advisory Committee or thereafter to the Israeli Supreme Court:

> We refuse to participate in measures which will give the deportation orders the appearance of legality, while they are contrary to international law, the rules of natural justice, and the law accepted by civilized nations, even in times of occupation . . . There is no reason to go through the legal measures when we are convinced that the [Advisory] Committee's hearing, like the hearing before the Supreme Court later, will only serve the State of Israel, which wishes to project a democratic image to the unjust and arbitrary deportation orders [. . .] The law is only the continuation of a policy, and as such we do not believe in it [. . .] We are not prepared to have the occupation authorities act as enemy and judge at one and the same time.[48]

In its early years, LSM had on occasion to educate foreign organizations who failed to recognize the stand behind such positions. One such, whom al-Haq asked in 1987 to intervene against the deportation of a Gaza resident who had decided not to appeal the order, telexed to say that it would be difficult for them to intervene if the man "wanted to be deported."[49] Despite the more general acceptance of recourse to the Supreme Court in later years, it remains the case that the Court's record has been mixed and not encouraging. Reviewing David Kretzmer's study of the Court's record in 2005, prominent Israeli human rights lawyer Michael Sfard reminds his readers that the court has refused to rule on the legality of Israel's settlement policy, although it has taken on individual cases; and it has also not decided whether the Fourth Geneva Convention applies.[50] Sfard addresses the "existential dilemma of

the human rights lawyer" with his question: "From the perspective of human rights *and of those who seek a quick end to the occupation*, was (and is) the justiciability of the occupation a positive development?"[51] Given a lawyers' professional and moral obligations to their clients, Sfard suggests that this question should be answered by academics. "I reject the argument, which can be heard from time to time by human rights neutralists, according to which there must not be a linkage between objecting [to] human rights violations and objecting [to] the occupation."[52] Al-Haq's own voice on this is no longer "neutralist"—it is far more explicit about seeking an end to the occupation than was LSM in its early years.

Decades later, Shehadeh was to write: "I sometimes doubt whether our struggle will ever succeed in liberating us. What I've always been sure of is that, regardless of the cost, nothing proved more important in the fight against Israeli expansionist ambitions than our staying put on our land, our *summoud*."[53] Looking back at the Israeli response to *WBRL*, Shehadeh tracked the development of the interpretive arguments in the responses of the Israeli jurists Cohn and Singer forward to the positions enshrined in the Israeli-Palestinian Interim Agreement of 1995.[54] In particular, noting the agreement on "due regard to internationally accepted norms and principles of human rights and the rule of law" included in the text of the 1995 Interim Agreement, Shehadeh observes:

> If ever there was an empty gesture that exemplified hypocrisy and token adherence to principles of human rights, this was it. With this cynical assertion of the application of human rights, it was the Israeli position enunciated in 1982 by Justice Haim Cohn that won the day.[55]

It was clear after the publication of *WBRL* that the Israeli legal establishment would respond vigorously to Palestinian attempts to establish a narrative of the legal and human rights situation in the occupied territories, including an account of the applicable law, that differed from that of the official Israeli narrative. As Shehadeh put it, "The debate on the legal and human rights aspects of the Israeli occupation between Israelis and Palestinians had begun."[56] Whether the responses comprised denial of facts or denial of the legal classification of those facts as violations, they more than supported the insistence of all three cofounders that rigor had to be the basis of everything LSM did and said. Stanley Cohen, himself a significant actor in the Israeli human rights movement, classified the possibilities of denial according to "*what* exactly is being 'denied': literal, interpretative and implicatory." Literal denial "is the type of denial that fits the dictionary definition: the assertion that something did not happen or is not true"—hence, "the fact or knowledge of the fact is denied." In the second, interpretive denial, "the raw facts (something happened) are not being denied. Rather, they are given a different meaning from what seems apparent to others." And in the third, implicatory denial, "there is no attempt to deny either the facts or their conventional

interpretation. What are denied or minimized are the psychological, political or moral implications that conventionally follow."[57]

There is more than a note of "implicatory denial" in the response by a senior Israeli legal figure to Kuttab and Shehadeh's next publication, a dry legal analysis of Military Order 947 (1981) establishing the Civilian Administration which the authors identify as "among the most important" of the "physical as well as legislative changes" being pursued through "energetic policies" by the Israeli authorities in line with the "autonomy plan agreed upon at Camp David."[58] Introducing their analysis, Kuttab and Shehadeh set out their understanding of what was going on in the occupied territories:

> A survey of the legislation promulgated by the military government legislation over the past fifteen years would lead one to conclude that this period was one of extensive and deliberate activity intended to fulfil the following policies:
>
> 1. The assumption of control over the local Arab population of the territories.
> 2. The close determination of the pace, extent, and manner of the development of key sectors of Palestinian society in the Area. The development of infrastructures and institutions that could serve as a basis for an independent Palestinian state has been inhibited. This control is achieved by prohibiting the exercise of a wide range of activities without permits and licenses which are within the total discretion of the military government to grant and which are withheld whenever the activity concerned conflicts with Israeli objectives in controlling Palestinian development.
> 3. The creation of a situation whereby many of the economic benefits which would accrue to the State of Israel from an annexation of the territory are obtained. Some of the ways through which this has been achieved are: the extension of elements of the Israeli taxation system to the West Bank; the incorporation of the West Bank into the Israeli customs cordon; the establishment of labour bureaus to channel West Bank labour resources; the regulation of employment of West Bank workers and the tying of other aspects of West Bank services and governances to those of Israel.
> 4. The facilitation of the creation of a strong, large and dominant Jewish civilian presence in the Area through the acquisition by the military Government of large areas which have been classified as "State land," the development of a communications network, the establishment of administrative, legal, defence, economic, and other structures for the Jewish settlements; and through the determination of the development of the Arab society in such a way as not to conflict with the proposed growth of the Jewish settlements.[59]

