



The
Civilian Judicial System
in the West Bank
and Gaza:
Present and Future

INTERNATIONAL COMMISSION OF JURISTS
THE CENTRE FOR THE INDEPENDENCE
OF JUDGES AND LAWYERS

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A Report of a Mission

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by

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It was a pleasure to meet with Mr. Yossi Sarid, Israel's Minister for Environment. His statesmanship and integrity give us hope for the future. We are also thankful to the venerable Justice Haim Cohn, ICJ Honorary Member and former President of the Supreme Court of Israel. The Mission is also grateful to Justice Meir Shamgar, the President of the Supreme Court of Israel.

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Introduction

On 13 September 1993, and after many difficult years, the historic *Declaration of Principles on Interim Self-Government Arrangements* in the West Bank and Gaza was signed by the Government of Israel and the Palestine Liberation Organisation (PLO). This has created prospects for a new Middle East. The ICJ and its Centre for the Independence of Judges and Lawyers (CIJL) were encouraged to send a Mission to the Occupied Territories.

The ICJ and the CIJL believe that for normal civil life to resume in the West Bank and Gaza, there is a need for a strong, confident and competent judiciary. We decided to study the present and future status of the Palestinian civilian courts. We identified the goals of this Mission to be:

- to review the status of the civilian courts,
- to identify the problem areas inconsistent with the proper working of a judicial system under the Rule of Law,
- to make constructive criticism and offer recommendations aimed at making the civil nucleus for a proper civil judiciary under a Palestinian self-governing authority, and
- to acquaint itself with the current human rights situation in the Occupied Territories.

The Mission took place from 8 to 19 December 1993. It was headed by Mr Adama Dieng, ICJ Secretary-General, and was composed of Justice P.N. Bhagwati, former Chief Justice of India, and Chairman of the CIJL Advisory Board; Mr Michael

Ellman, British solicitor since 1962 and member of "Justice", the ICJ Section in the United Kingdom; Mr Paul Gomez, judge of the Court of Cassation, Paris, France, and member of "Libre Justice", the ICJ Section in France; Mr Fali Nariman, Senior Advocate of the Supreme Court of India, President of the Bar Association of India and member of the ICJ Executive Committee; and Ms Mona Rishmawi, Director of the CIJL.

During its stay in the West Bank and Gaza, the Mission met with Palestinian lawyers, judges and human rights activists, as well as with Israeli and Palestinian political leaders. It also visited the courts in Ramallah, Nablus, Bethlehem, Jericho and Gaza. Meetings with Israeli lawyers and human rights groups were arranged. The Mission also met with the President of the Israeli Supreme Court. The Mission is thankful to all those who met with us.

This Mission was followed by a Seminar entitled "Towards an Independent Palestinian Judiciary" in Ramallah on 20 and 21 December 1993. The seminar was organised by the ICJ/CIJL in collaboration with al-Haq, the ICJ West Bank affiliate. The aim of the Seminar was to share the Mission's findings and conclusions with Palestinian jurists in order to enhance their knowledge of the role and functioning of an independent judiciary.

The Mission and the Seminar stem out of the ICJ and CIJL dedication to preserving the Rule of Law, legal protection of human rights, and the independence of judiciary and legal profession throughout the world. We hope that this report will help advancing these ideals in the West Bank and Gaza.

A Note on the Political and Legal History

Centuries of Ottoman rule over Palestine¹ came to an end in 1917, and, in 1921, the League of Nations entrusted Britain with a Mandate over this country. While certain parts of Ottoman Law (notably the Civil and Land Codes) were retained during the British Mandate period,² an elaborate English legal system was introduced.

Disputes broke out between the indigenous Palestinian population and the Jews,³ to whom the British had promised a national home in Palestine under the 1917 Balfour Declaration. After unsuccessful attempts to resolve the conflicts, the UN General Assembly passed Resolution 181 in November 1947 which partitioned the country. The resolution gave more than

¹ This is the area now covered by Israel and the Occupied Territories - excluding the Golan Heights, which are not covered by this Report.

² Article 46 of the 1922 Palestine Order-in-Council, which is equivalent to a constitution, states:

The jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Laws in force in Palestine on 1st November 1914, and such later Ottoman Laws as have been or may be declared to be in force by Public Notice, and such Orders-in-Council, Ordinances and Regulations as are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted....

³ The Jews were mainly settlers, but included some indigenous people.

55% of the land to the Jews and the remainder to the Palestinians. Jerusalem and its surrounding area (including the land as far as Bethlehem) were to be internationalised. The Arabs refused to accept this partition.

On the eve of the withdrawal of the British Mandate in May 1948, the Jews declared the State of Israel in Palestine. The area in which Israel was declared well exceeded the area allocated to the Jews in the UN partition plan. All Palestine, except what is now known as the West Bank and the Gaza Strip,⁴ came under Jewish control, including the west side of Jerusalem. The West Bank was left in the hands of the Kingdom of Jordan, while the Gaza Strip was administered by Egypt. The majority of the Palestinians from the area in which Israel was established became refugees not only in the West Bank and Gaza, but also in the neighbouring Arab countries, mainly Lebanon, Syria, and Jordan.

At the beginning, Jordan did not attempt to influence the West Bank legal system. On 24 May 1948, the Jordanian Military Governor of the West Bank ordered the continuing validity of all laws and regulations that were in force in Palestine on 15 May 1948, in so far as such laws and regulations did not contradict the Jordanian Defence Law of 1935.⁵

In December 1949, however, a conference was held in Jericho to examine the future of the West Bank. The conference recommended that the West Bank be united with Jordan.

⁴ These two territories constitute about 20% of the area of Palestine.

⁵ Proclamation No. 2 in 3 Compilation of Laws & Regulations Issued and in Force in the Hashemite Kingdom of Jordan until 1960, at 14.

On 24 April 1950, a resolution was passed by the Jordanian Parliament formally uniting the two Banks.⁶

Although both Jordanian and Palestinian legal systems had Ottoman and English roots, their laws differed to accommodate the different constitutional realities which existed in the two areas.⁷ On 16 September 1950, a law confirmed that "the laws and regulations that are in force in [each Bank] shall remain in effect until new unified and universal laws for both Banks are issued with the approval of the Parliament and the endorsement of His Majesty the King."⁸ Based on this law, there were some laws and regulations that were valid and applicable in one side of the Kingdom but not in the other.⁹ Consequently, a legal commission was set up to consider the merger of the legal systems.

The period between 1952 and 1967 witnessed a legislative boom. The Parliament, which consisted of an equal number of representatives from both Banks, enacted a new set of legislation moving away from the English legal tradition, and adopted a legal system closer to that prevailing in neighbouring Arab

⁶ For a discussion of the development of the legal system in Palestine, see Anis F. Kassim, *Legal Systems and Developments in Palestine*, 1 Palestine Yearbook of Int'l Law 19 (1984).

⁷ The Jordanian legal system also derived from Ottoman and English origins. Jordan had also been under Ottoman and British Mandate rule.

⁸ Law No. 28 of 1950. See Anis F. Kassim *supra* note 6.

⁹ The 1946 law of torts, which was enacted during the British Mandate over Palestine, for instance, continues to be valid in the West Bank. It was, however, never enforced in Jordan.

countries.¹⁰ As a result, and with few exceptions,¹¹ both Banks were ruled by one system of law. While the law became more continental, the system retained clear evidence of Ottoman and English influence.¹²

In contrast, the Egyptian Government did not incorporate Gaza into Egypt and no attempt was made to apply Egyptian law directly.¹³ On the contrary, Gaza was kept as an autonomous unit and was described as the "Areas Subject to the Supervision of the Egyptian Forces in Palestine."¹⁴ This unit had its own independent legislative, executive, and judicial functions.¹⁵ The same combination of Ottoman and British Mandate law was maintained.¹⁶ The Palestine Order-in-Council continued to serve as the Gaza Constitution.¹⁷ It retained its validity even when new Basic Laws were enacted in 1955 and 1962.¹⁸

¹⁰ There was a School of Law in Jerusalem during the time of the British Mandate. This school was closed when the Mandate elapsed, and Palestinian law students went to neighbouring Arab countries to study, mainly to Egypt, but also to Syria and Lebanon. These countries follow the continental system. When Jordan started to redraft its laws, it, therefore, used the continental models of Egypt, Syria and Lebanon.

¹¹ See *supra* note 9.

¹² The court structure is mixed. While there is a *cour de cassation*, following the continental model, all of the courts below it follow the common law model. See, e.g., the court structure, the laws of civil and criminal procedures and the law of evidence.

¹³ On 1 October 1948, a Proclamation of Independence was issued by the Palestinian Arab Higher Committee.

¹⁴ See Anis F. Kassim *supra* note 6.

¹⁵ See Basic Law No. 255 of 1955, at chap. 2.

¹⁶ See Law No. 6 issued by the Egyptian Administrative Governor on 1 June 1948; the Basic Law No. 255, which served as a Constitution for Gaza. Anis F. Kassim *supra* note 6, at 29.

¹⁷ *Id.*

¹⁸ Basic Law No. 255 of 1955. *Id.*

The 1962 Basic Law proclaiming a constitutional order in Gaza further confirmed its Palestinian identity.¹⁹ It provided, *inter alia*, that all the laws and court judgements were to be issued and executed in the name of the "Palestinian People."²⁰

The Six-Day War broke out in June 1967, as a result of which Israel conquered the West Bank and Gaza Strip. On 28 June 1967, Israel annexed East Jerusalem. Israeli law was imposed there. Jerusalem's immediate surroundings were later added to the annexed area.

The occupying power in the West Bank (excluding annexed East Jerusalem) and the Gaza Strip promulgated a number of Military Orders, which has risen over the years to some 1400 for the West Bank and over 1100 for the Gaza Strip. As will be elaborated on later in this Report, these orders severely affect the functioning of the courts in both territories.

Indeed no significant change occurred until 13 September 1993, when the historic *Declaration of Principles On Interim Self-Government Arrangements* ("the Accords") was signed between the Government of Israel and the Palestine Liberation Organisation. The impact of this document on the judicial system in the West Bank and Gaza will be discussed below in Part Two of this Report.

¹⁹ *Id.*

²⁰ *Id.*

Part One

The Civilian Courts Under Israeli Military Occupation

Section 1

The Position in International Law

In assessing the situation of the civilian courts in the West Bank and Gaza Strip, the ICJ/CIJL Mission used as standards the provisions of international humanitarian and human rights law, as well as the internationally accepted principles of proper administration of justice. These provisions are explained below.

1. Under International Humanitarian Law

The ICJ has always maintained²¹ that the West Bank (including East Jerusalem) and the Gaza Strip are governed by the provisions of international humanitarian law, specifically, the 1907 Hague Convention²² and the 1949 Fourth Geneva Convention.²³ In our opinion, these standards continue to apply, even after the signing of the Israeli/Palestinian Accords on 13 September 1993, in matters which are not transferred to the Palestinians. The Accords state that “[o]ther than these agreed arrangements, the status of the Gaza Strip and Jericho area will

²¹ See, e.g., 19 ICJ Review 27 (ICJ 1977); West Bank and the Rule of Law (ICJ 1981); Academic Freedom under Israeli Military Occupation (ICJ 1984).

²² IV Hague Convention Respecting the Laws and Customs of War on Land signed on 18 October 1907 and its annexed Regulations. This convention is considered as part of customary international law.

²³ IV Geneva Convention Relative to the Protection of Civilians in Time of War of 1949 [hereinafter Fourth Geneva Convention] was signed by Israel on 8 December 1949 and was ratified on 6 January 1952.

continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period.”²⁴ The Convention itself provides that some of its provisions continue to apply as long as the Occupying Power “exercises the functions of government.”²⁵

The main principle under international law governing laws and courts during occupation is that the occupier

is not the sovereign of the territory[. Thus,] he has no right to make changes in the laws, or in the administration, other than those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realisation of the purpose of the war. On the contrary, he has the duty of administering the country according to the existing laws and the existing rules of administration.²⁶

a. The Relevant Provisions in the Hague and Geneva Conventions

The article relevant to the question of laws and courts in the Hague Convention is Article 43. It provides:

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

²⁴ See Article 6 of Annex II of the Accords.

²⁵ See Article 6 of the Fourth Geneva Convention.

²⁶ 2 Oppenheim's International Law 437 (Lauterpacht ed., 7th ed. 1952).

Article 64 of the Geneva Convention expresses, in a more detailed form, the terms of Article 43 of the Hague Regulations.²⁷ It states:

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to later considerations and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

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

This article serves as the basis for our analysis of Israeli action in the West Bank and Gaza. Because of its significance, we will examine its precise meaning below.

b. The ICRC Commentary

The most authoritative explanation of the Fourth Geneva Convention, including Article 64, is found in the Commentary to

²⁷ Commentary to the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, 335 (Pictet ed. 1958) [hereinafter Pictet].

the Fourth Geneva Convention published in 1958 by the International Committee of the Red Cross (ICRC).²⁸ Prepared by ICRC staff, this Commentary explains the aims of the drafters of the Convention. It was prepared on the basis of comments and observations made during the Diplomatic Conference which approved the text of the Geneva Convention. Edited by Mr. Jean S. Pictet, this publication is now considered as the most authoritative work on the scope and meaning of this Convention. The following are its comments on Article 64:

Paragraph 1. - Penal Laws - Courts of Law

1. First sentence. - Penal Legislation

A. *The rule.* - The first sentence expresses a fundamental notion: that the penal legislation in force must be respected by the Occupying Power. This is an application of a basic principle of the law of occupation...

The idea of the continuity of the legal system applies to the whole of the law (civil and penal law) in the occupied territory. The reason for the Diplomatic Conference making express reference only to respect for penal law was that it had not been sufficiently observed during past conflicts; there is no reason to infer *a contrario* that the occupation authorities are not bound to respect the civil law of the country, or even its constitution.

The words "penal laws" mean all legal provisions in connection with the repression of offences: the penal code and Rules of Procedure proper, subsidiary penal

²⁸ *Id.*

laws, laws in the strict sense of the term, decrees, orders, the penal clauses of administrative regulations, penal clauses of financial laws, etc.

B. *Reservations.*- The principle that the penal laws in force in the occupied territory must be maintained is subject to two reservations.

The first relates to the security of the Occupying Power, which must obviously be permitted to cancel provisions such as those concerning recruiting or urging the population to resist the enemy.

The second reservation is in the interests of the population and makes it possible to abrogate any discriminatory measures incompatible with humane requirements. It refers in particular, to provisions which adversely affect racial or religious minorities, such provisions being contrary to the spirit of the Convention (Article 27), which forbids all adverse distinction based, in particular, on race, religion or political opinion.

This means that when the penal legislation of the occupied territory conflicts with the provisions of the Convention, the Convention must prevail.

These two exceptions are of a strictly limitative nature. The occupation authorities cannot abrogate or suspend the penal laws for any other reason - and not, in particular, merely to make it accord with their own legal conceptions.

2. Second sentence.- Courts of law

A. *The rule.*- Owing to the fact that the country's courts of law continue to function, protected persons will be tried by their normal judges, and will not have to

face a lack of understanding or prejudice on the part of the people of foreign mentality, traditions or doctrines.

The continued functioning of the courts of law also means that the judges must be able to arrive at their decisions with complete independence. The occupation authorities cannot therefore, subject to as stated below, interfere with the administration of penal justice or take any action against judges who are conscientiously applying the law of their country.

B. Reservations. - There are nevertheless two cases - but only two - in which the Occupying Power may depart from this rule and intervene in the administration of justice.

1. As has just been said, the occupation authorities have the right to suspend or abrogate any penal provisions contrary to the Convention, and in the same way they can abolish courts or tribunals which have been instructed to apply inhumane or discriminatory laws.

2. The second reservation is a consequence of "the necessity for ensuring the effective administration of justice", especially to meet the case of the judges resigning, as Article 56 gives them the right to do for reasons of conscience. The Occupying Power, being the temporary holder of legal power, would then itself assume responsibility for penal jurisdiction.

For this purpose it might call upon inhabitants of the occupied territory, or on former judges, or it may set up courts composed of judges of its own nationality; but in any case the laws which must be applied are the penal laws in force in the territory.

Paragraph 2. - Legislative Powers of the Occupant

The legislative power of the occupant as the power for applying the Convention and the temporary holder of authority is limited to the matters set out in a limitative list below.