The particular areas of concern noted were not obviously "human rights" concerns as understood by the civil and political focus of the international movement at the time; it was very much a rule-of-law approach. LSM/al-Haq was subsequently to initiate projects and publish studies on planning and taxation and *Know Your Rights* publications on workers' rights which fitted more into the ICJ's growing thinking on economic and social rights and development.

Joel Singer responded in print again and forwarded copies of his article for Kuttab and Shehadeh with the "hope that this article will clarify some of the questions raised in your analysis of January 1982."[60] Shehadeh's 2008 reflection considers Singer's response as follows:

> Singer (1982) published a lengthy article defending this development and denying it had any prospective political objectives. He proposed that the newly established civilian administration intended to facilitate better rule of Palestinians in the areas he referred to as the "territories administered by Israel." Twelve years later when the Oslo Accords were drafted with Singer's help, the apartheid structure established in 1981 became more entrenched.[61]

By the start of the 1980s, then, with the publication of *WBRL* and the analysis of Military Order 947, LSM had provided evidence of what Israel was doing and how, and what it was planning for the future of the occupied territories following Camp David.

In al-Haq's archives is the text of Shehadeh's presentation to the First International NGO Meeting on the Question of Palestine, convened in Geneva in 1984 by the UN Division for Palestinian Rights, telling of the profile the young organization had already won. Shehadeh opened with the assertion that in the seventeenth year of occupation, "it is possible, with some authority, to speak very clearly about what seems to be already in place and what are the plans for the future and what is the vision that Israel sees for the population of the Jewish minority of less than 4 per cent and the Palestinian majority in the West Bank."[62] Starting with land confiscation and settlement, he moved to town planning and the proposed Road Plan No. 50, published that year by the Israeli authorities:

> The West Bank does have roads, these roads are adequate for its purposes and it is not a case of an area which did not have roads suddenly being brought civilization and better road systems. What is really intended behind this road plan is to tie the Jewish settlements to Israel and to do this by avoiding the Arab towns and villages."

Shehadeh informed his audience that the Israeli High Court of Justice had already reviewed and approved the Road Plan, and thus "we have come to a dead end as far as the possibilities of resorting to legal action within the existing legal framework that the occupation has provided us with." He suggested therefore that those present ask their governments to work for an advisory opinion from the International Court of Justice. An LSM publication later that year made the same recommendation in relation to the Road Plan, arguing that it was fundamental to Israel's plans for annexation of large parts of the West Bank and to its settlement policy.[63] MacDermot asked the UN Commission for Human Rights to propose to the General Assembly "that it seek an advisory opinion from the International Court of Justice on the [following] question":

> Is a military occupant entitled in international law to make major changes to the road system of an occupied territory in the supposed interest of the local population

> (such as that in Road Plan Number 50 of February 1984) in the absence of any request or support from, or full consultation with, the inhabitants of the occupied territory and their elected representatives?[64]

In the West Bank, a committee was formed and hundreds of objections submitted against the plan; but neither the Shehadehs nor LSM built up the complex legal arguments or mobilized the necessary political support (local, regional, international) to seek the advisory opinion. Much later, Shehadeh wrote later that LSM had made sure the PLO received the study but received no response, and he doubted that the PLO was particularly interested.[65] Nevertheless, the analysis was prescient and two decades later, at the request of the UN General Assembly, the International Court of Justice issued its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.[66]

Shehadeh's scholarship in subsequent years demonstrated a continuing focus on the land. A different kind of publication, *Palestinian Walks*, was in 2008 awarded the Orwell Prize, which describes itself as "Britain's most prestigious prize for political writing"[67]—not the sort of accolade that Shehadeh could have been expected to seek or welcome back in his earlier life. In one passage in this book he describes walking in the hills around Ramallah with Jonathan Kuttab in the early 1980s, making exuberant plans for frustrating the "existential threat" of the settlements through use of the law and the energy of LSM; twenty-five years later, he wrote, "those times seem aeons away."[68]

JONATHAN KUTTAB

Jonathan Kuttab's family had left Jerusalem for the United States after he finished high school, and he took a degree in history followed by a JD. Qualifying at the New York Bar, he worked in corporate law in Wall Street to pay off his law school debts. With this done, he turned his attention back to Palestine, writing to the Shehadeh law office in Ramallah ("because they were the number one") to offer his services. He had the "specific purpose of doing something of service, of using the law as my contribution to helping the situation here in Palestine, helping the Palestinian cause." His letter found its way to Shehadeh, and Shammas met Kuttab in New York to explain the ongoing project to establish LSM and use the law in precisely the way that Kuttab was seeking; Shammas remembers that "wanting to be of service, that was exactly how Jonathan was presenting it." Kuttab came over late in 1979 on a volunteer status and subsistence wages with the Mennonite Central Committee: "I wrote my own job description, which was to learn Hebrew, understand Israeli law and work for justice, human rights and international law in the Palestinian community." Kuttab qualified at the Israeli Bar as a foreign attorney (taking advantage of the military order allowing Israeli lawyers to practice in the West Bank),[69] and then became a member of the Israeli Bar, later qualifying also at the West Bank Bar.

Kuttab's positioning distinguished him from both Shehadeh and Shammas, and his role in the organization built on his strengths. The following is an extract from a presentation he made in 1985 to the Foreign Affairs Committee of the US House of Representatives:

> My name is Jonathan Kuttab. I am a Palestinian attorney residing in Jerusalem. I studied at the University of Virginia Law School and am a member of the New York Bar Association, as well as the Israeli Bar. I am director of Law in the Service of Man, a human rights organization which is the West Bank affiliate of the International Commission of Jurists. I am addressing this Committee on behalf of the Palestine Human Rights Campaign, a non-profit, American organization which focuses exclusively on Palestinian human rights. PHRC's membership is comprised of church, peace, academic, Arab-American and Jewish communities who are concerned about peace in the Middle East. [. . .]
>
> I am quite familiar with the legal and human rights situation in Israel and the West Bank, and speak from the perspective of those in the US, in Israel, and among Palestinians who actively seek peace and justice, advocate human rights, and would like to see US aid and assistance become a constructive force leading to moderation, reconciliation, justice and peace in the Middle East. At the same time, as an American, I realize that governmental foreign aid is a limited resource that must be carefully distributed in accordance with well defined priorities; that it must be properly accounted for, and that it is an instrument of policy which needs to accommodate US interests while meeting the needs of others throughout the world.
>
> One of the several interests the US seeks to achieve through its foreign aid program is greater respect and observance for human rights and democratic principles by recipient nations. [Here Kuttab brings up the State Department country report for 1984 and other human rights reports about the situation.] The basic cause for most of the complaints is that Israel is attempting to pursue in the Occupied Territories policies of annexation and expansion contrary to international law, United Nations resolutions and to the vision of the US concerning the ultimate disposition of the territories. While the US believes the final status of the Occupied Territories should be determined in the context of a peaceful settlement whereby Israel exchanges territory for peace and recognition, Israel has been actively undermining that vision by attempting to Judaize the Occupied Territories (which it calls Judea and Samaria) and annexing them into the Jewish state. This course of behaviour necessarily leads to violations of the human rights of the indigenous Palestinians, including their right to self determination, their democratic rights, freedom of speech, freedom of assembly, and freedom of the press. It requires an oppressive military regime that denies them due process and imposes on them collective punishment. It also leads to systematically robbing Palestinians of their land and water resources, placing such resources in the hands of Jewish settlers for whom an entire infrastructure and separate regime is created. A classic de facto apartheid system has thus been created, with two separate and differing structures, courts, residences and rights—one for Palestinian Arabs and another for Israeli Jews.

> This behavior is not only violative of human rights generally, but is specifically contrary to US interests and is a major liability to the US policy in its relations with the Arab world.[70]

Kuttab speaks here "as an American," a US attorney, as well as a Palestinian, addressing US policy interests as a citizen. LSM's understanding of causes (Israel's annexationist agenda) and consequences (human rights violations) is clear in this presentation. Kuttab was an engaging public speaker, especially in the United States, often hosted by different church and peace groups that he drew into LSM's network. He was an active member of church groups and was engaged with the practice of nonviolence in resistance strategies.[71] To the founders, it seemed, LSM's organizational identity and rule-of-law framework rendered unnecessary any explicit reference to nonviolence in its own methodology. Nor, until later in its development, did the organization take a view on the use of violence in resistance to the occupation. Kuttab, however, was actively interested in the principle of nonviolent resistance, and in the early 1980s he helped set up the Palestinian Center for the Study of Non-Violence.[72] In an interview in 2001, Kuttab was discussing the need to involve US Christian churches in the campaign of nonviolent resistance to the occupation:

> Any challenge to the policy of domination is viewed as a threat against the survival of the state of Israel. We need to uncouple these two things before we can be effective in a nonviolence campaign. As a Palestinian Christian, I can be for the Palestinians, for the state of Israel, and for God—while at the same time be against the illegal occupation and the settlements.[73]

Kuttab's early public speaking commitments were much about building a network for LSM. "To survive under military occupation, we realized we needed a large network of people who knew about us and cared enough to fight for us if we got detained." Then there was the need to get information out, which under occupation and in the days before electronic communications was rarely straightforward. Al-Haq's archives hold copies of a large number of letters from Kuttab to lawyers, church leaders, people he had met on planes, etc. The letters enclosed publications and information about LSM. In 1982 Kuttab was at a meeting in Strasbourg: "My agenda was to go and collect as many cards as I could to build up our mailing list." He ended up—almost by accident, as he tells it—being proposed as the delegate for the Middle East group on the governing Council of the Human Rights Information and Documentation Systems (HURIDOCS), which was holding its founding assembly. This was probably LSM's first contact with the developing Arab human rights movement. HURIDOCS describes itself as "an NGO that helps human rights groups gather, organise and use information to create positive change in the world."[74] It was to be a long relationship; Kuttab worked with the organization until 2009. Observing that he was by no means a documentation systems specialist, he has the following to say on his role:

> I was always bringing up the base of activists in the field, that we need proper tools to prepare proper documents for those activists. I always used to talk about the philosophy of documentation, how important it was for human rights work because the first line of defense for any oppressive regime is denial—what are you talking about, this doesn't happen. So if the documents are not of a high enough level of credibility, they can be dismissed. I was always drawing on our experience at al-Haq, in support of what HURIDOCS was trying to do.[75]