- (a) It may promulgate provisions required for the application of the Convention in accordance with the obligations imposed on it by the latter in a number of spheres: child welfare, labour, food, hygiene and public health etc.
- (b) It will have the right to enact provisions necessary to maintain the "orderly government of the territory" in its capacity as the Power responsible for public law and order.
- (c) It is, lastly, authorised to promulgate penal provisions for its own protection. This power has long been recognised by international law. The provision is sufficiently comprehensive to cover all citizens and military organisations which an Occupying Power normally maintains in occupied territory. The Convention mentions "the Occupying Power" itself besides referring to the members and property of the occupying forces or administration, so that general activities on behalf of enemy armed forces are covered.

Upon this understanding, the ICJ/CIJL Mission assessed Israeli practice with regard to law and courts in the West Bank and Gaza. The Mission believes that the laws which were in force in the occupied territory before its occupation should have continued to be enforced. The occupier may, however, abolish or

pass new legislation if such action is needed to protect the safety of its armed forces, or if it is in the interest of the occupied population as they are guaranteed by the Convention. Moreover, the local judiciary in occupied territories must continue to function with independence and impartiality without the improper interference of the Occupying Power, taking into account the necessity of the proper administration of justice.

c. Israel's Position and Our Reaction

The Israeli Government does not accept that it is bound by the provisions of the Fourth Geneva Convention.²⁹ Israel puts forward two main arguments in support of its position. The first argument is that sovereignty over the West Bank and Gaza is undetermined since Jordanian rule over the West Bank was not internationally recognised. Israel, therefore, claims that it administers the area as *terra nullius*. The second argument is that the occupation of the West Bank and Gaza is *sui generis*, as it is of long duration. Nevertheless, Israel claims that it "acts in accordance with the humanitarian provisions contained therein."³⁰

Both arguments are widely rejected by the international community. A State may not abolish or create international law in the same way that it can abolish or create municipal law. Israel is a High Contracting Party to the Geneva Convention. It must

²⁹ See, e.g., Yehuda Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, 3 Israel Law Review 279 (1968).

³⁰ Letter from Colonel Ahaz Ben-Ari, Head of the International Law Section of the Advocate-General's Office, IDF, to the ICJ, dated 6 February 1994.

therefore abide by its provisions. The very purpose of the Convention is, as its title indicates, the protection of civilians in times of war. This fundamental protection of non-combatants should be respected irrespective of who is the sovereign over the territory they live in. In fact, the Convention does not only protect nationals but also aliens. Furthermore, Article 2 of the Convention states that “the Convention shall apply to all cases of partial or total occupation of a High Contracting Party.” It is enough for the purpose of applying the Convention that Jordan and Egypt are High Contracting Parties. The provision does not require that they be legitimate sovereigns.

As for the duration of the occupation, Article 6 of the Convention distinguishes between two sets of obligations, using as a criterion the continuity of general military operations. If general military operations continue, then the Convention as a whole applies. If there is a close of general military operations, then one year after, the Occupying Power continues to “be bound for the duration of occupation, to the extent that such power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29, to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.”³¹ Thus, and as long as it exercises the functions of government in the West Bank and Gaza, Israel must respect the provisions listed in this article.

³¹ Article 6 of Fourth Geneva Convention.

Further and more specific to the task of the ICJ/CIJL Mission, Israel maintains that the Convention itself does not deal with civil judicial procedures.³² As discussed above, however, this position is not supported by Pictet's Commentary. The Commentary states that "the continuity of the legal system applies to the whole of the law (civil and penal law) in the occupied territory."³³ No distinction should be made between civil law and criminal law, and civil courts and criminal courts.

2. Under Human Rights Law

Based on its reading of the decisions of the International Court of Justice,³⁴ and the European Commission on Human Rights,³⁵ the ICJ has consistently asserted the applicability of human rights law in times of armed conflict. The Israeli occupation of the West Bank and Gaza Strip is no exception.³⁶

Consequently, the ICJ believes that both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are applicable in the Occupied Territories. The UDHR is widely accepted as

³² Letter from Col. Ben-Ari to the ICJ, *supra* note 30.

³³ Pictet, *supra* note 27.

³⁴ For instance, in the case of Namibia, the International Court of Justice pointed to the applicability of "certain general conventions such as those of a humanitarian character." *International Court of Justice Report 1971*, Advisory Opinion of 21 June 1971, at 55.

³⁵ 62 *International Law Reports*, at 5-7, 82-83.

³⁶ See, e.g., *Academic Freedom Under Israeli Military Occupation*, at 30 (ICJ 1984).

customary international law and Israel is a State Party to the ICCPR.³⁷

Article 10 of the UDHR states that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Article 14, *inter alia*, of the ICCPR spells out these due process rights.

According to these provisions, the right to a fair trial is composed of about twenty substantive and procedural rights. They include the independence of the judiciary, the right to independent legal advice and representation, access to family, a lawyer of choice, and independent medical care, the non-retroactivity of laws, the right to public and speedy trial, the presumption of innocence, the right to proper defence and the right to appeal.

3. Under the Principles of Judicial and Legal Independence

The exact meaning of “independent and impartial tribunal” required by the human rights instruments as a guarantee for fair trial

³⁷ Israel has signed and ratified the International Covenant on Civil and Political Rights. Israel entered reservations effectively refusing to apply the provisions of the ICCPR to the Occupied Territories. Here it is worth noting that Article 19 of the Vienna Convention of the Laws of Treaties of 1969, which is considered as declaratory of customary international law, allows reservations to be made provided that “the reservation is not incompatible with the object and purpose of the treaty.”

was spelled out in two United Nations instruments: the 1985 UN Basic Principles on the Independence of the Judiciary,³⁸ and the 1990 UN Basic Principles on the Role of Lawyers.³⁹ As a member of the United Nations, Israel, together with other members, was invited by the UN General Assembly "to respect them and to take them into account within the framework of their national legislation and practice."⁴⁰

The Basic Principles on the Independence of the Judiciary set forth principles concerning the freedom of expression and association of judges, as well as rules regarding the qualification, selection, training, conditions of service, tenure, immunity, discipline, suspension and removal of judges.

The Principles emphasise that the independence of the judiciary should be guaranteed by the State and enshrined in the Constitution or law of the country. Judges should be appointed by an independent body, such as a council of judiciary, consisting mainly of judges and lawyers. They should be paid an adequate salary to render any other form of income unnecessary, and should be irremovable during their term for any, but the gravest, cause. Even then, there should be a public procedure with full rights for the judge to present his or her case. These Principles are reproduced as a Basic Text at the end of this Report.

³⁸ G.A. Res. 146, U.N. GAOR, 40th Sess. (1985), *reprinted in* 25-26 CIJL Bulletin 14 (1990).

³⁹ G.A. Res. 166, U.N. GAOR, 45th Sess. (1990), *reprinted in* 25-26 CIJL Bulletin 27 (1990).

⁴⁰ See A/RES/40/32, 29 November 1985; A/RES/40/146, 13 December 1985; A/Res/45/121, 14 December 1990; A/Res/45/166, 18 December 1990.

The Basic Principles on the Role of Lawyers pay special attention to the following issues: provision for effective access to legal assistance for all groups within society; the right of the accused to counsel and legal assistance of their own choosing; the education of the public on the role of lawyers in protecting fundamental rights and liberties; training and qualifications of lawyers; the prevention of discrimination with respect to entry into the legal profession; the role of governments, bar associations and other professional associations of lawyers; the right of lawyers to undertake the representation of clients or causes without fear of repression or persecution; and the obligation of lawyers to keep communications with their clients confidential, including the right to refuse to give testimony on such matters. The Principles are reproduced as a Basic Text at the end of this Report.

Section 2

Our Investigations and Findings

There are two parallel sets of systems of justice that have jurisdiction over the West Bank and Gaza. One deals with Palestinians, and the other deals with Israeli settlers. The system of justice that applies to Palestinians is composed of civilian courts as well as military courts and tribunals. Israel's own system of justice has been extended extra-territorially to apply to settlers.

The current ICJ/CIJL Mission has confined itself to studying the civilian courts which serve the Palestinians in the West Bank and Gaza. The military court system has been the subject of other ICJ studies.⁴¹

⁴¹ See, e.g., Inquiry into the Military Court System in the Occupied West Bank and Gaza (Report of the 1989 ICJ Mission) (ICJ 1990).

The Mission visited courts of all types in Ramallah, Nablus, Bethlehem, Jericho and Gaza, despite some initial difficulty,⁴² and met with Palestinian lawyers and judges. The Mission also met with Mr. Jan Claude Nizam, the Israeli Officer-in-Charge of the Judiciary in the West Bank,⁴³ as well as with Israeli officials in the Ministries of Defence and Foreign Affairs.⁴⁴

The civilian justice systems in the West Bank and in Gaza derive from the legal systems enforced in the two areas before the 1967 Israeli occupation. Under the 1952 Jordanian Constitution, which is still part of the law applicable in the West Bank, there are three types of courts: the regular, religious and special tribunals.⁴⁵ The regular courts are granted jurisdiction

⁴² The Israeli officials were well informed about our intention to visit the courts. In a preparatory visit to the West Bank in September 1993, Ms. Mona Rishmawi, the CIJL Director, met with the President of the Court of Appeal in Ramallah and informed him about the ICJ/CIJL intention to send a mission to visit the courts in the West Bank and Gaza and to meet with judges. He welcomed this initiative. Throughout the months of October and November, the ICJ and CIJL wrote to Israeli officials, including the Officer-in-Charge of the Judiciary in the West Bank, informing them of the Mission.

The day before the Mission began, the CIJL Director was informed by a representative of the Officer-in-Charge of the Judiciary, as well as by Col. Ahaz Ben-Ari, the Head of the International Law Section of the Advocate-General's Office, that a permit is needed from the Israel Defence Forces to allow the Mission to meet with judges in the West Bank courts. The officials argued that the judges are employed by the Military Government, and like any other public official, they need its approval before speaking to any foreign delegation. When we asserted that the judiciary is meant to be independent, an Israeli official said this assertion is a "legal formality." Although the matter was eased after a few telephone conversations, and the Mission was facilitated, the conversation reflected how the Military Government views the independence of the West Bank and Gaza judiciary.

⁴³ Meeting in Beit El on 9 December 1993.

⁴⁴ Meetings on 16 December 1993.

⁴⁵ Article 102 of the Jordanian Constitution.

over all civil and criminal matters. The religious courts deal with all issues of personal status. The special courts deal with specific issues, such as land and water disputes. In continuation of what prevailed during the Mandate period, the court system in Gaza is composed of magistrate courts, district courts, a criminal court, land courts and a High Court.⁴⁶ There are also religious courts.

1. The Structure of the Regular Courts

a. In the West Bank

The regular courts deal with criminal and civil matters. According to the Jordanian law, they are of three levels: first instance, appeal and cassation. Appeals against administrative decisions are of one level and handled by the *Cour de Cassation* sitting as a High Court of Justice. The Law Concerning the Organisation of Courts No. 26 of 1952 specifies the powers and jurisdiction of each court.

Before the 1967 Israeli occupation, there were magistrate courts and courts of first instance in the major towns in the West and East Banks. There were two Courts of Appeal: one in Amman and the other in Jerusalem. The *Cour de Cassation* sat in Amman.

The courts of first instance are of two types: the magistrate courts, which deal with minor offences and small civil claims, and courts of first instance, which deal with crimes and major claims. Currently, there are eight Magistrate Courts in the West

⁴⁶ Articles 39-43 of the 1922 Palestine Order-in-Council.

Bank. They have jurisdiction over criminal matters where the maximum sentence does not exceed three years' imprisonment or a fine of 200 Jordanian Dinars (JD). In criminal matters, judges also act as public prosecutors. These courts also deal with civil matters whose value is under 250 JD. This limit has not been increased to take account of inflation (it is currently around £250, or US\$ 375).

There are now three Courts of First Instance, in Nablus, Ramallah and Hebron. Each court is composed of a President and a number of judges. They have general competence at first instance and deal with civil and criminal disputes that fall outside the competence of the Magistrate Courts. They also act as an Appeal Court from the Magistrate Courts in criminal matters where the penalty does not exceed 5 JD, and in civil matters where the value of the claim does not exceed 10 JD. A single judge court hears civil claims. In criminal cases, the court may be composed of one to three judges depending on the seriousness of the crime.

There is one Court of Appeal in the West Bank. It currently sits in Ramallah. Before the Occupation, this court sat in East Jerusalem. After the Israeli annexation of East Jerusalem in 1967, the court was moved to Ramallah by a Military Order. The newly constructed building, which housed this court in East Jerusalem, became the seat of the Israeli District Court of Jerusalem. This Israeli action caused much protest amongst Palestinian lawyers and judges and led to a professional strike, which, almost 27 years later, is still partially observed in the West Bank.

The Court of Appeal has jurisdiction to hear appeals in civil and criminal matters from the Courts of First Instance. It sits in panels comprised of three judges. It now also acts as a High Court of Justice in limited matters.⁴⁷

The *Cour de Cassation* always sat in Amman. This court acts as a court of judicial review. Following the occupation, recourse to this court was abolished, and no attempt was made to institute alternative arrangements. While the Supreme Court of Israel assumed jurisdiction over matters arising from the behaviour of the military government in the West Bank and Gaza, this Court did not deal and cannot deal with criminal and civil matters, as the legal systems in Israel and the West Bank differ significantly.⁴⁸

The lack of proper judicial review procedure denied the Palestinian system in the West Bank, *inter alia*, from developing its own jurisprudence. It also led to the changes in the structure of the Judicial Council which was responsible for selecting and promoting judges as this council was headed by the President of the *Cour de Cassation*.

Although the courts under Jordanian law are not specialised — they deal with all the criminal and civil matters that are brought to their attention — there are special procedures to deal with matters such as those related to juveniles or workers. According to the Jordanian Constitution, however, these special

⁴⁷ See *infra* the discussion of Military Order 164 in sub-section *Access to Justice*.

⁴⁸ Israel still follows the English legal tradition.

courts could be formed. In some cases, specialised courts have been created. Amongst the most significant special courts were the tribunals established under the 1952 law concerning the Settlement of Disputes Over Land and Water. This law enabled registration of land in the name of its private owners. In order to speed the process, Special Tribunals were set up. When the occupation took place, this process was finalised only in one-third of the West Bank. Military Order 291 issued on 19 December 1968, however, suspended all the operations of the Settlement of Disputes over Land Law. This Military Order facilitated the taking over of land by the Israeli military government for Jewish settlements.

The only remaining special courts in existence are the Municipal Courts. They deal with violations of municipal laws and regulations such as those on health and public safety, and town planning violations within municipal areas.

Moreover, to ensure high standards and conformity throughout the system, a system of regular inspection of courts existed under Jordanian law. No Court Inspector has been appointed since 1967.

b. In the Gaza Strip

The judicial system in the Gaza Strip follows the structure established during the British Mandate, under the 1922 Palestine Order-In-Council. As stated above, it is composed of magistrate courts, district courts, criminal courts, land courts and a High Court.

The Magistrate Courts have similar jurisdiction to those in the West Bank. The District Courts are comparable to the Courts of First Instance in the West Bank. In serious criminal charges, this court sits as a Criminal Court. Similar to the West Bank, the bench is then composed of several judges depending on the seriousness of the charge. The court of appeal in Gaza is called the High Court. It hears appeals against decisions of the district and criminal courts. As in the West Bank, there are no specific juvenile courts, though there are special procedures for trials of juveniles.

2. Our Investigations and Findings Concerning the Regular Courts

Under international humanitarian law, the occupier is obliged to preserve the integrity of the local judiciary within the parameters drawn in Articles 64 to 67 of the Geneva Convention.⁴⁹ Israel maintains that “the problem with the Palestinian-controlled civil courts is more lack of use by the people they are intended to serve, rather than the existence of a third party hindering access to them.”⁵⁰

⁴⁹ See Article 64 of the Fourth Geneva Convention regarding the continuity of the courts and Pictet’s comment on them, *supra* note 27 and corresponding text.

⁵⁰ Letter from Colonel Ben-Ari to the ICJ, *supra* note 30.

The Palestinians certainly hold some responsibility for the decline of their civilian court system. No doubt this system was negatively affected by two political decisions taken by the leadership of the 1987 Palestinian Uprising, known as the *Intifada*. First, the public was discouraged from resolving their conflicts in the courts. Second, the Palestinians working in the Israeli police force in the West Bank and Gaza were asked to resign. This denied the courts the power to execute their judgements.