Kuttab became LSM's Steering Committee member responsible for the Fieldwork Unit, the quality of whose work is widely considered as behind the young organization's reputation and credibility. He shared a professional insistence on this with Shehadeh. It was Kuttab who leapt to the defense of the organization when its fieldwork-based credibility was directly and very publicly challenged in a key international forum by an Israeli official. The occasion was the joint LSM-ICJ publication of a report titled *Torture and Intimidation in the West Bank: The Case of Al-Fara'a Prison*.[76] In the report, LSM described "the conditions at al-Fara'a using the statements under oath of those with first hand experience."[77] The ICJ released it in Geneva. "Four days after publication of the LSM report," wrote Niall MacDermot, "the 41st session of the UN Commission on Human Rights opened in Geneva and its first item was the Israeli Occupied Territories. The discussions began with interventions by the representatives of Syria and the PLO, both of whom referred at some length to the Al-Fara'a report."[78] MacDermot also spoke, mostly on Israel's Road Plan No. 50, but noting that "the Al-Fara'a report was the first convincing report of the systematic use of torture by Israeli forces to reach the ICJ for over 10 years."[79] The Israeli ambassador responded the same day and also in a written statement a few days later, in which he referred to the report as "prepared by an ICJ's affiliate in the West Bank who intitulates itself bombastically 'Law in the Service of Men'" [sic] and to LSM as "a notorious front organization created by local PLO sympathisers."[80] Kuttab recalls his response to the Israeli Ministry of Foreign Affairs (with a copy to the ambassador) as "one of my best ever letters":

> We fully understand the political and often polemical nature of statements made before that forum [the Commission on Human Rights], particularly by representatives of the different states, and we do not wish to engage in such debates, and will not address here most of the points raised by the statement of Ambassador Dowek. None the less, there were some very serious charges and innuendoes made in that statement which we cannot ignore, since they come from an official representative of the state under whose authority we are living in the occupied territories, and because they carry serious consequences for our organization.
>
> Most serious of those is the charge that Law in the Service of Man is a " . . . front organisation, created by local PLO sympathisers . . . " Such a charge is very serious, and if proven, would render LSM illegal under the prevailing Military Orders in the West Bank and would subject members of LSM to prolonged prison sentences. Other

statements published in the papers attributed to Israeli spokesmen have labelled LSM a "hostile" organisation. Mere contact with a "hostile" organisation under Military Order No. 284 subjects a resident of the West Bank to a prison term of up to ten years.

We therefore wish to state categorically that LSM is a fully independent body affiliated with the International Commission of Jurists, that it is not a "front" for any body or organisation, and that it is duly registered with the competent authorities of the Military government. Such false accusations concerning the character of the organisation and its independence, therefore, go beyond political discussions or even polemics and can have serious legal consequences for us.

Secondly: Ambassador Doweik states that LSM has the "open aim" to (1) discredit Israel, (2) stain its reputation of integrity and clean hands, (3) attract world attention, (4) blow up minor details out of all proportion and (5) give the semblance of credibility and respectability to unfounded allegations. LSM admits that one of its aims is attracting world attention (aim No. 3) but emphatically denies all of the four other aims attributed to it.

The true aims of the organisation are clearly stated in its articles of incorporation and reflected in its yearly activities. They are the promotion of the principles of the rule of law and of respect for human rights, and compliance with international norms. It is true that in pursuit of these goals LSM objectively monitors the human rights record of the Israeli military authorities and it is not surprising that the results of such investigation is not pleasing to the Israeli authorities. They should not be. However it is both false and dangerous to deduce from this that the "open aim" of LSM is to "discredit Israel and stain its reputation for integrity and clean hands, etc . . . " LSM endeavours to investigate these matters with integrity and objectivity, but it cannot be blamed for the substance of the violations it documents and the results it brings to light.

Thirdly: The statement of the Ambassador contained a direct attack on the credibility and truthfulness of LSM's documentation. Specifically it stated that "In the past, many affidavits, *including quite a few channelled through "Law in the Service of Men"* (sic), were proven, after proper investigation, as completely unfounded (my emphasis). Another spokesman referred to the Al-Fara'a report as an "unfounded web of lies."

LSM strenuously endeavours to maintain the highest possible standards of accuracy and truthfulness. Great care is taken in collecting information and sceptically investigating allegations of human rights violations. Evidence which does not meet our exacting standards of accuracy is never published. Our identity as a human rights organisation is closely linked to this careful approach to facts. That being the case, we would be most grateful to learn *which* of our affidavits have been proven to be unfounded. Even more, we hereby commit ourselves to amend, or retract any published material that is proven to be materially inaccurate and to publish such corrections or retractions as widely as possible. Such a commitment is not a concession by LSM but an essential ingredient of its nature as a serious human rights organisation on which it stakes its credibility. We therefore welcome a specific reply indicating which of our published material you believe you have proven to be false or inaccurate. Barring

> that we would appreciate it if official spokesmen for your ministry would refrain in future from making unsubstantiated attacks on LSM's credibility.[81]