However, these Palestinian actions took place after 20 years of occupation. During these years, the Israeli authorities interfered in the proper administration of the civilian justice in the West Bank and Gaza to such an extent that the public lost confidence in the legal system. This loss of confidence eventually led to the paralysis of the civilian courts. The following are the main problem areas that the Mission identified:

- The Military Orders

Article 1 of the 1985 UN Basic Principles of the Independence of the Judiciary states that "the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the laws of the country."

Instead of preserving the independence of the judiciary in the West Bank and Gaza, the Mission found that the Israeli Military Government established a "legal" base for its interference in the administration of justice. During the years of occupation, the Israeli military authorities have built an elaborate structure of military legislation amending existing local laws. Almost 1400 Military Orders are currently in force in the West Bank, and over

1100 in Gaza. This set of legislation has given sweeping powers to the military,⁵¹ affecting all aspects of life of the local population.⁵²

⁵¹ Article 78 of Military Order 378 (Order Concerning Security) in force in the West Bank states for example:

A. Any soldier may, without a warrant, arrest any person violating the provisions of this order or who, there is reason to suspect, has committed an offence under the terms of this order.

B. Any person arrested under sub-clause (A) shall be brought as soon as possible to a police station or a place of detention specified in the order.

C. A warrant of arrest must be made within a reasonable time against any person arrested in accordance with sub-clause (A); if such an arrest warrant is not issued within ninety-six hours of the person's arrest, then he shall be released.

D. Any police officer is authorised to issue an arrest warrant in writing, which shall not exceed seven days.

E. A police officer, not being below the rank of "Packed", who is of the opinion that the investigation material gathered against a person, in respect of whom an arrest warrant has been taken out in accordance with the terms of sub-clause (D), necessitates continuation of his detention, may extend the period for not more than seven days.

F.-1. A military court is to issue an arrest warrant for a period of less than six months. The military court may extend it from time to time, provided that the total period of detention shall not exceed six months. -2. In circumstances in which an arrest warrant is issued for a period of less than six months a military court may extend it from time to time, provided that the total period of detention shall not exceed six months.

G. In circumstances in which a charge has been brought before a military court, the court shall be authorised to order the continued detention of the accused until the end of his case.

H. An arrest warrant, under the terms of sub-clauses (D) to (G), shall be executed by a soldier.

I.-1. A military court or a police officer is authorised to order the release of any person arrested in accordance with this clause; no person arrested by virtue of an arrest warrant issued by a court shall be released except by a court order emanating from the court which originally ordered the arrest, in accordance with sub-clause (G);

-2. No police officer may release any person detained in accordance with Military Order 52 concurring Police Force Working in Conjunction with the Israeli Defence Force, 1967.

J. 'Police officer' in this article shall be taken to include any other officer defined in Military Order 52 concurring Police Force Working in Conjunction with the Israeli Defence Force, 1967.

⁵² This includes the economy, culture and so forth, reaching such detail as to prohibit the growing of tomatoes or the picking of wild thyme without a permit. *See, e.g.,* Military Order 1051.

More specific to this Report are the many Military Orders which negatively affect judicial and legal independence. In the West Bank, for instance, these orders include Military Orders 310 and 412 that vest all powers and privileges of the Minister of Justice under Jordanian law in the Israeli Military Officer in Charge of the Judiciary; Military Order 528 that grants this officer the powers of the Bar Association; Military Order 378 that gives the military courts concurrent jurisdiction over all criminal cases; Military Order 841 that allows the military to withdraw cases pending before the courts; Military Order 172 that supplants the jurisdiction of the local courts in hearing appeals against administrative decisions in wide and important areas to the Military Objections Committees; and Military Order 164 that prohibits bringing cases against officials without obtaining permission from the Military. Equivalent orders were enacted in Gaza.

These orders are issued by the Israeli military commanders in the area without any input from the Palestinian population. There is no surprise, therefore, that the Israeli legislative interventions only served their own interest. Where there is no Israeli interest, the rules remained the same as they were before 1967.

In fact, Israel even disputes that the occupying power is required under international law to act for the benefit of the local population.⁵³ With all due respect, the ICJ/CIJL Mission differs

⁵³ In his letter to the ICJ, Colonel Ahaz Ben-Ari challenged that an occupying power is required under international law to act for the benefit of the local population. He states that "[w]hereas this may indeed be an expression of a principle of international law, it is not contained within the aforementioned convention." Letter from Col. Ben-Ari to the ICJ, *supra* note 30.

from this Israeli view. Under international humanitarian law, the occupying power may alter the existing legislation only if it is necessary for the security of its forces or if it is needed for the benefit of the local population.⁵⁴ For many years, the ICJ has maintained that the Israeli Military Orders exceed these parameters. The ICJ/CIJL Mission continues to hold the same view. In fact, the Mission is convinced that it is the existence and implementation of Military Orders, such as those cited above, more than any other single factor, that contribute to the distortion of the legal system in the Occupied Territories.

- Transfer of Jurisdiction

Article 5 of the 1985 UN Basic Principles on the Independence of the Judiciary stipulates:

Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. *Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.*⁵⁵

A large part of the jurisdiction of the civilian courts has been taken over by the military courts and tribunals. Since the beginning of occupation, military courts have been established in the West Bank and Gaza. These courts assumed jurisdiction over any "crime specified in any security provision or other

⁵⁴ See *supra* Part One, Section 1.

⁵⁵ Emphasis added.

legislation without prejudice to the security legislation.”⁵⁶ In other words, the military courts assumed concurrent jurisdiction over all matters of criminal nature.

In case of conflict between the Jordanian law and the Military Orders, the Military Orders prevail. Also, there is no judicial power charged with resolving this conflict. In fact, the ICJ/CIJL Mission was told by a high-ranking Israeli legal officer that Israeli military officials decide the cases of conflict of jurisdiction between the military and the civilian court.⁵⁷ In practice, the military courts assume jurisdiction over a number of cases that do not touch on issues of security. These include traffic offences, drugs, antiquities and taxation. Fines imposed by military courts, for example in traffic offences, can be 30 times higher than what is allowed under Jordanian law.

There are also Military Objections Committees formed under Military Order 172 which rule on appeals against administrative decisions on issues including land, registration of companies, taxation and pension. These Committees pass recommendations to the Military Commander which he can accept or reject. In addition, there are various other military appeal committees that are established by virtue of specific Military Orders, such as concerning land registration and town planning.⁵⁸

⁵⁶ Article 7 of Military Order 378 in the West Bank.

⁵⁷ Meeting with Col. Ben-Ari on 16 December 1993.

⁵⁸ See, e.g., Military Order 1060.

In addition to the transfer of jurisdiction over topical matters, the Palestinian courts have no jurisdiction over the Israelis who work or live in the West Bank and Gaza. Under Military Order 164, the West Bank courts cannot hear any case or make any order or decision or allow anyone to take any proceedings against the State of Israel, the Israeli Defence Force, or any of their employees or appointees without a military permit. Also, the jurisdiction of Israeli law has been extended extra-territorially. As the settlers are Israeli citizens, they benefit from the rights and protections of the Israeli legal system. Settlements also have their own Rabbinical Courts to deal with personal status matters as well as municipal courts.

- Access to Justice

As just mentioned, Military Order 164 in the West Bank, along with the parallel order in Gaza, poses perhaps the most serious impediment to access to justice. These orders require that a permit be obtained from the Military before the court can hear cases against the State of Israel, the Israeli Defence Force or any of their employees or appointees.

The second problem is court fees which, since the occupation, have increased disproportionately. West Bank lawyers said that this increase has been by a factor of 70. When we asked a high-ranking Israeli legal officer about this matter, he first denied it. After an initial check that seems to have confirmed our information, he said that the matter needs to be further checked. As of today, we have not heard from the officer on this issue.

Physical access to certain courts is also impeded. When we went to the court in Bethlehem, for instance, military guards had closed the gate, allowing only a certain number of persons per day to enter. When we asked about the reason for this restriction, we were told that it is because the building is shared by the tax and other civil administration offices. This type of measure, however, constitutes a clear impediment to public access to the courts.

On the Palestinian side, at the beginning of the December 1987 Palestinian Uprising known as the *Intifada*, the *Intifada* leadership called upon the Palestinians to settle their disputes amicably. The number of cases brought in the courts dropped. The Palestinians turned to other methods, such as arbitration or mediation through political figures. Many Palestinians, including political figures, told us that these methods were not always effective or fair, as they are not essentially based on law.

- Closing Files

Article 4 of the 1985 UN Basic Principles on the Independence of the Judiciary stipulates: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision."

West Bank Military Order 841, however, allowed the Israeli Military Area Commander or the Israeli Legal Advisor to the Military Government "to close an investigation file or to refrain from proceeding with a certain case if they think that there is no public interest served by the investigation or the trial." We were told

that as a result of this order, many files concerning both criminal and civil matters in the West Bank have been withdrawn during their examination by the civilian courts, sometimes in the middle of court procedure. It seems that these files involve forgery of land sales,⁵⁹ Israelis or collaborators with the military government.

The Israeli officers denied that files are withdrawn. When we mentioned this concern to Justice Meir Shamgar, the President of the Supreme Court of Israel, he said that no such case was ever brought to the attention of his court. The Palestinian Head of the Court of Appeal in the West Bank also denied that such a pattern prevails at the present time.

As a result of evidence it received from lawyers as well as judges, the ICJ/CIJL Mission is convinced that there is a practice of withdrawing files during judicial proceedings, at least in the West Bank. The existence of Military Order 841 only backs this conclusion. It seems, however, that this pattern was more pervasive before 1985 when the judiciary had a number of corrupt judges on the West Bank bench.⁶⁰

⁵⁹ Some land dealers have been "selling" land to Israelis without having legal title. When the matter is discovered, the actual owners usually go the Court to annul the transaction. In such cases, files have been withdrawn from the court, in effect giving validity to the forged deal.

⁶⁰ See *infra* sub-section on *Corruption*.

- Releasing Convicted Prisoners

The ICJ/CIJL Mission was informed by several judges about a number of incidents in the West Bank and Gaza where prisoners convicted and sentenced by Palestinian judges were released early in return for collaborating with the occupying forces. On occasion, they sought out and threatened the judges who had sentenced them. Military Order 226 in the West Bank seems to grant the Israeli authorities such pardoning powers.

Judges and lawyers in Gaza recalled the case of late Judge Kamal Sayegh. He was threatened in the courtroom by a person whom he convicted and sentenced. A few days later, the sentenced prisoner was released from jail and appeared with a gun in the court seeking the judge. Several judges in the West Bank told us similar stories. We find this to be very serious.

Article 4 of the UN Basic Principles on the Independence of the Judiciary allows for mitigation or commutation by proper authorities of sentences imposed by the judiciary, in accordance with the law. This licence seems to have been so abused in the Occupied Territories that it threatens judicial independence.

- Execution of Judgements

Before 1987, judgements passed by the Palestinian courts were executed through the police. The police in the West Bank and Gaza, though considered part of the Israeli Police, contained in its lowest ranks some Palestinians. These Palestinians were responsible for investigating offences where there was no Israeli interest, such as regulating traffic, and inter-Palestinian crime.

They were also charged with executing the judgements of the civil courts.

At the beginning of the December 1987 Palestinian *Intifada*, the *Intifada* leadership called upon the Palestinians working in the Israeli police force to resign. Almost all of them did. The police stations and functions were taken over by the Military. The execution of the judgements passed by the civil court thus suffered as Palestinians did not ask the Israeli military to execute a civil judgement against other Palestinians.

- Appointment of Judges

According to Article 5 of the law concerning Judicial Independence No. 19 of 1955, West Bank judges are to be appointed by the Judicial Council. This Council is composed of the head of the *Cour de Cassation*, two members of this court chosen according to seniority, the Attorney General, the two heads of the Courts of Appeal in Amman and Jerusalem, and the Director-General of the Ministry of Justice.⁶¹

Military Order 310 altered this structure. According to this Military Order, the Judicial Council has been replaced by a Committee appointed by the Israeli Military Area Commander.

The composition of this Committee is not clear. In the West Bank, and before 1985, it seems that it was entirely composed of military officers. We were told by both Mr. Jan Claude Nizam, the Israeli Officer-in-Charge of the Judiciary in the West Bank,

⁶¹ Article 15 of the Jordanian law concerning Judicial Independence No. 19 of 1955.

and Judge Khalil Silwani, the President of the Court of Appeal in the West Bank, that this Committee is now composed of 6-7 Israeli officers, including the Officer-in-Charge of the Judiciary and the Advisor on Arab Affairs. Judge Silwani also attends the proceedings of this Committee.⁶² It was not clear to us, however, whether he is a full member of this Committee or he attends in an advisory capacity.

The Mission considers this mode of appointing judges as inadequate. The independence of the judiciary is hindered if the mode of selecting judges does not safeguard against appointments for improper motives. Entrusting the Executive, in this case the Military, without constraints, the power to appoint judges risks appointments on the basis of political or personal loyalty.

Furthermore, it is hard to see how the Israeli Military Orders which amended the Jordanian mode of selecting judges fall within the parameters of the Occupier's authority to change local laws under international law.⁶³ These amendments are clearly neither needed for the security of the Israeli armed forces, nor are they for the benefit of the local population.⁶⁴ They are also not needed to ensure "the effective administration of justice."⁶⁵

⁶² Mr. Silwani said that the officers do not reject any matter he raises.

⁶³ See *supra* Part One, Section 1, sub-section 1.

⁶⁴ *Id.*

⁶⁵ *Id.*

- Salaries

Judges should be paid adequate salaries. Judges' salaries should be periodically reviewed to overcome or minimise the effect of inflation.

Before 1985, the salaries of Palestinian judges in the West Bank were significantly low. Lawyers maintained that this was an invitation for corruption. The present average monthly salary of a Palestinian judge is 3,000 shekels (about \$1,000) compared with upwards of 10,000 shekels (about \$3,300) for an Israeli judge. This is still low, although it is not below salaries of other Palestinians with the same status, such as doctors working in the West Bank governmental hospitals.

- Corruption

Corruption was widespread in the West Bank courts for many years. Gaza did not suffer from this problem. West Bank lawyers argued that the quality of the judges selected by the Military Committee, as well as the low salaries offered by the Military authorities encouraged this phenomenon. It was not until 1985, and due to substantial pressure from the Palestinian lawyers, that the Israeli authorities took measures against some judges in the West Bank's civil courts. This led to a number of dismissals.⁶⁶ Unfortunately, the corrupt judges were licensed as lawyers in the West Bank.⁶⁷

⁶⁶ Shortly after the exposure of this case, in December 1985, Mr. Aziz Shehadeh, a 71 year-old senior West Bank lawyer who spoke forcefully and publicly against the corruption of judges, was assassinated. The mystery around his killing remains unresolved.

As a result of the 1985 judicial scandal, and responding to pressure from the lawyers, Judge Khalil Silwani, a senior Palestinian lawyer, was appointed as the Head of the Court of Appeal. He began to sit with the Committee to appoint judges. Responding to the lawyers' arguments that the low salaries were amongst the main reasons for corruption, the judges' salaries were raised. We were told that at present there is no significant problem with corruption.

- Logistics

Providing the judiciary with adequate resources to enable it to perform its functions properly is a basic principle affecting judicial independence.⁶⁸ Such adequate resources do not seem to be allocated to the West Bank and Gaza courts.

The court buildings in Gaza and Nablus are old and run down. Most of the furniture dates from the British Mandate period. Although clean and tidy, the West Bank Court of Appeals in Ramallah is located in a building that was once a vegetable market. Just before 1967, a new modern building was constructed for the Court of Appeal in Jerusalem. This building was taken over by the Israelis in 1967. After the annexation of Jerusalem, it became the seat of the city's Israeli District Court.

In both the West Bank and Gaza, court records are written by hand. The registry is also done manually. There are no adequate

⁶⁷ Article 12 of the UN Basic Principles on the Role of Lawyer, for example, requires that lawyers "maintain the honour and dignity of their profession as essential agents of the administration of justice."

⁶⁸ Article 7 of the 1985 UN Basic Principles on the Independence of Judiciary.

legal books or a library in most of the courts. The notarial services attached to the Courts still inscribe matters in old-fashioned registers which have not changed since Mandate times. The only change was the fees, which had gone up many times.

Further, the budgets of the courts are not published. In light of the excessive court fees, those working in the courts have the impression that the occupying forces are profiting from the judicial system and not putting in the investment that is needed in machinery, staff and premises.

- The Need for Modern Laws

There are adequate guarantees for fair trial in criminal and civil procedure. The legal system, however, is formalistic, and is based on long and sometimes cumbersome procedures. Judges and lawyers also said that they are out of touch with modern developments which had passed them by in the Occupied Territories, while neighbouring legal systems, such as those of Jordan and Egypt have made considerable advances.

3. The Religious Courts

Since Ottoman times, personal status matters have been handled by religious courts. In fact, before the legal system was modernised in the last century, these courts also handled all civil and criminal matters. Their jurisdiction has considerably diminished over the years. It seems that keeping family matters in the hands of these courts was the only way to modernise the

legal system, as these matters are commonly considered as religious affairs.

Under Ottoman, British and Jordanian rule, the law recognised eleven religious groups and allowed them to have their own courts and apply their own laws. These include the Shari'a courts for Moslems and the courts of five Christian denominations. The Moslem courts are the principal courts. Litigants of other religions may agree to submit their cases to these courts.

We visited the Christian courts. We were received with openness and much welcome. We also met lawyers and a judge from Shari'a court in Gaza. While the Shari'a courts in the West Bank agreed first to meet with us, they later revoked their invitation. On 8 December 1993, the Acting President of the Shari'a Court of Appeal in Jerusalem issued the following statement to the press:

A month ago, some Shari'a lawyers contacted our court asking us to receive a foreign delegation from the International Commission of Jurists which will visit the Occupied Territories in December 1993. We fixed an appointment to receive this delegation in the seat of the Shari'a Appeal Court in Jerusalem on Saturday 11 December 1993 on the basis that the delegation wants to learn about the legal system applicable in the West Bank.

This morning, Wednesday 8 December 1993, we received a letter of invitation with six pages attached to it from the International Commission of Jurists and its Centre for the Independence of Judges and Lawyers, in collaboration with al-Haq in Ramallah, to attend a

seminar in Bir-Zeit University under the title "Towards an Independent Palestinian Judiciary" which will take place on 20-21 December 1993. The letter of the International Commission of Jurists and al-Haq also confirmed the appointment of 11 December 1993 to discuss the problems of the legal system in the Occupied Palestinian Territories.

It became clear to us from the letter of invitation that the planned seminar in Bir-Zeit on 20-21 December 1993 intends to deal with unifying the judicial system in the Gaza Strip and the West Bank under the anticipated political conditions after the signing of the Palestinian/Israeli Declaration of Principles, in addition to the problems related to the application and execution of various and contradictory laws. It became therefore clear to us that the visit of this delegation to our department and what will follow it, is not for the purpose of seeking information, but will lead after the seminar to formulating recommendations, decisions, and views on the judicial system anticipated under the new political situation in the Occupied Palestinian Territories.

Therefore, and whereas the Shari'a Courts in the West Bank follow the department of *Qadi al-Qudat* (Chief Islamic Justice) in Amman and applies the laws, regulations and instructions issued from the official and competent authorities, any new vision for its work and composition cannot take place except by *Qadi al-Qudat* (Chief Islamic Justice) in Amman and the officials in Jordan.

In light of this position, we would like to inform the distinguished members of the International

Commission of Jurists, and the lawyers and jurists that we are unable to participate and receive any person or delegation concerning this subject.

We consider that any new prospectives concerning the Shari'a Courts in the West Bank are made among the competent authorities whose laws apply. We hope this matter is clear for the proper functioning of the Shari'a Courts to fulfil everybody's interest.⁶⁹

The letter summarises the position and concerns of the Shari'a courts since occupation. The courts are not independent from the Jordanian administration. They are hesitant to take any step that could be interpreted as disloyalty.

In fact, these courts faced considerable difficulties when the Israelis took over and wanted to appoint its *qadis*, or judges. The *qadis* resisted and demanded that they continue to be appointed and paid by the Jordanian authorities. Eventually, Israel gave up and ignored the matter.

The situation was particularly difficult in Jerusalem. The annexation, and application of Israeli law and system there, exacerbated the matter. Israel refused to recognise or enforce judgements of the Shari'a Courts in East Jerusalem. Since in Israel religious courts have jurisdiction in family matters, excluding succession which is handled by the civil courts, Israel made personal status disputes in Jerusalem (excluding succession) subject to the jurisdiction of the Shari'a Court in

⁶⁹ Translated from Arabic.

Jaffa. The Palestinians refused to accept the jurisdiction of the Jaffa Court and continued to use the Shari'a Court in East Jerusalem.

The matter did not arise in Gaza. There are Shari'a Courts, including a Court of Appeal. In addition, there is one Greek Orthodox Court with appeal to Jerusalem. Other Christian communities in Gaza go directly to the court of their denomination in Jerusalem.

The law applicable in the West Bank Shari'a Courts is the 1976 Jordanian Personal Status law. This law was enacted in Jordan as a temporary law. Further, this legislation is based on an Islamic school of thought different from that followed by the Palestinians.⁷⁰ In Gaza, it is still the 1917 Ottoman law. Many of the Christian laws date from the last century.

4. The Lawyers

In addition to an independent and qualified judiciary, an independent legal profession is an essential precondition for the proper administration of justice under the Rule of Law. The UN Basic Principles on the Role of Lawyers states:

adequate protection of the human rights and fundamental freedoms to which all persons are entitled,

⁷⁰ There are four schools of thought in Islam: Hanafi, Shafi'i, Hanbali and Maliki. Most of the Palestinian Moslems follow the Shafi'i school of thought. The law itself, however, is based on the Hanafi school, which was followed by the Ottomans. See Mona Rishmawi, *An Introduction to the Family Law Applied in the Palestinian West Bank*, in *Family Law and Gender Bias: Comparative Perspectives*, 4 *International Review of Comparative Public Policy* 245 (1992).

be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.⁷¹

During occupation, lawyers, as the chief users of the legal system, have also suffered the problems of the judicial system outlined above. In addition, they faced their own specific problems.

- The Lawyers' Strike

As a result of the annexation of Jerusalem and the taking over of the building of the Court House, West Bank lawyers announced a strike, which was backed by the Jordanian Bar Association in Amman and the Arab Lawyers Union in Cairo. At the beginning, all lawyers observed the strike. Court litigation did not stop, however, and military courts conducted trials in the absence of lawyers for the accused.⁷²

As a result, and as the pressure from society on lawyers increased in 1971, some leading lawyers decided to resume practice. The Jordanian Bar Association reacted harshly. These lawyers were accused of "representing clients before the Zionist civil and military courts."⁷³ They were later dismissed from the Bar and their pension rights were cancelled.

⁷¹ Basic Principles on the Role of Lawyers, at Preamble.

⁷² West Bank and the Rule of Law, *supra* note 21.

⁷³ *Id.* at 47.

Since then, there are two types of lawyers in the West Bank: those who strike and those who practice. The striking lawyers are still members of the Jordanian Bar Association and are barely a quarter of the total lawyers in the West Bank. Their stance was confirmed by the High Court in Jordan in 1981, which declared it illegal for Jordanian lawyers⁷⁴ to practise in the civil or criminal courts. This decision cannot, of course, be enforced in the West Bank. It does mean, however, that those who had acquired pension rights lose them, if they resume practice. They are, therefore, bound to continue the strike for fear of losing such rights. Many of the striking lawyers have qualified since 1967, training in Egypt, Jordan or Lebanon. They have never practised in the West Bank.

- The Absence of a West Bank Bar Association

The chief problem facing lawyers in the West Bank has been the absence of an officially recognised Bar Association. Before 1967, all West Bank lawyers were members of the Jordanian Bar Association.

There is no Bar Association for the practising lawyers. Although the Jordanian Bar Association Law is still in force in the West Bank, the Officer in Charge of the Judiciary assumed the powers of the Jordanian Bar.⁷⁵ This included admitting lawyers to practice.

⁷⁴ West Bank lawyers hold Jordanian passports.

⁷⁵ Military Order 528.

In 1979, the Palestinian lawyers in practice in the West Bank set up an Arab Lawyers Committee. This Committee was not recognised by the Israeli Military authorities. In 1986, the lawyers petitioned the Israeli Supreme Court for the right to set up their own recognised independent Bar Association. While they were in court, the Military Government issued a Military Order on the establishment of a Bar Association.⁷⁶ The Order, *inter alia*, gave the Military the power to veto the members of the governing body of such an association. This was not acceptable to the lawyers. Sympathetic to the lawyers' case, the Israeli Supreme Court froze the Military Order asking the Military to offer new suggestions. The Court's decision was not followed up.

The consequences of the lack of a properly organised legal profession have been very serious. It has meant, as stated above, that the Officer in Charge of the Judiciary has assumed the powers of the Bar Association, including the admission of new lawyers to the legal profession. The lawyers have not generally been able to make effective organised representations about judicial standards, as they have not had an organised body to do so. Society has been deprived of a well-organised profession with proper professional ethics and a disciplinary committee, and able to make authoritative legal commentary which lawyers as a body would normally make on new laws and military orders.⁷⁷

⁷⁶ Military Order 1164.

⁷⁷ This particular task had to be assumed by al-Haq.

- Israeli Lawyers

Adding to the problem are the Israeli lawyers. After 1967, members of the Israeli Bar Association were authorised to practise in the Occupied Territories.⁷⁸ Palestinian lawyers, however, were not entitled to practise in the Israeli courts. Most of the matters handled by the Israeli lawyers include issues related to the Israeli Military Government. This includes obtaining travel permits, and family renunciations, representing accused persons before the military courts, and taking cases to the Israeli Supreme Court. There are also Israeli lawyers who represent land dealers or Israeli settlers in land deals. The difference in the legal tradition between the Israeli legal system, which is English-based, and the West Bank one, which is largely continental, made this admittance rather unhealthy.

- Harassment

In addition, many practising lawyers recounted instances of lack of respect by the military, such as having to queue unnecessarily, being kept waiting unreasonably at Police Stations and excessive delays at checkpoints. Some had their offices searched and files removed, and others were subjected to excessive tax demands followed by seizure of assets (a car, for example) prior to the hearing of any appeal. For several years, the CIJL annual report *Attacks on Justice* has reported on such cases of harassment of lawyers in the West Bank and Gaza.

⁷⁸ Military Order 148. The Israeli authorities claim that the order was made on account of the strike in the West Bank. Although lawyers did not strike in Gaza, a similar Military Order was issued in the Gaza Strip.

Section 3

Summary of Recommendations

The ICJ/CIJL Mission recommends that the following measures should be taken in the areas under Israeli Military rule to restore the independence of the judiciary:

- Immediate application of the Fourth Geneva Convention as a matter of law.
- A clear definition of security matters, limited only to the maintenance and safety of the army.
- Limiting the jurisdiction of the military courts to cases relating to security as defined above.
- Abolishing the Military Orders that have negative effect on the Rule of Law, human rights, and the proper administration of justice.
- Re-establishment of full jurisdiction for the civilian courts in all other matters.
- Institution of a new body with specialised judges to act as a Court of Cassation or Supreme Court with power to review all the orders and decisions from all Courts in the Occupied Territories.
- Creation of a juvenile court as a matter of urgency, and other specialised jurisdictions (such as labour and tax courts).

- Establishment of a High Council of the Judiciary comprising senior judges and lawyers.
- Creation of an independent bar which will take responsibility for admission and re-training of lawyers.
- Abolition of the system of permits for bringing cases to court.
- Cessation of interference with files of pending cases.
- Ending the abuse of power to pardon convicted civilian prisoners, and establishing a legal mechanism to review cases in which pardons were granted.
- Reduction of court fees and adequate funding for the administration of the civilian court system. The publication of the budget for the Occupied Territories and, in particular, that which relates to the functioning of the courts.
- Ensuring the enforcement of judicial decisions.

Part Two

A Future Legal System

Section 1

The Framework:

The September 1993

Declaration of Principles

1. In General

The future framework for reforming the legal structure of the West Bank and Gaza is the *Declaration of Principles On Interim Self-Government Arrangements* in the West Bank and Gaza (“the Accords”) which was signed in Washington by the Government of Israel and the Palestine Liberation Organisation (PLO) on 13 September 1993. The Accords are composed of one agreement (“the Declaration”), consisting of 16 articles, and a number of annexes. The agreement was signed by the two parties and witnessed by the United States of America and the Russian Federation. The annexes comprise the following documents and are regarded as an integral part of the agreement:⁷⁹

- Annex 1: Protocol on the Mode and Conditions of Elections;
- Annex 2: Protocol on Withdrawal of Israeli Forces from the Gaza Strip and Jericho Area;

⁷⁹ Article XVII of the Declaration.

- Annex 3: Protocol on Israeli-Palestinian Co-operation in Economic and Development Programmes;
- Annex 4: Protocol on Israeli-Palestinian Co-operation Concerning Regional Development Programs;
- Agreed Minutes to the Declaration of Principles on Interim Self-Government Arrangement.

The Accords are reproduced as a Basic Text at the end of this Report.

The Accords envisage three stages for their implementation. The implementation of each stage is linked to signing further subsidiary agreements. These three stages are:

- Stage One - Gaza and Jericho

The Accords require the withdrawal of Israeli forces from these areas within 3 months of signing the Accords,⁸⁰ and subject to the conclusion and the signing of a further agreement that includes "comprehensive arrangements to apply in the Gaza Strip and Jericho area subsequent to the Israeli withdrawal."⁸¹ This additional agreement was expected to be signed on 13 December 1993. It was only on 4 May 1994 that the *Agreement on the Gaza Strip and the Jericho Area* ("the Gaza/Jericho Agreement") was signed.

⁸⁰ The withdrawal should be completed within four months of the signing of the further agreement. Article 2 of Annex II.

⁸¹ Article 1, Annex II, Protocol on Withdrawal of Israeli Forces from the Gaza Strip and Jericho Area.

Following the signing of the Gaza/Jericho Agreement, the powers that have been vested in the Israeli Military Government in Gaza and Jericho are transferred to "the Palestinian representatives"⁸² pending the election of a Council (see Stage Two below). Matters such as those related to "external security, settlements, Israelis, and foreign relations"⁸³ are not to be transferred. Also, "Israeli military forces and civilians may continue to use roads freely within the Gaza Strip and the Jericho area."⁸⁴

- Stage Two - the Remaining Parts of the Occupied Territories

Immediately after the withdrawal from Gaza and Jericho, the Accords establish an Interim Period of five years. An agreement is to be negotiated to govern this period. During the five-year period, a gradual transfer to "authorised Palestinians"⁸⁵ of some powers and responsibilities that are currently in Israeli hands "with the view to promoting economic development in the West Bank and Gaza"⁸⁶ is to take place. Initially, five responsibilities will be transferred, specifically, education and culture, health, social welfare, direct taxation, and tourism.⁸⁷

⁸² Article 3 (a) of Annex II.

⁸³ Article 3 (b) of Annex II.

⁸⁴ Point concerning Annex II of the Agreed Minutes.

⁸⁵ Article VI (1) of the Declaration.

⁸⁶ Article VI (2) of the Declaration.

⁸⁷ Article VI (2) of the Declaration.

Matters related to the status of Jerusalem and Israeli settlements, refugees, foreign relations, security arrangements, border relations and co-operation with other neighbours are not to be transferred during this stage.⁸⁸

During the Interim Period, a Palestinian Council shall govern the West Bank and Gaza.⁸⁹ This Council shall have the authority to legislate and administer the powers and responsibilities transferred to it.⁹⁰ The Council shall be elected not later than 10 months after signing the Declaration.⁹¹

- Stage Three - The Permanent Status of the West Bank and Gaza

At the end of the five-year Interim Period, the Permanent Status of the West Bank and Gaza will be negotiated. At this stage, "remaining issues including Jerusalem, refugees, settlements, security arrangements, borders, relations and co-operation with other neighbours, and other issues of common interest"⁹² will be determined. According to the text, negotiations on the Permanent Status are to start "not later than the beginning of the third year of the interim period."⁹³

⁸⁸ Article V of the Declaration.

⁸⁹ Preamble and Article III of the Declaration.

⁹⁰ Article IX of the Declaration.

⁹¹ An Israeli/Palestinian agreement will determine the mode and conditions of elections. Article III of the Declaration.

⁹² Article V of the Declaration.

⁹³ Article V of the Declaration.

The prospects for peaceful coexistence in the Middle East created by these Accords are, no doubt, welcomed. The terms of the Accords, however, render vague the essential question of sovereignty. The Accords, for instance, move away from the UN Resolutions that affirm Arab sovereignty over these territories⁹⁴ and slide towards the Israeli vision of sovereignty over the West Bank and Gaza.⁹⁵ While they refer to the implementation of Security Council Resolutions 242 and 338 as their ultimate goal,⁹⁶ the Accords leave important questions on territory (such as East-Jerusalem and settlements) and functions (such as questions relating to foreign relations, settlers and Israelis) in the hands of Israel in the Interim Period. Also, the "co-operation and co-ordination" agreements between Israelis and Palestinians on

⁹⁴ These include, for instance, the 1947 partition-plan resolution.