The insistence on accuracy and "sceptically investigating allegations" was a cornerstone of the organization's methodology: "We'd drill it into everybody at al-Haq, field-workers and everyone else," says Kuttab, "that our credibility and accuracy was our greatest asset." Kuttab's preoccupations came through in his contribution to the first international law conference held in East Jerusalem, convened by al-Haq just as the first intifada moved into its second month in January 1988.[82] In "Avenues Open for Defence of Human Rights in the Israeli-Occupied Territories," Kuttab addressed Jordanian law and the Israeli High Court as "avenues that present themselves to the local practitioner." He noted "practical obstacles" to the International Court of Justice as an avenue of recourse, and then moved on to:

> the 'court of public opinion' and the engagement, through implication, of major segments of the international public, foreign governments, international human rights organizations, and even sectors and organizations in the Israeli public itself. Israel has shown itself as vulnerable, if not more vulnerable than other states, to international pressure but there have always been a number of serious and important qualifications surrounding this aspect. Individuals and organizations who attempt to work in this direction must keep in mind a number of factors that will determine the effectiveness of this method.[83]

The first of these factors was "specific, detailed, and accurate documentation of human rights violations and a detailed account of the responsibility of the Israeli government or the military authorities in causing or failing to curb such violations." Kuttab contrasted "generalized, exaggerated, and heartfelt but inaccurate descriptions of the human rights situation" with Al-Haq's "sober listing" based on "careful documentation through affidavits, medical and other records."[84] This resonates with Shehadeh's reference to "understatement" and goes also to other issues of methodology: according to Kuttab, "we never put out a 'condemnation' (*istinkar*), everyone else was doing that, we didn't want to start taking meaningless positions."[85] Shehadeh agrees that "the reason we survived was that we were very careful at every step, it was always careful legal language." This caution extended to the formalities expected of the cofounders; Shehadeh recalls feeling increasingly resentful at being the "someone who had to keep the balance and to be 'establishment,' always formally dressed and so on."

The second factor to which Kuttab turned was tone and political content:

> Proper work for human rights [. . .] requires an objective and dispassionate appeal to internationally recognized principles which apply to friend and foe alike [. . .] Appeals and attempts to defend human rights by working through the 'court of public opinion' require that the issue not be stated in political terms, but rather stated in terms of universal principles coupled with a willingness to apply these same principles to all parties in the dispute.[86]

For Kuttab, the universality principle was a key presumption shared by himself, Shehadeh, and Shammas when they came together to form LSM.[87] This meant that they expected to work, through LSM, on practices in Palestinian society as well. At the time, Kuttab says, "this wasn't a common presumption." However, al-Haq almost never commented on violations in other countries: it was not an international human rights organization.[88]

Kuttab then looked at the "use of publicity" and, against the background of the uprising, confirmed that "the mere presence of foreign observers and access to international media has an ameliorating effect on human rights violations."[89] Moving on to "implicating other groups," Kuttab drew on work initiated by Charles Shammas that was growing into the Enforcement Project, referring to third-party state obligations under the Fourth Geneva Convention and "the stake that every nation has in peace and in the value of adherence to human rights by every other nation." Here can also be read Kuttab's appeal to what Shammas has called "human rights as a high form of morality."[90] Finally Kuttab turned to the "Israeli court of public opinion":

> Some success can be achieved by appealing directly or indirectly to elements within the Israeli public itself or even the Israeli establishment. To do this, however, a human rights activist must obtain a full understanding of the structure and true goals and interests of Israeli society, and must avoid thinking of Israelis or even of the military government as a monolith, or a totally evil structure, and must be able to address it on its own terms, while being aware of the dangers inherent in this approach.[91]

By the time Kuttab was writing this paper, addressing interventions to the Israeli military or other authorities was well established as a methodology—and as he said, it "is often a necessary prerequisite to further intervention."[92] The passage reiterates the approach of taking seriously what the Israeli system—especially the legal system—said about itself in order to then face this system with its claims and with the facts that contradict them. Hiltermann was later to observe that:

> The genius of the method fashioned by al-Haq's founders was that al-Haq took Israel at its word (of being a democracy, as well as a self-declared reluctant, tolerant and benign occupier) and, playing fully by the rules of a democratic society, held it to its commitments, pressing it further and further as it retreated into a growing tangle of self-generated contradictions.[93]

This issue of legitimation of Israel's self-image and external projection, along with the impact of this on its conduct and reaction to challenge, has been widely theorized since, but it was clearly understood and consciously acted upon by the Palestinian practitioners who established al-Haq.[94] An early example of LSM/al-Haq's approach came in the wake of a raid on LSM's first office in a basement flat in Ramallah in November 1982. It was Kuttab who corresponded with Haim Cohn,[95] among others, describing the disruption of a regular evening meeting by a group of Israeli soldiers, which involved physical violence against LSM's first

field-worker, Ali Jaradat, questioning, and the summoning of civilian Israeli police investigators to conduct a further search. An Amnesty International representative was a guest at the meeting. "The police seemed anxious to explain that what had prompted this action was that several cars with yellow Jerusalem plates were parked outside. The army wanted to know what was going on." After an initial response from Cohn, noting that he had written to the Judge Advocate General, a subsequent letter provoked Kuttab into pointing out a set of inconsistencies in the report that Cohn appeared to have received on the incident. These included apparent misreporting or selective reporting of Raja Shehadeh's testimony, a failure to interview Ali Jaradat (misrepresented as Jaradat's own failure to show) or to take up the offer of a statement from the Amnesty International representative. Kuttab concluded:

> The whole matter is hardly worth pursuing since more serious events occur regularly on the West Bank except for the fact that it illustrates the manner in which irregularities by the military government are insulated from the scrutiny of conscientious people like yourself who are genuinely concerned with the rule of law. In this case a worker from a recognized, and I trust credible, human rights organization is beaten in the presence of a representative of Amnesty International. And after going through the motions of a full and thorough investigation, I am surprised to receive your letter that implies you are now satisfied that there is no evidence that Mr. Jaradat was beaten or otherwise assaulted.[96]

Facing Justice Cohn with the possibility that he was not getting the full facts from the Israeli side, Kuttab presents this distortion and the practices it covered up as a matter of systemic practice, as well as reminding Cohn of the presence of a third party of potentially significant standing. In a sense, all these elements are key to the way LSM/al-Haq identified its priorities and pursued its objectives.

CHARLES SHAMMAS

In the 1982 raid on the office, some suspected that the soldiers had also been unsettled by the sight of Charles Shammas's "portable" computer. Shammas's engagement with new technology is discussed further below. Of the three founding Steering Committee members, he has worked most closely on the technical implications of the contractual obligations of third-party states with Israel (particularly EU states). Shammas insists that early on, "the most important thing in common was that we all wanted to effect change in situations we saw around us *from our practice*. [. . .] We were pragmatists, and law and human rights was a tool to use to reach out."

> The idea was there was no way [. . .] of getting any international support to restrain what Israel was doing without engaging the third states, the international environments under normative language that they themselves understood. That was

> the attraction of it. None of us started out as human rights people. [. . .] The idea was we had to engage them in the language that they understood. And also the idea was to use law, but because law sets down what other actors have accepted. So we were starting from a starting point of the accepted discourse and norms that were not really being used as part of the struggle of people for their rights. The whole question was what was the nature of our struggle. What did the struggle consist of? I mean either we struggle alone—however we understand it and of course the scene was not very promising (that was the patronage and subsidies)—or we have to enlist others, we had to enlist other power. And the idea was not just they didn't understand what Israel was doing, which is the first step, but we had to figure out also how to make claims on them, on power, that ultimately led to the enforcement approach.

Al-Haq's Enforcement Project took institutional form in 1988 and departed amid some organizational controversy in 1992 (see chapter 5). In the period leading up to the establishment of LSM, Shammas, the only nonlawyer of the three, recalls that between himself and Shehadeh, "it wasn't talked about in terms of human rights but it was talked about in terms of the rest of the world is letting this happen and we're not fighting the larger battle." If Shehadeh's shock came from realizing what was going on with the legal system and the land, Shammas's came from observing the "culture of dependency." The letter to the ICJ quoted in the previous chapter that referred to a "society organized around [. . .] patronage and subsidy" set out Shammas's thinking at the time. Born and brought up in Brooklyn to Lebanese American parents, Shammas had spent some years in Lebanon after completing his degree in philosophy of knowledge at Yale, and had developed an interest in the "structural causes of economically driven migration":

> My interest in the economy was because I saw it as a fundamental problem in terms of the subjugation of the society and dependency. For me the issue was a culture of dependency that could only be alleviated or rectified if there were some structural economic changes. Dependency on foreign patronage, dependency on subsidies, dependency on cash flows. [. . .] We weren't generating wealth internally. I was struck by the fact that the economy was undocumented. I could see the patronage, I could see the dependency, I could see the fact that initiative was basically being squelched and neutralised, that if you wanted to survive, the way you accommodated to reality, was that you affiliated yourself with somebody and promoted their interest against their competitor's interest.

Here, Shammas reflects Bisharat's understanding of the dynamics of "over-control" in the West Bank at that time. In Shammas's case it was a question of

> looking at it from a standpoint of the economic foundations, basically how people earn their bread and butter, what they have to depend on makes all the difference in the world. [. . .] The economic issue was because of the general structure of Palestinian political life and how Palestinian efforts to cope with their Israeli adversary would be neutralised or made dysfunctional[. . .]—the economic side was that so much of the dysfunctionality was related to patronage, dependency, and the fact that

> the first form of control is economic. I had never thought of economics before seeing that. [. . .] I'm not an economist, and I'm not a human rights person, by definition; for me those are all tools that are necessary to implement human rights but each one is a kind of an enterprise that is too limited [. . .]
>
> It was struggle, it was the notion of struggle. I often use the word predatory, for me that was a very significant word, I saw it as a predatory process, and the question was how to overcome the dysfunctionality and the ineffectiveness and the inadequacy of the response to that predatory process. In principle it shouldn't be allowed to occur. Now, what to do about it?

In Lebanon, Shammas had developed some of his theories about patronage and the culture of dependency through observing the way the PLO was conducting itself. He inherited a clothing factory from the family business in Brooklyn and arrived in the West Bank in 1976 with the intention of setting up a "laboratory manufacturing venture" with an experimental structure. This was to be MATTIN, an Arabic acronym translating as the Centre for Applied Production Development.[97] Among other things, MATTIN began producing silk lingerie for the export market, inter alia to test the declared commitment of the (then) European Community to Palestinian development and to direct export from the occupied territories, in line with the Europeans' nonrecognition of Israeli control over the West Bank economy. Over the years, MATTIN was at the forefront of these efforts, sometimes working with other Palestinian producers, sometimes (as in the case of the lingerie) itself testing the practical viability of export routes and documenting Israeli obstruction of the same. Just before the outbreak of the first intifada, Shammas contributed the cover feature of an issue of al-Haq's Newsletter under the title "Restrictions on the Export of Goods from the Occupied Territories to the US," setting out the arguments in regard to Israeli settlement produce entering US markets labeled as "made in Israel" and the exclusion by law of West Bank/Gaza goods from that same market.[98] He framed the human rights argument in terms of the right to development and the prohibition of discrimination. This and other attempts to mainstream Shammas's particular interests at al-Haq did not at the time attract much of a following.

Alongside the substantive activities led by Shammas went a capacity-building approach to labor and management and workers' rights that sought to "work towards a collective, public interest, rather than private interest allying one group against another engaged in the same activity." Now considering himself "very naive at that time," Shammas nevertheless points to several successes in the MATTIN venture. As discussed in the next chapter, his colleagues in the first LSM Steering Committee had somewhat similar approaches, insisting on the individual investment of each worker in the substance of the work. In LSM/al-Haq, this became increasingly unwieldy as the organization grew. At MATTIN, the work—and Shammas's approach to economic development and hostility to the culture of dependency—drew some negative interest from leftist Palestinian groupings,

particularly those associated with the PFLP. The Israeli authorities took a hostile interest and eventually the factory was forced to close, with Shammas and a few colleagues continuing to pursue project-based ventures involving Palestinian producers and the EU.[99]

Of the three members of the Steering Committee, Shammas was probably the least easy to place, and the MATTIN connection made some leftists at al-Haq uneasy. He also worried away at language all the time, working in both Arabic and English, whether written or spoken, to render in the most precise terms exactly what was intended—Shehadeh recalls Shammas revising and correcting letters to the ICJ word by word late into the night. Kuttab remembers that "Charles was always the thinker, and a large part of what Raja and I did was to try to understand him; when he talks, even in English, he's hard to understand." British researcher Candy Whittome summed up Shammas's distinctive contribution to al-Haq's collective leadership as that of a strategist focused on "how to get from A to B in a way that works, but that wasn't always massively straightforward."

With no formal legal training, Shammas argued international obligations and normative understandings with leading international jurists of the day, including senior ICRC mandate officials, relishing opportunities to pin down what law was supposed to do, and how to get it to do it. In London in 1989, at the first of several European symposia held through the efforts of al-Haq's Enforcement Project, Shammas presented his thinking on the "what":

> I work hard with an organization that is dedicated to defending human rights and promoting the rule of law. In highlighting the importance of enforcing international law to the process of dispute settlement, I do not mean to speak as a diplomat or politician. However, the fact that this Symposium has brought together human rights workers, jurists, politicians and civil servants is in large measure due to the fact that the defence of human rights, the enforcement of international humanitarian law and the process of dispute settlement are inextricably intertwined.
>
> The problem that we all must now confront is as follows: Twenty-two years of military rule in the West Bank and Gaza have occasioned extensive and systematic violations of basic human rights and a radical undermining of the rule of law within the occupied territories. Inevitably, the prosecution of this occupation has also further eroded respect for human rights and the rule of law within Israel itself.
>
> Palestinians and Israelis are, as a result, locked into an increasingly brutal conflict perpetuated by the fact that constraints and limits on coercive and conquestatorial options are necessary to inspire the will to seek accommodation. Such constraints and limits, starting with those clearly prescribed by international humanitarian law, have not been effectively applied or sufficiently felt.
>
> In the final analysis, any durable settlement is reliant on, or presupposes, a *de facto* situation in which international law is respected, international agreements are enforced, and third party guarantors can be relied upon to perform their role vigorously, objectively and effectively. The will to seek accommodation presupposes confidence that, having forsworn conquest and coercion, reparations and concessions

> can establish peace. But this in turn presupposes confidence that international guarantees and the restoration of the rule of law can make peace durable. To satisfy this precondition, and to enhance the perceived feasibility of achieving a durable settlement, third party states and other prospective guarantors of a settlement must start by demonstrating their will and practical commitment to enforcing the body of humanitarian law that applies. They have not. [. . .]
>
> The Fourth Geneva Convention is good law for Palestinians and Israelis alike. Innovative and serious efforts at enforcement can only have a positive impact on both parties to the dispute. Continued failure by the international community to enforce the most basic standards of humanitarian law in the occupied territories, on the other hand, can only create doubt in our two national societies about the possibility of utilising international guarantees, international law, enforceable treaties and guarantees, to finally put an end to a conflict which has afflicted us all for far too long.
>
> If I were to outline an agenda for dispute settlement [. . .] my first point would be that some process must contain the dynamic of brutalisation and dispossession which continues to generate sentiment antithetical to accommodation within two political societies, the Palestinian as well as the Israeli. [. . .] My second point would be that an occupant who possesses overwhelming military superiority and all of the instruments of coercion must be checked in the scope and quality of his utilisation of those instruments of coercion. The political society of the occupant must have its assessment of the feasibility of prosecuting an agenda of conquest reduced, in order to be willing to entertain other political visions and options. Third, it is essential to build trust, through observing the minimal standards set forth in the Fourth Geneva Convention, in the will of the adversaries to be bound by law, regardless of the balance of power prevailing between them.[100]

Having learned IHL (and the intricacies of different areas of EU legislation) on the job, because he needed to understand it, Shammas has become a recognized authority and significant interlocutor in certain legal as well as technocratic and political circles.