⁹⁵ While the Palestinians, backed by customary international law, have maintained that sovereignty resides in the people of the territory, the Israeli Government maintains that the sovereignty over the West Bank and Gaza is undetermined, and that it is administering the area as terra nullius. See *supra* note 29 and corresponding text.

⁹⁶ See article 1 of the Accords. Security Council Resolution 242 issued on 22 November 1967 requires *inter alia* "withdrawal of Israeli armed forces from territories occupied in the recent conflict." Security Council 338 called upon the parties *inter alia* to start immediately the implementation of Security Council Resolution 242 "in all its parts."

There is a significant difference between the Israeli and the Palestinian position with regard to these resolutions. While the Palestinians assert that they require the immediate and complete withdrawal from the areas occupied as a result of the 1967 war, Israel claims that a partial withdrawal from these areas is sufficient to comply with these resolutions.

almost all aspects of daily life in the West Bank and Gaza⁹⁷ give Israel an upper hand. The provisions make the separation and disengagement between the Israelis and Palestinians weak. It might make it difficult at the end of the five-year Interim Period to move away from economic, political, and legal structures established by these "co-operation and co-ordination" agreements. This could lead to future conflict.

2. Establishing A New Legal Order

As stated in Part One above, the administration of justice in the West Bank and Gaza is currently governed by Israeli Military Orders which violate international human rights law, including fundamental principles of judicial and legal independence and the right to a fair trial. The May 1994 Gaza/Jericho Agreement keeps in force the laws and Military Orders which were enforced in Gaza and Jericho during the Israeli occupation unless they are amended or repealed in accordance with the procedure established by this agreement.⁹⁸

⁹⁷ To mention but a few:

- an agreement on the formation of the Palestinian police force;
- an agreement on the structure and powers of the Palestinian National Authority;
- the scope of authority, structure and procedures for electricity, water and sea port authorities;
- transfer of additional powers and responsibilities;
- the mode and conditions of the Palestinian elections; and
- many agreements on "co-operation and co-ordination."

The only matters which are excluded from this "co-operation and co-ordination" are perhaps matters relating to personal status.

⁹⁸ See Article 7 of the Gaza/Jericho Agreement.

However, if a new legal order based on the Rule of Law is to be established in the Palestinian Territories, these Military Orders must be abolished and replaced with a new set of legislation. The key question in this regard is who has the power to alter this legislative structure.

According to the Accords, a Palestinian Council should be elected in the Palestinian Territories not later than ten months after the signing of the Accords.⁹⁹ "The Council will be empowered to legislate in accordance with the Interim Agreement, within all authorities transferred to it."¹⁰⁰ This means that in Gaza and Jericho, the Council will have the power to legislate with regard to all aspects of life except "external security, settlements, Israelis, and foreign relations."¹⁰¹ In the West Bank, (excluding East Jerusalem and Jericho) this authority will be initially confined to education and culture, health, social welfare, direct taxation, and tourism, i.e., the five areas which are to be transferred to the Palestinians. Additional legislative authorities may be added as more powers are transferred to the Palestinians. It is not clear, however, who possesses the legislative power before the Council is elected. One interpretation could be the "authorised Palestinians."

⁹⁹ Article III of the Declaration.

¹⁰⁰ Article IX (1) of the Declaration.

¹⁰¹ Article 3 (b) of Annex II.

Moreover, the May 1994 Gaza/Jericho Agreement establishes a long and cumbersome review procedure for Palestinian legislative acts.¹⁰² Accordingly, the Palestinians are required to submit every piece of legislation they wish to enact to a Joint Israeli/Palestinian Committee before its enactment.¹⁰³ Israel may veto the legislation, if it believes that the Palestinians exceed the powers granted to them by the Accords and its subsidiary agreements. The legislation reviewed by the Committee cannot be enforced unless the Committee decides that it does not deal with "a security issue which falls under Israel's responsibility [and] that it does not seriously threaten other significant Israeli interests protected by this Agreement...."¹⁰⁴

Despite these cumbersome procedures, the May 1994 Gaza/Jericho Agreement states that both sides will exercise the powers they assumed under this agreement in accordance with the internationally accepted principles of human rights and the rule of law.¹⁰⁵ The ICJ therefore believes that the two sides are under a duty to abolish all the laws and Military Orders which violate these principles. Immediate steps should be made in this direction. Measures should be taken, however, to protect and preserve legal rights acquired on the basis of these orders.¹⁰⁶

¹⁰² See Article 7 of the Gaza/Jericho Agreement.

¹⁰³ Article IX of the Declaration.

¹⁰⁴ Article 7(6) of the Gaza/Jericho Agreement.

¹⁰⁵ Article 14 of the Gaza/Jericho Agreement.

¹⁰⁶ Military orders have, for example, extended the duration of registering irrecoverable powers of attorney from five years to fifteen years. As a result, many land deals have not been registered in the Land Registration Department. If this Military Order is cancelled without taking the rights acquired by virtue of it, many civil disputes will erupt.

3. The Jurisdiction of the Courts

The Accords mention "the independent Palestinian judicial organs." In the Gaza/Jericho Agreement, the jurisdictions of the Israeli and Palestinian judicial organs are defined as follows:

1. The authority of the Palestinian Authority encompasses all matters that fall within its territorial, functional and personal jurisdiction, as follows:
 - a. The territorial jurisdiction covers the Gaza Strip and the Jericho Area territory, as defined in Article 1, except for settlements and the Military Installation Area.

Territorial jurisdiction shall include land, subsoil and territorial waters, in accordance with the provisions of this Agreement.
 - b. The functional jurisdiction encompasses all powers and responsibilities as specified in this Agreement. This jurisdiction does not include foreign relations, internal security and public order of Settlements and the Military Installation Area and Israelis, and external security.
 - c. The personal jurisdiction extends to all persons within the territorial jurisdiction referred to above, except for Israelis, unless otherwise provided in this Agreement.
2. The Palestinian Authority has, within its authority, legislative, executive and judicial powers and responsibilities, as provided in this Agreement.
3. a. Israel has authority over the Settlements, the Military Installation Area, Israelis, external

security, internal security and public order of Settlements, the Military Installation Area and Israelis, and those agreed powers and responsibilities specified in this Agreement.

- b. Israel shall exercise its authority through its military government, which, for that end, shall continue to have the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This provision shall not derogate from Israel's applicable legislation over Israelis in personam.
4. The exercise of the authority with regard to the electromagnetic sphere and airspace shall be in accordance with the provisions of this Agreement.
5. The provisions of this Article are subject to the specific legal arrangements detailed in the Protocol Concerning Legal Matters attached as Annex III. Israel and the Palestinian Authority may negotiate further legal arrangements.
6. Israel and the Palestinian Authority shall cooperate on matters of legal assistance in criminal and civil matters through the legal subcommittee of the CAC.¹⁰⁷

¹⁰⁷ Article 5 of the Gaza/Jericho Agreement.

In other words, the Israeli Military Government, which exercises legislative, executive and judicial power, continues to operate in Gaza and Jericho, dealing with matters such as those related to external security, settlements, Israelis, and foreign relations. Also, the Israeli system of justice continues to apply to Israeli settlers. The Palestinian system of justice does not have jurisdiction over such matters. This article, therefore, confirms the transfer of jurisdiction from the Palestinian civilian courts to the Israeli military courts, as well as the extra-territoriality of Israel's own legal system, that took place during occupation, as mentioned earlier in Part 1, Section 2.

Another example of a provision that is based on the misuse of concepts is Article 22 of the Gaza/Jericho Agreement. This Article sets an important precedent about the jurisdiction of these courts, especially with regard to impunity. The Article deals with "Rights, Liabilities and Obligations" to make the Palestinian Authority responsible for "all related rights, liabilities and obligations arising with regard to acts or omissions which occurred prior to the transfer." It further adds that "Israel will cease to bear any financial responsibility regarding such acts or omissions and the Palestinian Authority will bear all financial responsibility for those and for its own functioning."

In other words, the Palestinian entity is made responsible for all Israeli misdeeds during the Occupation. Any claim for compensation for an illegal act that took place during the period of occupation will be paid by the Palestinian entity. This seems to

include compensation for violations of human rights that took place since 1967.

It seems that this provision was drafted on the assumption of state succession. Such a concept cannot be applied to the situation, however. First, the Palestinian entity is not yet a state. Second, state succession assumes that the outgoing power was sovereign. Under international law, however, an occupying power is not sovereign.

Section 2

Our Views on the Future Palestinian Legal System

In the 1988 Declaration of Palestinian Independence,¹⁰⁸ the Palestine Liberation Organisation (PLO) promised the Palestinians that a state will be established in the West Bank and Gaza. This Declaration defined the state in the following terms:

The State of Palestine is the state of Palestinians wherever they may be. The state is for them to enjoy in it their collective national and cultural identity, theirs to pursue in it a complete equality of rights. In it will be safeguarded their political and religious convictions and their human dignity by means of a parliamentary democratic system of governance, itself based on freedom of expression and the freedom to form parties. The rights of minorities will be duly respected by the majority, as minorities must abide by decisions of the majority. Governance will be based on principles of social justice, equality and non-discrimination in public rights of men and women, on grounds of race,

¹⁰⁸ Issued by the Palestine National Council.

religion, colour or sex under the aegis of a constitution which ensures the rule of law and an independent judiciary. Thus shall these principles allow no departure from Palestine's age-old spiritual and civilisational heritage of tolerance and religious coexistence.

Without entering into a political discussion on the feasibility of creating a Palestinian State under the terms of the 1993 Israeli/Palestinian Accords, the ICJ/CIJL Mission hopes that the PLO will fulfil its promise in exercising its authorities in accordance with the principles of the Rule of Law outlined in the Declaration of Palestinian Independence.

1. A Palestinian Democratic Order Based on the Rule of Law

- In General

In democratic societies, just law rules. Legislation passed by parliament, which represents the electorate, is the instrument through which people's sovereignty is imposed on the administration, preventing it from becoming an autocracy. The role of the independent judicial organs is to check that these ideals are correctly applied. This is what is meant by the Rule of Law.¹⁰⁹

¹⁰⁹ *See generally* The Rule of Law and Human Rights (ICJ 1966).

Thus, the notion of the Rule of Law is intended, in particular, to oblige the administration to respect the law.¹¹⁰ It guarantees freedom, equality and security to the individual. By imposing respect for stable norms on state bodies, law reduces the risk of arbitrary behaviour. The measures that will be taken by the public authorities become predictable and acquire permanent character, the consequences of which can be calculated by the individual in advance. The Rule of Law, therefore, is only conceivable and workable where human rights are fully recognised and respected.

There are certain basic conditions and principles without which the Rule of Law cannot be sustained.¹¹¹ Governments must represent the will of their people. The legislative, executive and judicial authorities must be separate, independent and given equal status and importance. The three powers must be able to exercise effective checks and balances against each other. Administrative actions must be legal and controlled by independent judges. Moreover, any power emerging from the collective authority, in particular the legislative and the executive, must respect the individual's fundamental rights and freedoms. These conditions and principles are inherently inter-linked.

If the West Bank and Gaza are to be justly governed, restoring the Rule of Law should be a priority for any Palestinian entity. This poses a serious challenge for Palestinians. For the last 27 years, the West Bank and Gaza have been denied not only

¹¹⁰ *Id.*

¹¹¹ *Id.*

structures that can ensure a just governance, but the practice of application. They have been ruled by a foreign military government which imposed its Military Orders enacted without the participation of the local population.¹¹² The judiciary has been subjugated to Israeli military government supremacy.¹¹³

- Participation in the Decision-Making Process

Article 21 (1) of the Universal Declaration of Human Rights states that "everyone has the right to take part in the government of his country, directly or through freely chosen representatives." The Palestinians are no exception.

Palestinians from all walks of life in the West Bank and Gaza expressed to the ICJ/CIJL Mission their concern that the Israeli/Palestinian Accords were concluded without adequate participation from the Palestinian people.¹¹⁴ Israel subjected the Accords to the endorsement of its Parliament (*Knesset*). In contrast, the PLO Executive Committee endorsed the Accords. Despite Palestinian calls for wider involvement, no other segments of the Palestinian society or political institutions,

¹¹² See Part One, Section 1 above.

¹¹³ See Part One, Section 1 above.

¹¹⁴ The Israeli/Palestinian negotiations commenced formally in Madrid in October 1991. The Palestinian team in Madrid was composed of highly qualified technical advisors on all aspects of life from the West Bank and Gaza, including a legal team. While acknowledging its high professional level, the Palestinian team was often criticised for its undemocratic selection. While the Madrid process was underway, another confidential process started in Oslo, this time directly between the PLO and Israel. The Oslo process eventually led to the signing of the Accords. This process involved very few Palestinians with professional skills.

including the Palestine National Council,¹¹⁵ had the opportunity to endorse these agreement.

The Mission felt that this lack of popular participation is at the root of much of the Palestinian opposition to the Accords. We are concerned that this absence of adequate professional and popular participation continued when the May 1994 Gaza/Jericho Agreement was drafted. Although this agreement includes, for instance, a Protocol Concerning Legal Matters, which defines the jurisdiction of the Palestinian courts, only a few, if any, of the Palestinian judges and lawyers practising in the West Bank and Gaza were adequately consulted.¹¹⁶ In contrast, the Mission met with members of the legal team in the Israeli Ministry of Foreign Affairs who had elaborate ideas on such questions.

- Elections of the Council

If the Rule of Law is to be respected in Palestine, legislative and executive powers should be exercised through elected representatives. This is elementary. The Universal Declaration of Human Rights in article 21 (3) stated that

...the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

¹¹⁵ This body serves as the Palestinian parliament in exile.

¹¹⁶ See supra note 114.

Articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights also confirm these principles. Furthermore, UN General Assembly Resolution 46/137 concerning "Enhancing the effectiveness of the principle of periodic and genuine elections" declares that

determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in co-operation with others, as provided in national laws and constitutions.¹¹⁷

This Resolution is reproduced as a Basic Text at the end of this report.

In fact, the Israeli/Palestinian Accords require that a Council be elected in the West Bank and Gaza during the interim period.¹¹⁸ This Council shall have the authority to legislate and administer the powers transferred to it.¹¹⁹ According to the provisions of the Accords, the elections shall take place not later than ten months after the signing of the Declaration, i.e., 13 July 1994. An Israeli/Palestinian agreement shall determine:

- a. the system of elections;
- b. the mode of the agreed supervision and international observation and their personal composition; and,

¹¹⁷ UN General Assembly Resolution 46/137 published in 1 *Resolutions and Decisions adopted by the General Assembly during its Forty-Sixth Session* (17 September - 20 December 1991) at 209-210.

¹¹⁸ Preamble and Article 3 of the Declaration.

¹¹⁹ Article IX of the Declaration.

- c. rules and regulations regarding election campaign, including agreed arrangements for the organising of mass media, and the possibility of licensing a broadcasting and TV station.¹²⁰

Such an agreement is yet to be concluded. Notwithstanding that the jurisdiction of the Council is restricted to the limited authority transferred to it, the election of this Council is the first attempt for decades that may allow the Palestinians the opportunity to govern themselves by an elected leadership.¹²¹

The ICJ/CIJL Mission cannot recommend a particular electorate system for the Palestinians as there is no political system or electoral method that is equally suited to all nations and their people.¹²² We hope that the Palestinian people will develop an electoral system that will ensure free, fair and genuine elections that are conducted without discrimination on the basis of sex or political opinion. We also hope that they will be by universal and equal suffrage and will be held by secret ballot or by equivalent free voting procedures.

With the exception of preparations for a Palestinian television station, no official preparations for these elections seem to be taking place on the ground. In this context, we welcome the non-governmental initiative of creating an

¹²⁰ Article 2 of Annex 1 of the Declaration.

¹²¹ There were no official elections of any kind in Gaza during the period of occupation. In the West Bank, municipal elections were held twice, in 1977 and 1980. When supporters of the PLO were elected, Israel suspended municipal elections.

¹²² See UN General Assembly Resolution 46/137 *supra* note 117.

Independent Palestinian Electoral Group created under the auspices of the Centre for Palestine Research and Studies in Nablus in the West Bank in February 1994. Composed of 19 eminent Palestinians, the Group aims at proposing an electoral system, educating and training the candidates and electorate about elections, and monitoring the elections for the Council.

- Drafting the Palestinian Basic Law

The Rule of Law should be guaranteed through a constitutional order. There is a draft Palestinian Basic Law which is currently circulating. This Basic Law is intended to serve as a Palestinian Constitution. As this Basic Law is still in draft form, we do not wish to comment on its provisions. We hope, however, that this law will take into account the points raised in this Report, particularly those concerning the need to establish a Palestinian political entity based on the Rule of Law, with real and effective separation of the Executive, Legislative and Judicial powers. We also hope that this document will guarantee the independence of the judiciary and give it jurisdiction over all matters of a judicial nature, in particular those dealing with human rights. The Mission also believes that international human rights norms should be incorporated into the Palestinian legal system through this document and that these norms are given supremacy over national laws.

At this stage, the Mission is concerned about the process in which the Palestinian Basic Law is being drafted. It seems that a small group, chaired by the Head of the Legal Committee in the Palestine National Council, has been entrusted with the task of

drafting this document. The Committee produced several drafts. Many Palestinians expressed concern that while this document is intended to set the basis for the Palestinian governance of the West Bank and Gaza, the document itself is being prepared outside these territories without adequate participation from or consultation with interested sectors of the Palestinian society.¹²³

The ICJ/CIJL Mission feels that all sectors of Palestinian society, particularly those judges and lawyers practising in the West Bank and Gaza, should be fully involved in this process. We hope that as with other Palestinian legislative acts, this Basic Law will be submitted to the Palestinian Council for discussion, and eventual enactment.

- A Palestinian "Ombudsman"

As the above examples clearly demonstrate, immediate steps should be taken to broaden the basis of Palestinian democracy. Processes should be established to ensure that the opinion of all sectors of Palestinian society in matters pertaining to their daily life is sought and respected.

Every state needs systems of checks and balances. In this context, the Mission welcomes the creation of the Independent Palestinian Human Rights Commission in February 1994. We understand that this Commission, which is currently headed by

¹²³ See, e.g., interview with Dr. Anis F. Kassem, the legal advisor to the negotiating team in Madrid (*see supra* note 114) in *Al-Watan al-Arabi* on 4 March 1994.

Dr. Hannan Ashrawi, is composed of nine eminent Palestinian figures who act as Commissioners. The Commission aspires to function as an Ombudsman or State Controller holding the Palestinian authorities accountable to the principles of the Rule of Law, human rights, and proper and democratic principles of governance. The establishment of this Commission was endorsed by PLO Chairman, Mr. Yasser Arafat.¹²⁴ The Decree signed by him grants the Commission wide investigatory powers. As an official institution, such a Commission cannot replace the work of the non-governmental sector.

2. An Independent Judiciary and Legal Profession

Judicial independence is a goal to which almost all nations aspire. Restoring the independence and self-confidence of the judiciary in the West Bank and Gaza should be treated with priority by the Palestinian entity. An independent and qualified judiciary does not only ensure the respect of human rights and the Rule of Law, but also enhances a stable economic and political system.

As far back as 1959, the ICJ described the conditions which must govern the existence of an independent and impartial

¹²⁴ We hope that when the Palestinian Council is elected, this Commission will base its legitimacy on the will of the electorate, rather than a Presidential Decree.

judiciary.¹²⁵ According to the definition drawn up by the ICJ in 1981:

Independence of the judiciary means that every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements or pressures, direct or indirect, from any quarter or for whatever reason...¹²⁶

The modern concept of judicial independence is not limited to individual judges and their substantive and personal independence. It must also incorporate the collective independence of the judiciary as an institution.

The ICJ/CIJL Mission hopes that the Palestinian authority will enact specific legislation guaranteeing legal and judicial independence. While the Jordanian 1959 Law of Judicial

¹²⁵ On January 5-10, 1959, the ICJ sponsored the International Congress of Jurists in New Delhi. One hundred and eighty-five jurists from 53 countries participated in the Congress' four committees, each of which was devoted to examining a different aspect of the Rule of Law. At the end of the Congress, the committees drafted important papers on the topics of The Legislature and the Rule of Law; The Executive and the Rule of Law; The Judiciary and the Legal Profession under the Rule of Law; and The Criminal Process and the Rule of Law. These documents can be found in the ICJ's *The Rule of Law and Human Rights*.

Several more international congresses followed: in Lagos (1961), Rio de Janeiro (1962) and Bangkok (1965). The ICJ also continued its work on the definition and application of the Rule of Law, and on concepts related to the independence of the judiciary, through its publications (the *ICJ JOURNAL* and *ICJ REVIEW*) and, since 1978, through the activities of the Centre for the Independence of Judges and Lawyers (CIJL). See 25-26 *CIJL BULLETIN* 4-6 (April-Oct. 1990).

¹²⁶ 8 *CIJL BULLETIN* 34 (Oct. 1981). This principle was incorporated into the UN Basic Principles on the Independence of the Judiciary.

Independence, as it existed in 1967, forms a base for judicial independence in the West Bank, there is no equivalent legislation in Gaza. Such laws should be immediately enacted. The Palestinian lawyers and judges we met were highly aware and articulate about how the judiciary and the legal profession should be reformed. Their full participation, at the largest possible scale, in the redrafting of the new rules is essential. The Mission hopes that the law will take into account the following matters.¹²⁷

- Legal and Constitutional Guarantee of Judicial Independence

Ensuring the integrity of the judicial process must be expressed in a constitutional prohibition of any interference by other branches of government with judicial proceedings. The 1980 Constitution of Peru, for instance, states :

No authority may assume jurisdiction in cases pending before the judiciary or interfere in the exercise of its functions. Neither can court cases that are *res judicata* be unendorsed, ongoing court proceedings be cut off, judgements modified, nor their execution delayed.

Bearing in mind the practice of withdrawing court jurisdictions and files during Occupation, the Mission hopes that similar provisions will be incorporated in a future Palestinian legislation.

¹²⁷ See generally R. Brody, International Norms on the Independence of the Judiciary (ICJ unpublished paper delivered at a conference entitled "The Independence of Justice in a Changing Europe" in Popowo, Poland, 10-13 Oct. 1991).

- Jurisdictional Monopoly

The Basic Principles on the Independence of the Judiciary provide that "the judiciary shall have jurisdiction over all issues of a judicial nature."¹²⁸ A problem arises when special tribunals are created to decide certain categories of cases. If special courts are created under the Palestinian system to deal with matters such as those involving labour disputes, these courts should be under the control of the regular judiciary.

The Military Orders operating in the West Bank and Gaza created military courts and military objections committees. These courts fall totally outside the civilian judiciary. We hope that these courts, as well as the provisions creating them will be abolished.

In this context, we are concerned about the use of Palestinian military justice procedure in Gaza after the withdrawal of Israeli troops. We have been informed that Mohammad and Adel Gholam al-Hindi, two brothers who were arrested for possessing a stolen car,¹²⁹ and insulting a Palestinian policeman, were tried by a Palestinian military court in Gaza in early June 1994. It seems that PLO revolutionary procedures were invoked to give jurisdiction to this court.

This is a regrettable precedent. First, we had hoped that no civilian would be tried before a military court under a Palestinian authority. Second, these revolutionary procedures are

¹²⁸ At art. 3.

¹²⁹ There is a possibility that they possessed an assault weapon.

not part of the law applicable in Gaza. Such cases should have been brought before the regular civil justice system.

- Judicial autonomy

In many countries, the judiciary is administered through a High Council. The Jordanian law established such a council. The Mission recommends that this Council be immediately re-created. The Council is responsible for the selection, promotion, and removal of judges.

A technique for assuring financial independence of the judiciary is a constitutional requirement that a fixed percentage of the country's total budget be allocated to the judiciary. We hope that such financial independence is granted to the Palestinian judiciary.

- Guaranteed Tenure in Office

The most important guarantee of personal independence is fixed tenure in office. The Basic Principles on the Independence of the Judiciary provide that judges "shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office."¹³⁰ This insulates judges from worrying over the political reaction to their decisions. Some countries assure judges lifetime tenure, conditional on good behaviour. Others protect tenure in office until a specified retirement age. Others limit the terms of office.

¹³⁰

At art. 12.

The Basic Principles on the Independence of the Judiciary further provide that “judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.”¹³¹ These two standards are repeated in many constitutions. Removal of a judge should be entrusted to other members of the judiciary, often in the form of an appellate court or a council of magistrates.

- Irreducibility of Judicial Salaries

Several constitutions attempt to protect a judge's independence by providing that his compensation may not be diminished during his term of office. The policy is to protect judges from financial retribution for rendering decisions that displease the legislature or the executive.

- The Establishment of a Palestinian Bar Association

For the legal profession to be effective, there is a need for a bar association that organises the profession, exercises quality control and enhances the professional standards of lawyers. As stated earlier, Palestinian lawyers practising in the West Bank have been totally denied this right. The powers of the Bar Association have been interfered with in Gaza. While West Bank striking lawyers continue to be members of the Jordanian Bar Association, they lack practical experience.

¹³¹ At art. 18.

There is an urgent need to establish an independent Palestinian bar association. A scheme needs to be developed whereby lawyers from Gaza, and the practising and striking lawyers in the West Bank, are incorporated in one Bar Association. Necessary arrangements and training should be made to accommodate the different legal systems in the West Bank and Gaza and the lack of practice of the striking lawyers.

- Judicial and Legal Training

The judges should not only be independent but also competent. The establishment of judicial training institute like those that exist in Jordan and Tunisia ensure that judges are given particular training before their appointment, and enhances their quality. Also, such institutes would ensure that such training is continuous.

The training of lawyers is also important, especially as the striking lawyers have not practiced for the last 27 years. This task is commonly assumed by the bar associations and, of course, by law schools. Such law schools do not exist in the West Bank and Gaza.

3. Harmonising and Reforming the Legal System

As stated earlier, the justice system in the West Bank and Gaza derives from the legal systems which were enforced in the two areas before the occupation. While both have Ottoman and British roots, for historical reasons the systems in these

territories differ significantly.¹³² The West Bank legal system is still based on Jordanian law which is a combined system of English and continental rules. The system in Gaza is based on the British Mandate laws.

In addition to their difference, the laws themselves are old and outdated. The Civil Code, for instance, dates from Ottoman times. These laws do not, therefore, only need harmonising, but also modernising.

In addition, the rules imposed since the Israeli Occupation, through the Israeli Military Orders, generally have had a character that cannot be sustained in a society based on democratic principles, respect for the Rule of Law and human rights. Such orders need to be abolished.

- Forming Committees

Several practical steps should be taken to reform the legal system while ensuring the participation of all segments of society in the process. One possibility that the Mission recommends is to establish several committees with the task of harmonising and updating the two systems. Each committee should be entrusted to work on a specific area of law, e.g., commercial law, juvenile justice, land law, personal status law, etc. Each committee should be composed not only of judges and lawyers, but also of other sectors of society, such as human rights organisations, women's groups, trade unions, etc., as

¹³² See *supra* A Note on the Political and Legal History.

appropriate and without discrimination on the grounds of sex or political opinion. The committees should also be entrusted with the task of recommending the repeal of Military Orders as appropriate.

When these Committees finalise their task, they should present the work to the Palestinian Council which, under the Israeli/Palestinian Accords, has some legislative powers. Public and open debate on these laws should be encouraged. In the Palestinian context, the approval of the Council does not mean that the legislation is enacted. As we explained earlier, Israel may still exercise a veto on any Palestinian legislative acts.¹³³ We hope that Israel will not hinder this process.

Conducting applied legal studies on possible scenarios of reform could enhance this process. This is particularly important since there is no recognized law faculty of the main universities of the Occupied Territories.

- Human Rights

Since the Israeli Occupation, the Palestinians have suffered serious human rights violations. We hope that these violations will end under Palestinian rule.

Many violations were rooted in the legal system. The Defence (Emergency) Regulations of 1945, which were enacted by the British, and reactivated by the Israelis, allow Military Commanders to order, for example, the destruction of property

¹³³ See *supra* Establishing a New Legal Order, Part Two, Section 1.

and deportation. Both measures violate human rights and humanitarian law. House demolition is a form of collective punishment and deportation is absolutely prohibited under the Geneva Conventions. Such laws that sanction violations of human rights should be immediately abolished.

Moreover, human rights norms should be incorporated into the Palestinian legal system. Since only States can become party to international treaties, it will be difficult for the Palestinian entity established under the Israeli/Palestinian Accords to sign and ratify international treaties at least during the Interim Period, especially since "foreign relations" are not transferred to the Palestinians.¹³⁴ The Mission, therefore, recommends incorporation. We particularly recommend that the following instruments be immediately incorporated:

- The International Covenant on Civil and Political Rights.
- The International Covenant on Economic, Social and Cultural Rights.
- Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment.
- Code of Conduct for Law Enforcement Officials.
- Convention on the Elimination of All Forms of Discrimination against Women.

¹³⁴ See Article 3 (b) of Annex II of the Accords.

- The Basic Principles on the Independence of the Judiciary.
- The Basic Principles on the Role of Lawyers.

Incorporating these instruments into the Palestinian legal system requires that laws are enacted by the Palestinian Council embodying the provisions of these conventions. Moreover, we hope that the death penalty will not be re-instated.

The work of human rights groups in monitoring the respect of human rights norms and advocating for better systems of protection is essential during the Interim Period. For many years, these human rights groups not only protected Palestinians from human rights violations under difficult circumstances, but also gave the Palestinians much pride and honour due to their high level of professionalism, knowledge, sophistication and courage. The ICJ is particularly proud of the achievements of its two affiliates, al-Haq in the West Bank, and the Gaza Centre for Rights and Law.¹³⁵ We hope that these human rights groups and others continue to operate and develop their programmes with the same determination to suit the needs of the new phase. We hope that their operation will not be hindered by any party. Indeed, the level of democracy in any society is often gauged by the degree of freedom human rights groups have.

¹³⁵ In 1989, al-Haq was granted the Carter/Menil Human Rights Award. In 1991, Mr. Raji Sourani, the director of the Gaza Centre for Rights and Law, was granted the Robert F. Kennedy Human Rights Award.

- The Religious Laws and Courts

This is an issue that needs special attention. As stated in Part One, the Shari'a courts in the West Bank follow Jordanian authority. They believe that their status should be negotiated with the Jordanian government. Steps should be taken in this direction.

In any case, the laws the courts apply are old and inadequate. While many felt that the religious courts needed updating, the great majority of those we spoke to of both sexes maintained that it was not possible to change the system of religious courts at all in present or foreseeable circumstances. It was pointed out that almost every country in the Middle East accords exclusive jurisdiction to religious courts in matters of personal status, including Israel itself.¹³⁶ We were advised, however, that in Egypt the religious courts had been brought into the same building as the civil courts, while in Syria an appeal to the *Cour de Cassation* was possible. One solution could be to devise a dual system when dealing with personal status matters giving the litigants the choice of resolving their disputes in the civil courts using civil procedures or in the religious courts.

¹³⁶ Though not in Turkey or Tunisia.

- Foreign Assistance

Several foreign governments, inter-governmental and non-governmental organisations are keen on aiding the Palestinians in reforming their legal system. Indeed, outside help could be needed, especially in giving logistical support such as the provision of books, equipment and training in court administration.

As for substantive law, the Mission would like to add a caution against speedy legal reforms that are not based on the actual needs of the majority of the Palestinian population. One such draft proposal written by a member of the legal staff of an inter-governmental organisation and some lawyers representing one political party in Gaza, for instance, recommends that judges and lawyers in Gaza first improve their English to be able to follow English jurisprudence. This type of assistance should be discouraged. The Mission believes that foreign assistance could be most useful in encouraging a process where Palestinian lawyers and judges, rather than outsiders, fully participate in the reform of their legal system without discrimination on the basis of sex or political opinion.

Section 3

Summary of Recommendations

The ICJ/CIJL Mission recommends that the following measures in the areas under Palestinian authority be taken:

- The Palestinian authorities incorporate international human rights norms within the new legal system.
- The widest possible consultation of all sectors of society be exercised at every stage when drafting various Palestinian legal instruments, including basic laws, without discrimination.
- Judges and lawyers be fully consulted about questions relating to the judiciary and the legal profession.
- The establishment of an independent legal profession be encouraged in view of its centrality to the principles of the Rule of Law.
- The development of legal competence in the areas of the West Bank and the Gaza Strip be strengthened and encouraged through initiating and carrying out appropriate measures such as programmes for applied legal studies.
- The urgent setting-up of a committee of Palestinian judges and lawyers from the West Bank and Gaza Strip to study the different laws in force in the Occupied Territories and propose a harmonised legislation covering both territories.