In the early period, it was the MATTIN experiment that led to Shammas's investment in information technology: "We used computers to develop a system to manage and regulate and document the whole production process." This needs-based engagement with information technology meant that LSM/al-Haq was remarkably up-to-date on technical developments insofar as the circumstances of the occupation would allow (LSM managed to get a telephone line only in 1984, and Shammas introduced email communications at the organization a few years thereafter). Shammas also pioneered the development of the database. The idea "was to bridge between a critique of the institutional aspect of governance, the established facts in practice and the thematic violation. Cases of individuals had to be related to institutional governance issues. To do that effectively you needed a database." The following extract is from a draft document titled "Whence and Why the al-Haq Database?," undated and unattributed but probably from 1984–85 and authored (at least mainly) by Shammas:

> In 1984, al-Haq, facing proliferating files and no adequate method of restoring and retrieving relevant information, began to explore ways in which it could organize its entire collection of materials into a manageable computerized database to facilitate storage and retrieval, and hence to improve its ability to make available al-Haq resources for research and other needs.
>
> The purpose of the al-Haq database is quite clearly to serve the research and intervention capabilities of al-Haq staff in the first instance, and then secondarily also to provide public information collected by al-Haq in a useful format to concerned parties outside the organization. This particular purpose has dictated an idiosyncratic methodology of database development, reflecting as it does al-Haq's role as an activist human rights organization rather than as a public relations bureau serving the human rights bureaucracy in the western world. We have opted, for example, not for a bibliographic system of indexing information or for the latest in documentation technology, but for the type of structure and technology that (a) would respond adequately to al-Haq's objectives, and (b) is readily and cheaply available in the West Bank.
>
> Al-Haq is not in the business of documenting any and all human rights violations that occur in the West Bank and transmitting the information in bibliographical format to other parties, thus allowing outsiders free and easy access to such information. There are other organizations who play that role, and who are better equipped than al-Haq to play such a role. Al-Haq rather aims primarily to document *certain patterns of violations* which are seen to exist and which may be of importance to al-Haq's work at any given time, in order to process the information thus obtained and act—usually locally—on the basis of our increased knowledge and understanding of the situation. We have therefore decided to focus on *events* as units of analysis, and to break these down into their constituent parts to discover or verify and test the patterns which al-Haq is interested in addressing.[101]

The issue of software, and which system would suit which kind of organization, became the subject of some disagreement as the possibilities of information technology—and the prospects of harmonization of information systems—advanced through the 1980s. Hiltermann later wrote an overview of the debates among human rights organizations on this, and the different priorities and needs that organizations in the Global South and international ones in the West had of their software.[102] Nina Atallah, who took over this work under Shammas's guidance and went on to head up the Database Unit and later the Monitoring and Documentation Directorate at al-Haq, recalls intense discussions within al-Haq's database committee at the time. Hiltermann reports that at a 1986 meeting with HURIDOCS and other conveners, an al-Haq representative criticized "the exclusive use of bibliographically-based programs"; a compromise was eventually worked out whereby al-Haq and other similarly minded organizations could be accommodated to link up to the central system without themselves having to fundamentally change the way they stored and retrieved data.[103] In 1988, al-Haq joined the HURIDOCS "taskforce to produce standard formats for recording human rights events."[104]

LSM STEERING COMMITTEE

Lori Allen found Shehadeh, Kuttab, and Shammas to have "an assertive faith in facts and logic, which fuelled their earnest optimism that they could confront the occupation successfully through law."[105] The three men constituted LSM's Steering Committee, its basic governance structure for many years. As noted above, Shammas had strong views and innovative ideas about how an organization might be run, views that were shared in different ways by Shehadeh and Kuttab, and that arguably shaped the organization in ways not entirely anticipated by its founders. The three men were in many ways quite disparate, with different personalities, interests, and focuses; Shammas recalls that in the early years, "we had a 'live and let live' approach, each had a specialised area and the others gave him their confidence." "We supported each other with shared values," says Kuttab. Candy Whittome recalls three men with "massively different personalities, massively different talents," who came together in an extraordinarily strong collective leadership. At the same time, Rabbani observes that "until the end of 1991 al-Haq was governed by only four (later three) individuals who came from nearly identical class, geographic, educational, confessional, and professional backgrounds."[106] Here Rabbani was including, as the fourth of the governing group, lawyer Mona Rishmawi, who joined the Executive Committee that replaced the three-man Steering Committee in 1985. She had finished her law degree in Cairo in 1981 and volunteered with LSM during her trainee period at the Shehadeh law firm, including writing most of the organization's Arabic publications for that period. She left in 1990 after two intense intifada years as al-Haq's first executive director.

Shehadeh, Kuttab, and Shammas set up and worked with LSM/al-Haq as volunteers, as did Rishmawi until she was employed as director. They all had other, full-time professional occupations, Shehadeh in his law practice with his family firm in Ramallah, Kuttab busy requalifying and then building his own legal practice, and Shammas heading up MATTIN. They were part of the professional elite, decidedly nonaffiliated politically, all from Christian families and all educated at least partially abroad. They were at something of a distance from the majority of Palestinian society by a "class and culture gap" that some of those interviewed for this study found significant. They themselves were aware of this, and of the potential limits it set to their goals for the work of LSM. How the three (and then the four) managed to get LSM/al-Haq up and working, what the young organization tried to do, and how it was perceived by staffers who joined it are examined in the next chapter.