- There be strict separation between the executive, legislative and judicial powers in the future Palestinian authority.
- The independence of the judiciary be guaranteed and enshrined in the constitution and different laws.
- The judiciary be given full powers over all matters of a judicial nature, especially those relevant to human rights.
- A High Council of Judiciary be established with the power to appoint, promote and dismiss judges.
- The power of judicial review on civil, administrative and constitutional matters be exercised by the highest judicial authority, either by establishing a Court of Cassation or a Supreme Court.
- The Palestinian police force be required to follow the Code of Conduct of Law Enforcement Officials and to respect human rights norms.
- The independence of Palestinian human rights NGOs be respected and that they be allowed to function without the interference of the authorities.

ANNEX 1

ICJ/CIJL Mission on Judicial Structures and Functions in the Palestinian Territories

8 - 19 December 1993

SCHEDULE

Wed, 8 December 1993

Arrival of Mission participants.

Thurs, 9 December 1993

- | | |
|---------------|--|
| 09:00 - 11:00 | Meeting with Palestinian lawyers experienced in the functioning of the civil court system. |
| 12:00 - 14:30 | Meeting with Advocate Jan Claude Nizam, Officer-in-Charge of the Judiciary, Civil Administration of the Military Government in the Westbank. |
| 15:00 - 17:00 | Meeting with Palestinian and Israeli human rights organisations: al-Haq, Palestine Human Rights Information Center, Mandella Institute for Political Prisoners, Quaker Legal Aid Office, B'Tselem, Palestine Section of Defence for Children International and the Association for Civil Rights in Israel. |

Fri, 10 December 1993

- | | |
|---------------|--|
| 09:00 - 10:30 | Meeting with Father Anton 'Isa, President of the Catholic Religious Court at Jerusalem (Latin Patriarchate). |
| 10:30 - 11:30 | Meeting with Father Kornilious, President of the Orthodox Christian Court at the Orthodox Patriarchate. |

15:30 - 17:30 Meeting with lawyers experienced in dealing with religious courts.

Sat, 11 December 1993

13:00 - 14:30 Meeting with lawyers working in the Shari'a courts.

15:30 - 17:00 Meeting with Palestinian politicians.

Sun, 12 December 1993

09:00 - 10:00 Meeting with Judge Fahd Shweika, President of the Magistrate Court in Bethlehem.

10:30 - 12:00 Meeting with lawyers dealing with civil matters from Bethlehem and Hebron (the Southern part of the West Bank).

13:30 - 15:00 Meeting with representatives of the Israeli Section of Defence for Children International.

Mon, 13 December 1993

09:00 - 10:00 Meeting with Judge Khalil Silwani, President of the Court of Appeal in Ramallah (West Bank).

10:30 - 12:00 Meeting with a number of judges members of the Court of Appeal and judges in the Court of First Instance in Ramallah.

Tues, 14 December 1993

09:00 - 11:00 Visit to the Court of First Instance and the Magistrate Court and meeting with Judge 'Imad Salim, President of the Court of First Instance.

12:00 - 13:00 Meeting with Dr. Munther Salah, President of al-Najjah University in Nablus.

15:00 - 17:00 Meeting with lawyers dealing with civil matters working in Nablus, Jenin and Toulkarem.

18:00 Meeting with Dr. Hanan 'Ashrawi, spokesperson of the Palestinian Delegation to the peace negotiations.

Wed, 15 December 1993

- 09:00 - 10:00 Meeting with Judge Yousef al-Salibi, Head of the Magistrate Court in Jericho.
- 10:30 - 12:00 Meeting with lawyers dealing with civil matters in Jericho.
- 15:30 - 17:00 Joint meeting with Advocate 'Ali Ghuzlan, Head of the Arab Lawyers' Committee, and Advocate 'Ali Shuqairat, Secretary of the Jerusalem Branch of the Jordanian Bar Association.

Thurs, 16 December 1993

- 08:30 - 09:15 Meeting with Justice Meir Shamgar, President of the Supreme Court of Israel.
- 10:30 Meeting with Legal Advisors of the Ministry of Foreign Affairs.
- 15:00 Meeting with the Minister of Environment, Mr Yossi Sarid.
- 17:00 Meeting with Advocate Ahaz Ben-Ari, Head of the International Law Branch, Advocate General Headquarters, Israel Defense Forces.

Fri, 17 December 1993

- 12:30 Meeting with Justice Haim Cohn, former President of the Supreme Court of Israel.

Sat, 18 December 1993

and

Sun, 19 December 1993

Meetings in Gaza and end of ICJ/CIJL Mission.

ANNEX 2

COPY

*Permanent Mission of Israel
to the Office of the United Nations
and Int'l Organisations in Geneva*

March 7, 1994

*Mr. Adama DIENG
Secretary-General ICJ*

Dear Mr. Dieng,

I refer to your two letters of the 1st and 2nd of February, as well as to the ICJ's statement before the Commission on Human Rights.

In the first place, I should like to address your assertion that "towards the end of our mission, we met with Israeli officials to convey our concerns". The natural implication of this was that a meeting was held with the Israeli officials *after* you completed your enquiries with the Palestinians, in order to bring their allegations to the Israelis' attention, so that you could take Israeli responses into account in preparing a balanced report. It is hard to see why else you would wish to meet with Israeli officials at all.

In reality, on your own showing, the meeting took place only two thirds of the way through your visit, on Thursday 16th December, and was followed by your visit to the Gaza strip, another full day of meetings with the Palestinians, and the seminar itself. What is more, no account whatsoever was taken of any Israeli comments in preparing your report, and there is no indication that you intended to take them into account. Had you regarded them as being of significance, you would certainly have waited until the very end of your visit, and until you had obtained all possible information before meeting the Israelis. Clearly, the meeting had quite a different purpose and character from that implied in your statement, and in

view of your attitude towards it, it perhaps does not matter very much when it took place.

As to the objectives of your mission, you made it clear in your letter to me of 20th October 1993 that the primary task was to make recommendations concerning the functioning of a future Palestinian judiciary. The study of the existing situation was a legitimate means to that end, but not an end in itself. One would therefore have expected the main emphasis to be placed on recommendations for the future rather than a survey of present defects, real or alleged. Yet the summary report consists of some three pages of critical allegations and so-called "recommendations under present circumstances", followed by a mere page of perfunctory suggestions on the real issues with which the visit was supposed to deal.

Furthermore, the Declaration of Principles signed by Israel and the PLO speaks of establishing inter alia "*independent Palestinian judicial organs*". (Art. VII(2)). This mutual commitment, to which you did not make any reference, renders the first three pages of the report entirely superfluous, since the present system is, in any case, going to be replaced.

All this entirely supports our perception of a "conspicuous political agenda" as stated in the letter of the Ministry of Foreign Affairs.

Indeed, the summary report appears to have been motivated far more by the animosities of the past than by any vision for the future.

Little wonder, then, that the ICJ's statement at the Human Rights Commission was markedly at variance with the general tone of the debate. With very few exceptions, this forum was notable, this year, for its moderation and for the constructive and forward-looking speeches made by most speakers, including those by representatives of some of Arab and Moslem States. The ICJ's statement, on the contrary, was filled with tendentious inflammatory allegations. The following are just a few examples.

It claimed that Palestinians require permits to enter Jerusalem (a situation you misleadingly described by saying that Jerusalem is

"closed" to them). There was no mention of the fact that these restrictions were imposed following a spate of daily knifings of Israeli civilians in the early part of 1993.

The statement asserts that "in Gaza, soldiers pointed their guns at our car, ordering us to detour". May I remind you of our telephone conversations in which I told you that the mission could go freely wherever it wished in Israel and in the territories, but that it would be advisable to have an escort when crossing "green line" checkpoints. Failing to respond to my offer of help at that time, you later produced this alarming account which insinuates far more than it asserts and provides no details which would enable one to understand what actually happened. Why for example was a detour requested? Were all cars being asked to detour, or only yours? What alternative route was indicated (since you evidently did enter Gaza)? What transpired between yourselves and the soldiers? No information is given which would enable one to understand this incident.

The statement alludes to "three Palestinians seriously injured by Israeli soldiers, the night we were in Gaza". Why was only this episode mentioned, especially since you were unable to ascertain its circumstances? Does this isolated incident truly convey a full picture of the prevailing security situation? There are casualties on both sides almost daily. Why was there no mention of the killing of Israeli soldiers or civilians before or after that event, or for that matter the murder of scores of Palestinians (more than 900!) by their brother Palestinians for alleged "collaboration"?

The statement then refers to the "13th December, the day when Israeli troops were to have withdrawn". Obviously the Declaration of Principles has been misread. The 13th December was the date on which the agreement for withdrawal was to have been signed, on the assumption that *both* parties had agreed its terms by then. Withdrawal was to have *commenced* on the date of signature (whenever that took place) and to have been *completed* 4 months after commencement. Your formulation, on the other hand, implies a deliberate Israeli breach of an undertaking to withdraw on 13th December.

You claim further that "owing to the late release of the Special Rapporteur's report (you) were unable to comment on it adequately". In view of the knowledge you claim to have amassed, it would not have been difficult to have made some comment, or at least to have welcomed it. It is hard not to conclude that you refrained from doing so because of the striking contrast between the balanced picture that the Rapporteur presented and the one-sided nature of the ICJ's report and statement.

To us here and in Israel, as well as to other representatives who shared with us their surprise at your address in the Commission, it is clear that in dealing with our issue, the ICJ falls far short of the standards of objectivity and even-handedness required by an international body of jurists.

You will notice that no reference is made here to the substantive legal comments contained in the ICJ's report. These are being prepared separately.* I would appreciate it however, if this letter could in the meantime be published in your bulletin.

I attach for your information a copy of my speech in the Commission in which I referred to the ICJ statement.

Finally, I would like to emphasize, Mr. Secretary-General, that nothing that is mentioned above will detract from the sentiment of friendship and amity that I feel towards you. I hope this relationship which I highly cherish will continue.

With my best personal wishes,

(signed)
Itzhak Lior
Ambassador
Permanent Representative

* ICJ note: as of the publication of this Report, no such comments have been received by the ICJ.

BASIC TEXT 1

Declaration of Principles on Interim Self-Government Arrangements

The Government of the State of Israel and the P.L.O. team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people, agree that it is time to put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process.

Accordingly, the two sides agree to the following principles:

Article I AIM OF THE NEGOTIATIONS

The aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority, the elected Council (the "Council") for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338.

It is understood that the interim arrangements are an integral part of the whole peace process and that the negotiations on the permanent status will lead to the implementation of Security Council Resolutions 242 and 338.

Article II FRAMEWORK FOR THE INTERIM PERIOD

The agreed framework for the interim period is set forth in this Declaration of Principles.

Article III ELECTIONS

1. In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.
2. An agreement will be concluded on the exact mode and conditions of the elections in accordance with the protocol attached as Annex I, with the goal of

holding the elections not later than nine months after the entry into force of this Declaration of Principles.

3. These elections will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements.

Article IV JURISDICTION

Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.

Article V TRANSITIONAL PERIOD AND PERMANENT STATUS NEGOTIATIONS

1. The five-year transitional period will begin upon the withdrawal from the Gaza Strip and Jericho area.
2. Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people representatives.
3. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest.
4. The two parties agree that the outcome of the permanent status negotiations should not be prejudiced or preempted by agreements reached for the interim period.

Article VI PREPARATORY TRANSFER OF POWERS AND RESPONSIBILITIES

1. Upon the entry into force of this Declaration of Principles and the withdrawal from the Gaza Strip and the Jericho area, a transfer of authority from the Israeli military government and its Civil Administration to the authorized Palestinians for this task, as detailed herein, will commence. This transfer of authority will be of preparatory nature until the inauguration of the Council.
2. Immediately after the entry into force of this declaration of principles and the withdrawal from the Gaza Strip and Jericho area, with the view to promoting economic development in the West Bank and Gaza Strip, authority will be transferred to the Palestinians on the following spheres: education and culture, health, social welfare, direct taxation, and tourism. The Palestinian side will commence in building the Palestinian police force, as agreed upon. Pending the

inauguration of the Council, the two parties may negotiate the transfer of additional powers and responsibilities, as agreed upon.

Article VII INTERIM AGREEMENT

1. The Israeli and Palestinian delegations will negotiate an agreement on the interim period (the "Interim Agreement").
2. The Interim Agreement shall specify, among other things, the structure of the Council, the number of its members, and the transfer of powers and responsibilities from the Israeli military government and its Civil Administration to the Council. The Interim Agreement shall also specify the Council's executive authority, legislative authority in accordance with Article IX below, and the independent Palestinian judicial organs.
3. The Interim Agreement shall include arrangements, to be implemented upon the inauguration of the Council, for the assumption by the Council of all of the powers and responsibilities transferred previously in accordance with Article VI above.
4. In order to enable the Council to promote economic growth, upon its inauguration, the Council will establish, among other things, a Palestinian Electricity Authority, a Gaza Sea Port Authority, a Palestinian Development Bank, a Palestinian Export Promotion Board, a Palestinian Environmental Authority, a Palestinian Land Authority and a Palestinian Water Administration Authority, and any other Authorities agreed upon, in accordance with the Interim Agreement that will specify their powers and responsibilities.
5. After the inauguration of the Council, the Civil Administration will be dissolved, and the Israeli military government will be withdrawn.

Article VIII PUBLIC ORDER AND SECURITY

In order to guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip, the Council will establish a strong police force, while Israel will continue to carry the responsibility for defending against external threats, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.

Article IX LAWS AND MILITARY ORDERS

1. The Council will be empowered to legislate, in accordance with the Interim Agreement, within all authorities transferred to it.
2. Both parties will review jointly laws and military orders presently in force in remaining spheres.

Article X JOINT ISRAELI-PALESTINIAN LIAISON COMMITTEE

In order to provide for a smooth implementation of this Declaration of Principles and any subsequent agreements pertaining to the interim period, upon the entry into force of this Declaration of Principles, a Joint Israeli-Palestinian Liaison Committee will be established in order to deal with issues requiring coordination, other issues of common interest, and disputes.

Article XI ISRAELI-PALESTINIAN COOPERATION IN ECONOMIC FIELDS

Recognizing the mutual benefit of cooperation in promoting the development of the West Bank, the Gaza Strip and Israel, upon the entry into force of this Declaration of Principles, an Israeli-Palestinian Economic Cooperation Committee will be established in order to develop and implement in a cooperative manner the programs identified in the protocols attached as Annex III and Annex IV.

Article XII LIAISON AND COOPERATION WITH JORDAN AND EGYPT

The two parties will invite the Governments of Jordan and Egypt to participate in establishing further liaison and cooperation arrangements between the Government of Israel and the Palestinian representatives, on the one hand, and the governments of Jordan and Egypt, on the other hand, to promote cooperation between them. These arrangements will include the constitution of a Continuing Committee that will decide by agreement on the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967, together with necessary measures to prevent disruption and disorder. Other matters of common concern will be dealt with by this Committee.

Article XIII REDEPLOYMENT OF ISRAELI FORCES

1. After the entry into force of this Declaration of Principles, and not later than the eve of elections for the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place, in addition to withdrawal of Israeli forces carried out in accordance with Article XIV.
2. In redeploying its military forces, Israel will be guided by the principle that its military forces should be redeployed outside populated areas.
3. Further redeployments to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police force pursuant to Article VIII above.

Article XIV ISRAELI WITHDRAWAL FROM THE GAZA STRIP AND JERICHO AREA

Israel will withdraw from the Gaza Strip and Jericho area, as detailed in the

protocol attached as Annex II

Article XV RESOLUTION OF DISPUTES

1. Disputes arising out of the application or interpretation of this Declaration of Principles, or any subsequent agreements pertaining to the interim period, shall be resolved by negotiations through the Joint Liaison Committee to be established pursuant to Article X above.
2. Disputes which cannot be settled by negotiations may be resolved by a mechanism of conciliation to be agreed upon by the parties.
3. The parties may agree to submit to arbitration disputes relating to the interim period, which cannot be settled through conciliation. To this end, upon the agreement of both parties, the parties will establish an Arbitration Committee.

Article XVI ISRAELI-PALESTINIAN COOPERATION CONCERNING REGIONAL PROGRAMS

Both parties view the multilateral working groups as an appropriate instrument for promoting a "Marshall Plan", the regional programs and other programs, including special programs for the West Bank and Gaza Strip, as indicated in the protocol attached as Annex IV.

Article XVII MISCELLANEOUS PROVISIONS

1. This Declaration of Principles will enter into force one month after its signing.
2. All protocols annexed to this Declaration of Principles and Agreed Minutes pertaining thereto shall be regarded as an integral part hereof.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:
(SHIMON PERES)

For the P.L.O.:
(MAHMOUD ABBAS)

Witnessed By:

The United States of America:
(WARREN CHRISTOPHER)

The Russian Federation:
(ANDREI KOZYREV)

ANNEX I

PROTOCOL ON THE MODE AND CONDITIONS OF ELECTIONS

1. Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides.
2. In addition, the election agreement should cover, among other things, the following issues:
 - a. the system of elections;
 - b. the mode of the agreed supervision and international observation and their personal composition; and
 - c. rules and regulations regarding election campaign, including agreed arrangements for the organizing of mass media, and the possibility of licensing a broadcasting and TV station.
3. The future status of displaced Palestinians who were registered on 4th June 1967 will not be prejudiced because they are unable to participate in the election process due to practical reasons.

ANNEX II

PROTOCOL ON WITHDRAWAL OF ISRAELI FORCES FROM THE GAZA STRIP AND JERICHO AREA

1. The two sides will conclude and sign within two months from the date of entry into force of this Declaration of Principles, an agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area. This agreement will include comprehensive arrangements to apply in the Gaza Strip and the Jericho area subsequent to the Israeli withdrawal.
2. Israel will implement an accelerated and scheduled withdrawal of Israeli military forces from the Gaza Strip and Jericho area, beginning immediately with the signing of the agreement on the Gaza Strip and Jericho area and to be completed within a period not exceeding four months after the signing of this agreement.
3. The above agreement will include, among other things:
 - a. Arrangements for a smooth and peaceful transfer of authority from the Israeli military government and its Civil Administration to the Palestinian representatives
 - b. Structure, powers and responsibilities of the Palestinian authority in these

areas, except: external security, settlements, Israelis, foreign relations and other mutually agreed matters.

- c. Arrangements for the assumption of internal security and public order by the Palestinian police force consisting of police officers recruited locally and from abroad (holding Jordanian passports and Palestinian documents issued by Egypt). Those who will participate in the Palestinian police force coming from abroad should be trained as police and police officers.
 - d. A temporary international or foreign presence, as agreed upon.
 - e. Establishment of a joint Palestinian-Israeli Coordination and Cooperation Committee for mutual security purposes.
 - f. An economic development and stabilization program, including the establishment of an Emergency Fund, to encourage foreign investment, and financial and economic support. Both sides will coordinate and cooperate jointly and unilaterally with regional and international parties to support these aims.
 - g. Arrangements for a safe passage for persons and transportation between the Gaza Strip and Jericho area.
- 4. The above agreement will include arrangements for coordination between both parties regarding passages:
 - a. Gaza - Egypt; and
 - b. Jericho - Jordan.
 - 5. The offices responsible for carrying out the powers and responsibilities of the Palestinian authority under this Annex II and Article VI of the Declaration of Principles will be located in the Gaza Strip and in the Jericho area pending the inauguration of the Council.
 - 6. Other than these agreed arrangements, the status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip, and will not be changed in the interim period.

ANNEX III

PROTOCOL ON ISRAELI-PALESTINIAN COOPERATION IN ECONOMIC AND DEVELOPMENT PROGRAMS

The two sides agree to establish an Israeli-Palestinian Continuing Committee for Economic Cooperation, focusing, among other things, on the following:

1. Cooperation in the field of water, including a Water Development Program prepared by experts from both sides, which will also specify the mode of cooperation in the management of Water resources in the West Bank and Gaza Strip, and will include proposals for studies and plans on water rights of each party, as well as on the equitable utilization of joint water resources for implementation in and beyond the interim period.
2. Cooperation in the field of electricity, including an Electricity Development Program, which will also specify the mode of cooperation for the production, maintenance, purchase and sale of electricity resources.
3. Cooperation in the field of energy, including an Energy Development Program, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This Program may also provide for the construction of a Petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.
4. Cooperation in the field of finance, including a Financial Development and Action Program for the encouragement of international investment in the West Bank and the Gaza Strip, and in Israel, as well as the establishment of a Palestinian Development Bank.
5. Cooperation in the field of transport and communications, including a Program, which will define guidelines for the establishment of a Gaza Sea Port area, and will provide for the establishing of transport and communications lines to and from the West Bank and the Gaza Strip to Israel and to other countries. In addition, this program will provide for carrying out the necessary construction of roads, railways, communications lines, etc.
6. Cooperation in the field of trade, including studies, and Trade Promotion Programs, which will encourage local, regional and inter-regional trade, as well as a feasibility study of creating free trade zones in the Gaza Strip and in Israel, mutual access to these zones, and cooperation in other areas related to trade and commerce.
7. Cooperation in the field of industry, including Industrial Development Programs, which will provide for the establishment of joint Israeli-Palestinian Industrial Research and Development Centers, will promote Palestinian-Israeli joint ventures, and provide guidelines for cooperation in the textile, food, pharmaceutical, electronics, diamonds, computer and science-based industries.
8. A program for cooperation in, and regulation of, labor relations and cooperation in social welfare issues.
9. A Human Resources Development and Cooperation Plan, providing for joint Israeli-Palestinian workshops and seminars, and for the establishment of joint

vocational training centers, research institutes and data banks.

10. An Environmental Protection Plan, providing for joint and/or coordinated measures in this sphere.
11. A program for developing coordination and cooperation in the field of communication and media.
12. Any other programs of mutual interest.

ANNEX IV

PROTOCOL ON ISRAELI-PALESTINIAN COOPERATION CONCERNING REGIONAL DEVELOPMENT PROGRAMS

1. The two sides will cooperate in the context of the multilateral peace efforts in promoting a Development Program for the region, including the West Bank and the Gaza Strip, to be initiated by the G-7. The parties will request the G-7 to seek the participation in this program of other interested states, such as members of the Organisation for Economic Cooperation and Development, regional Arab states and institutions, as well as members of the private sector.
 2. The Development Program will consist of two elements:
 - a. an Economic Development Program for the West Bank and the Gaza Strip.
 - b. a Regional Economic Development Program.
- A. The Economic Development Program for the West Bank and the Gaza Strip will consist of the following elements:
- (1) A Social Rehabilitation Program, including a Housing and Construction Program.
 - (2) A Small and Medium Business Development Plan.
 - (3) An Infrastructure Development Program (water, electricity, transportation and communications, etc.).
 - (4) A Human Resources Plan.
 - (5) Other programs.
- B. The Regional Economic Development Program may consist of the following elements:
- (1) The establishment of a Middle East Development Fund, as a first step, and a Middle East Development Bank, as a second step.
 - (2) The development of a joint Israeli-Palestinian-Jordanian Plan for coordinated exploitation of the Dead Sea area.

- (3) The Mediterranean Sea (Gaza)-Dead Sea Canal.
 - (4) Regional Desalinization and other water development projects.
 - (5) A regional plan for agricultural development, including a coordinated regional effort for the prevention of desertification.
 - (6) Interconnection of electricity grids.
 - (7) Regional cooperation for the transfer, distribution and industrial exploitation of gas, oil and other energy resources.
 - (8) A Regional Tourism, Transportation and Telecommunications Development Plan.
 - (9) Regional cooperation in other spheres.
3. The two sides will encourage the multilateral working groups, and will coordinate towards their success. The two parties will encourage inter-sessional activities, as well as pre-feasibility and feasibility studies, within the various multilateral working groups.

AGREED MINUTES

to the

DECLARATION OF PRINCIPLES

ON INTERIM SELF-GOVERNMENT ARRANGEMENTS

A. GENERAL UNDERSTANDINGS AND AGREEMENTS

Any powers and responsibilities transferred to the Palestinians pursuant to the Declaration of Principles prior to the inauguration of the Council will be subject to the same principles pertaining to Article IV, as set out in these Agreed Minutes below.

B. SPECIFIC UNDERSTANDINGS AND AGREEMENTS

Article IV

It is understood that:

1. Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, military locations, and Israelis.
2. The Council's jurisdiction will apply with regard to the agreed powers,

responsibilities, spheres and authorities transferred to it.

Article VI (2)

It is agreed that the transfer of authority will be as follows:

1. The Palestinian side will inform the Israeli side of the names of the authorised Palestinians who will assume the powers, authorities and responsibilities that will be transferred to the Palestinians according to the Declaration of Principles in the following fields: education and culture, health, social welfare, direct taxation, tourism, and any other authorities agreed upon.
2. It is understood that the rights and obligations of these offices will not be affected.
3. Each of the spheres described above will continue to enjoy existing budgetary allocations in accordance with arrangements to be mutually agreed upon. These arrangements also will provide for the necessary adjustments required in order to take into account the taxes collected by the direct taxation office.
4. Upon the execution of the Declaration of Principles, the Israeli and Palestinian delegations will immediately commence negotiations on a detailed plan for the transfer of authority on the above offices in accordance with the above understandings.

Article VII (2)

The Interim Agreement will also include arrangements for coordination and cooperation.

Article VII (5)

The withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the Council.

Article VIII

It is understood that the Interim Agreement will include arrangements for cooperation and coordination between the two parties in this regard. It is also agreed that the transfer of powers and responsibilities to the Palestinian police will be accomplished in a phased manner, as agreed in the Interim Agreement.

Article X

It is agreed that, upon the entry into force of the Declaration of Principles, the Israeli and Palestinian delegations will exchange the names of the individuals designated by them as members of the Joint Israeli-Palestinian Liaison Committee. It is

further agreed that each side will have an equal number of members in the Joint Committee. The Joint Committee will reach decisions by agreement. The Joint Committee may add other technicians and experts, as necessary. The Joint Committee will decide on the frequency and place or places of its meetings.

Annex II

It is understood that, subsequent to the Israeli withdrawal, Israel will continue to be responsible for external security, and for internal security and public order of settlements and Israelis. Israeli military forces and civilians may continue to use roads freely within the Gaza Strip and the Jericho area.

DONE at Washington, D.C., this thirteenth day of September 1993.

For the Government of Israel:

(SHIMON PERES)

For the P.L.O.:

(MAHMOUD ABBAS)

Witnessed By:

The United States of America:

(WARREN CHRISTOPHER)

The Russian Federation:

(ANDREI KOZYREV)

BASIC TEXT 2

U.N. Basic Principles on the Independence of the Judiciary

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organisation and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always

conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organisations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

11. The terms of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure.

The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

BASIC TEXT 3

Basic Principles on the Role of the Lawyers

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national

levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and co-operating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.
11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
 - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
 - (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
 - (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.
20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall co-operate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

BASIC TEXT 4

U.N. General Assembly Resolution 46/137

Enhancing the effectiveness of the principle of periodic and genuine elections

The General Assembly,

Recalling its resolutions 44/146 of 15 December 1989 and 45/150 of 18 December 1990, as well as Commission on Human Rights resolution 1989/51 of 7 March 1989,

Having considered the report of the Secretary-General,

Aware of its obligations under the Charter of the United Nations to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to promote and encourage respect for human rights and fundamental freedoms for all,

Reaffirming the Universal Declaration of Human Rights, which provides that everyone has the right to take part in the government of his or her country, directly or through freely chosen representatives, that everyone has the right of equal access to public service in his or her country, that the will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures,

Noting that the International Covenant on Civil and Political Rights provides that every citizen shall have the right and the opportunity, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors, and to have access, on general terms of equality, to public service in his or her country,

Condemning the system of apartheid and any other denial or abridgement of the right to vote on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, under the Charter, all States enjoy sovereign equality and that each

State, in accordance with the will of its people, has the right freely to choose and develop its political, social, economic and cultural systems,

Recognizing that there is no single political system or electoral method that is equally suited to all nations and their people and that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine elections should not call into question each State's sovereign right, in accordance with the will of its people, freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other States,

Noting with appreciation the advisory services and technical assistance provided by the Centre for Human Rights of the Secretariat as well as the technical assistance provided by the Department of Technical Cooperation for Development of the Secretariat and the United Nations Development Programme to some Member States, including those in transition to democracy, at their request, and inviting those bodies to continue and intensify these efforts as requested,

Noting the electoral assistance provided to Member States at their request by the Organization,

Affirming that electoral verification by the United Nations should remain an exceptional activity of the Organization to be undertaken in well-defined circumstances, primarily in situations with a clear international dimension,

Taking note of the criteria contained in paragraph 79 of the report of the Secretary-General which ought to be met before the Organization agrees to requests for electoral verification,

1. *Takes note with appreciation* of the report of the Secretary-General;
2. *Underscores* the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which establish that the authority to govern shall be based on the will of the people, as expressed in periodic and genuine elections;
3. *Stresses its conviction* that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights;
4. *Declares* that determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others, as provided in national constitutions and laws;
5. *Underscores* the duty of each Member State, in accordance with the

provisions of the Charter of the United Nations, to respect the decisions taken by other States, in accordance with the will of their people, in freely choosing and developing their electoral institutions;

6. *Reaffirms* that apartheid must be abolished, that the systematic denial or abridgement of the right to vote on the grounds of race or colour is a gross violation of human rights and an affront to the conscience and dignity of mankind, and that the right to participate in a political system based on common and equal citizenship and universal franchise is essential for the exercise of the principle of periodic and genuine elections;
7. *Affirms* the value of the electoral assistance that the United Nations has provided at the request of some Member States, in the context of full respect for their sovereignty;
8. *Believes* that the international community should continue to give serious consideration to ways in which the United Nations can respond to the requests of Member States as they seek to promote and strengthen their electoral institutions and procedures;
9. *Endorses* the view of the Secretary-General that he should designate a senior official in the Offices of the Secretary-General to act as a focal point, in addition to existing duties and in order to ensure consistency in the handling of requests of Member States organizing elections, who would assist the Secretary-General to coordinate and consider requests for electoral verification and to channel requests for electoral assistance to the appropriate office or programme, to ensure careful consideration of requests for electoral verification, to build on experience gained to develop an institutional memory, to develop and maintain a roster of international experts who could provide technical assistance as well as assist in the verification of electoral processes and to maintain contact with regional and other intergovernmental organizations to ensure appropriate working arrangements with them and the avoidance of duplication of efforts, and requests the Secretary-General to designate such an official to take on these tasks;
10. *Determines* that the designation of the senior official would neither pre-empt nor supersede ongoing arrangements regarding electoral assistance nor prejudice the operational arrangements for missions that the Organization may decide to undertake;
11. *Requests* the Secretary-General to allocate whenever appropriate, and within existing resources, a small number of staff and other resources to support the designated senior official in carrying out his or her functions;
12. *Commends* the Centre for Human Rights of the Secretariat as well as the Department of Technical Cooperation for Development of the

Secretariat and the United Nations Development Programme for the advisory services and technical assistance that they have provided and continue to provide to requesting Member States, and requests that they collaborate closely with the senior official designated by the Secretary-General and inform him or her of the assistance provided and activities undertaken by them in the area of electoral assistance;

13. *Requests* the Secretary-General to notify the competent organ of the United Nations upon receipt of official requests from Member States for electoral verification and, upon the direction of that organ, to provide appropriate assistance;
14. *Also requests* the Secretary-General to establish, in accordance with United Nations financial regulations, a voluntary trust fund for cases where the requesting Member State is unable to finance, in whole or in part, the electoral verification mission and to propose guidelines for disbursements therefrom;
15. *Affirms* the effectiveness of and the need for coordination with intergovernmental organizations, including regional organizations having international electoral assistance experience;
16. *Commends* the efforts of non-governmental organizations that have provided electoral assistance at the request of Member States;
17. *Invites* those Member States which have not responded to the Secretary-General's request, pursuant to paragraph 10 of resolution 45/150, to submit views concerning suitable approaches that will permit the Organization to respond to the requests from Member States for electoral assistance, to do so in order to enable the Secretary-General to include those views in his next report to the General Assembly;
18. *Requests* the Secretary-General to report to the General Assembly at its forty-seventh session on the implementation of the present resolution, on the experience of the Organization in providing electoral assistance to requesting Member States and on recommendations for providing such assistance, on the detailed guidelines and terms of reference being developed for United Nations electoral involvement and on the nature and disposition of the requests from Member States, under the item entitled "Human rights questions".

75th plenary meeting

17 December 1991

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